

# Report

Report to:	<b>Executive Committee</b>
Date of Meeting:	<b>23 June 2021</b>
Report by:	<b>Executive Director (Community and Enterprise Resources)</b>

Subject:	<b>Cross Party Working Group Review of South Lanarkshire Leisure and Culture (SLLC) – Outcomes</b>
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## 1. Purpose of Report

### 1.1. The purpose of the report is to:

- ♦ present the outcomes from the Cross Party Working Group (CPWG) review of South Lanarkshire Leisure and Culture (SLLC) following the conclusion of the work of the Group.
- ♦ set out the next steps in taking forward the action plan in section 9.

## 2. Recommendations

### 2.1. The Executive Committee is asked to approve the following recommendations: -

- (1) that governance arrangements set out in section 4; be endorsed
- (2) that pricing arrangements set out in section 5; be endorsed
- (3) that the proposal that the Council engage in further consultation and engagement with community groups to promote community asset transfer, as set out in section 8; be endorsed and,
- (4) that the recommendations be referred to the Full Council for approval.

## 3. Background

### 3.1. In 2018/2019, a number of factors led the Council to commission a review of its leisure and culture provision, including the need for clarity in terms of the relationship between the Council, SLLC and its Board, and its role as a provider of services to the Council.

### 3.2 The establishment of a Cross Party Working Group (CPWG) on leisure and culture was agreed at the Full Council meeting on 27 February 2019 and the Executive Committee on 13 March 2019.

### 3.3 On 29 May 2019, the Executive Committee agreed the following Terms of Reference for the CPWG, which was made up of 11 elected members drawn from South Lanarkshire's political parties:

1. to consider SLLC and leisure and cultural services by activity, providing guidance on which activities require to be expanded, reduced, introduced or discontinued and determining what delivery model is required to achieve this
2. to consider the leisure and culture asset base, taking account of the current condition of buildings and equipment and of future asset management plan

3. to consider proposals for the future SLC/SLLC relationship including its management, governance and monitoring arrangements
4. to consider the need for future investment, and the extent to which SLLC can be expected to contribute to the Council's future efficiency requirements
5. to consider a communication and stakeholder engagement plan to develop and include the wider partnerships that will contribute to and support the transformation process

3.4 The CPWG commenced its work in July 2019, supported by officers from Community and Enterprise Resources and SLLC, and concluded its considerations on the 19 May 2021. The overriding purpose of the review process was to define the 'ask' of SLLC in delivering services on behalf of the Council, and how it implements this ask. The review provided members with a significant level of information on the nature of the services delivered by SLLC and in turn the opportunities and challenges that require to be considered. This included reviewing the current profile of SLLC, reviewing the existing assets in terms of condition and future provision, governance arrangements and pricing models. In addition, the relationship between SLLC and the Community Planning Partners structure was considered.

3.5 At the final meeting of the CPWG on the 19 May 2021, it was agreed that the key outcomes from the review process would be reported to the Executive Committee and then onto the Full Council, and that this would focus on progressing the following matters: governance arrangements, pricing model and strengthening links with the Community Planning Partnership. In addition, the CPWG concluded that any further review and changes to the asset base would not be progressed. It was recognised however that opportunities and capacity for Community Asset Transfer (CAT) should be considered further, with a view to increase the community capacity and capabilities for engaging in a CAT process. The following sections of the report set out how these matters will now be taken forward.

3.6 Throughout the review process, officers have sought to keep the staff and trade unions fully informed and engage with them to seek their views. In the same way, officers kept the SLLC Board up to date with the review process and its direction of travel. In this respect, it is noted that the Board is broadly supportive of the key outputs of the process as set out below.

## **4. Governance**

### **4.1 Existing Governance Arrangements**

4.1.1 The Council is obliged to provide services, currently delivered by SLLC, under the following legislation:

- ♦ sections 14, 15 and 16 of the Local Government & Planning (Scotland) Act 1982 to ensure that there is adequate provision for facilities for the inhabitants of its area for recreational, sporting, cultural and social activities; and
- ♦ section 163 of the Local Government (Scotland) Act 1973 to secure the provision of adequate library facilities for all person's resident in its area.

- 4.1.2 SLLC is a separate legal entity from the Council. It is a charitable company limited by guarantee incorporated under the Companies Act and a charity registered with the Office of the Scottish Charity Regulator. Its trading company is SLL Trading Limited. As a charity, SLLC is able to apply for national non-domestic rates relief in respect of the properties it occupies and currently receives full discretionary relief. This amounts to £3.548 milion for financial year 2021/2022.
- 4.1.3 SLLC and SLL Trading Limited currently have a Board of twelve Directors whilst there are two vacant Board positions. As a charity, SLLC's Directors are its trustees. Although legally separate from the Council, four Councillors and one Council member of staff (Executive Director of Community and Enterprise Resources) are Directors of SLLC and Directors of SLL Trading Limited. In addition, the Trade Union appointed Director is also a Council employee. The remaining Directors are independently appointed.
- 4.1.4 The relationship between the Council, SLLC and SLL Trading Limited is governed by a suite of documents including:
- ◆ a **service specification** which sets out a range of obligations for SLLC in respect of its relationship with the Council
  - ◆ various leases and agreements in respect of the **properties** utilised by SLLC
  - ◆ a **funding agreement**
  - ◆ **transfer agreements** (these directly concerned the transfer of the services, staff etc. at the times of the transfers in 2002 and 2010)
  - ◆ a **collections agreement** in respect of delivery, exhibition and preservation of the Council's museums' collections
  - ◆ a **Memorandum of Understanding** setting out obligations in respect of services to be undertaken by the Council, properties, performance, standing orders and procedures and liaison
  - ◆ **Directors Duties** which determine the responsibilities and obligations of the SLLC Board in terms of both The Companies Act and Charities Legislation

## 4.2 The Case for Change

- 4.2.1 The current governance arrangements are based on a model dating back to the formation of the original Leisure Trust, South Lanarkshire Leisure Ltd, in 2002. This was one of the first leisure trusts in Scotland. Trusts established more recently have benefited from working within more modern legal frameworks that better reflect the up-to-date legislation surrounding arm's length organisations.
- 4.2.2 An analysis of Council/SLLC governance undertaken by Burness Paull, the Council's legal advisors, identified that the current arrangements are outdated and are ambiguous about the council's rights and scope for intervention. They also highlighted that the current arrangements predate legislation surrounding Teckal compliance and the Trust is, therefore, not structured in a way that prevents external organisations from exercising the right of competitive challenge for the delivery of leisure and cultural activities on the Council's behalf.
- 4.2.3 Consequently, it is recognised that the current governance arrangements no longer reflect the needs of either the Council or SLLC. It is proposed that both parties work together to develop a new, modernised governance model that achieves the optimum balance between the principles of charity law and other legal and operational considerations, and that this is undertaken to the satisfaction of both the Council and the SLLC Board.

4.2.4 A modernised governance model will also afford the Council and SLLC the opportunity to review the various Service Level Agreements that exist for the provision of shared services with the aim of strengthening the SLC/SLLC partnership and seek efficiencies.

### **4.3 Proposals to modernise the Governance arrangements**

4.3.1 The CPWG sought advice from Burness Paull solicitors to review the Constitutional Documents and the Agreements. Burness Paull's key findings and recommendations can be summarised as follows:

4.3.2 Burness Paull are of the view that, to achieve good governance and the optimal balance between the principles of charity law and procurement considerations, the most advantageous option would be for SLLC to restructure as a *Teckal-compliant* organisation.

4.3.3 The *Teckal* exemption applies where a contracting authority (i.e. the Council) contracts with a legally distinct entity – usually this will be a company that the authority has set up to provide services (i.e. SLLC). The conditions for the exemption are that:-

- ◆ The service provider carries out the principal part of its activities with the authority.
- ◆ The relationship between the authority and the service provider is similar to the relationship the authority has with its own departments.
- ◆ There is no private sector ownership of the service provider nor any intention that there should be any.

4.3.4 Where all three of these conditions are met, the arrangement will not be treated as a contract for the purposes of the procurement regime, rather it will be deemed to be an in-house administrative arrangement. By doing so, the Council and SLLC negate the risk of competitive challenge for the delivery of services on the Council's behalf and the opportunity for closer joint delivery of services is expanded.

4.3.5 A *Teckal-compliant* model has the benefit of not being subject to these challenges. Additionally, the new model would afford the Council an appropriate level of control over the make-up of the SLLC Board and the SLLC Board itself would, in turn, benefit from more devolved decision making in key business areas, such as pricing.

4.3.6 Taking this together, this would involve converting SLLC to a Scottish charitable incorporated organisation (a "**SCIO**") with the Council, and a Council nominee company, as the only members.

4.3.7 The structure of the SCIO consists of:

- ◆ the MEMBERS - who have the right to attend members' meetings (including any annual members' meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself. There will be two members: the Council and a nominee company set up by the Council. This structure is required to meet the requirements of SCIO and the nominee company serves no other purpose.

- ♦ the BOARD - who hold regular meetings, and generally control the activities of the SCIO; for example, the Board is responsible for monitoring and controlling the financial position of the SCIO. The people serving on the board are referred to in this constitution as Charity Trustees.

- 4.3.8 The future SLLC Board would be made up of up to 14 charity trustees to reflect the current size of the Board and help ensure a quorum of members can always be formed (a quorum is currently five members including at least one council member). The majority of charitable trustees will be neither elected members nor officers of the Council and the Chair will be drawn from the independently appointed trustees to help ensure that the organisation is recognised as being independent.
- 4.3.9 It is anticipated that enough current Board members will transfer to the new Board to form a quorum which will then establish a 'Nominations Committee' to make recommendations to the Council for the selection of individuals for appointment as charity trustees. Recruitment to the Board will be based on a pre-determined criteria and selection process to ensure that Board members have the requisite skills to add value to the organisation across key business areas. Membership of the Board will be time bound to three years with the opportunity for re-appointment, similar to the arrangements in place for the Integrated Joint Board (IJB).
- 4.3.10 Subject to the Council taking specialist tax advice, Burness Paull also recommend that an overarching Services Agreement is put in place between the Council and SLLC and that this is structured in a manner which reflects the *Altmark*<sup>1</sup> principles and that the various current management agreements are converted into a single Services Agreement.
- 4.3.11 The current arrangements for property will remain, with the Council retaining ownership and responsibility for capital investment and a shared approach to repairs and maintenance. Property will be dealt with through a basic lease with a separate Property Agreement governing all portfolio-wide issues.

## **4.4 Implementation and Timescales**

- 4.4.1 Details of new draft constitution is being developed, following the principles outlined above, and will be presented to the Council and the SLLC Board for final agreement.
- 4.4.2 It is expected that the new governance model will be implemented by 31 March 2022 at the latest.

## **5. Pricing**

### **5.1 Existing Pricing Arrangements**

- 5.1.1 The current SLLC prices have been amalgamated from a number of sources and rationalisation exercises conducted over the years to incrementally align charges across SLLC service areas. For example, the previous councils which now make up

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<sup>1</sup> The Altmark case set out a state aid test for contracts etc. between public bodies and other bodies delivering services on their behalf for the benefit of the public. If the principles are met, the arrangements do not amount to state aid.

South Lanarkshire operated different pricing structures and concessionary schemes for leisure and cultural provision.

- 5.1.2 In general, prices for each new activity are set based on market conditions, cost of delivery and demand. Annual adjustments to these prices do not always follow the same approach with the level of charges set within the context of the Council's overall annual charging framework. In general, this results in a percentage uplift to most prices in line with inflation.
- 5.1.3 Over the years, SLLC has accumulated over 7,000 different prices and many of these do not reflect market conditions. For example, the £42 per month full price fitness membership is now above market tolerances and the boundary charge for golf has impacted on uptake from customers outwith the authority area. In addition, it is recognised that the current pricing system is cluttered and over complicated.
- 5.1.4 Prices fall into two main categories: (1) Concessionary prices and (2) commercial prices.
- 5.1.5 Concessionary Pricing – This includes the 'Leisure for All' scheme, 'Activage' scheme, under 16's club prices and elite athletes' prices.
- 5.1.6 The 'Leisure for All' scheme offers a concession price of 50% discount on all prices within Leisure and is only available to residents of South Lanarkshire and is targeted at people on low income who are in receipt of universal credit or disability allowance.
- 5.1.7 'Activage' applies to all residents of South Lanarkshire who are over the age of 60 years. This is currently an annual price of £75 and includes the use of all activities within leisure centres, the ice rink, cultural and library facilities, golf courses and more.
- 5.1.8 'Under 16's club prices' is a discounted price only available to clubs in South Lanarkshire who are a member of their local Sports Council, registered to a National Governing Body and have the appropriate insurances and policies in place. They receive a 75% discount on the adult price.
- 5.1.9 The 'Gold Card' is aimed at elite athletes in South Lanarkshire, who can qualify for a discounted price.
- 5.1.10 Within cultural services, concessions are given to under 5's and over 60's and pricing for lets are based on a tiered approach depending on the nature of the activity, with separate prices for commercial, social and community based lets.
- 5.1.11 Some services have no fees; libraries offer most of their services free of charge and access to the museum and country parks are also free.
- 5.1.12 Commercial Pricing – These are prices that are most affected by market conditions and the private sector providers. Commercial pricing is currently tied in with the annual price increase set by the Council which may not always reflect the current market. Commercial pricing would include fitness memberships, golf, football, 'pay as you go' activities (e.g. badminton, casual swimming), events, shows and weddings would also be categorised as commercial prices.

## **5.2 Proposals for revised pricing arrangements**

- 5.2.1 It is proposed that the Council retains the final decision on concessionary pricing schemes given that these prices are in place to deliver on the Council's social and community objectives. This would include prices such as Leisure for All, Activeage, under 16's clubs and Gold Card, and community-based lets in halls.
- 5.2.2 SLLC would provide recommendations each year to the Council through the budget setting process on what the optimum price should be for these schemes to best meet the Council's social objectives whilst operating within an agreed budget.
- 5.2.3 Conversely, SLLC would be given scope to adjust commercial pricing, including halls, without prior approval by the Council. SLLC would report directly to SLLC Board of Directors on commercial pricing. In considering and setting commercial prices, SLLC will need to ensure that it continues to operate within its agreed funding envelope and avoid any decisions that could have an adverse implication on the level of funding it receives from the Council.

## **5.3 Implementation and Timescales**

- 5.3.1 Recommendations in relation to concessionary pricing for financial year 2022/2023 will be provided by SLLC in line with the Council's budget setting schedule.
- 5.3.2 Subject to Council agreement, the new commercial pricing arrangements will be presented to the SLLC Board on 25 August 2021 for approval and will be implemented thereafter.

## **6. Community Planning Partnership**

- 6.1 The South Lanarkshire Community Planning Partnership (CPP) brings together local agencies and organisations from the public, private and voluntary sector. The CPP is committed to improving the quality of life of everyone in South Lanarkshire by working together, with communities, to design and deliver better public services.
- 6.2 SLLC is one of the Council's key delivery partners, providing a range of programmes, projects and initiatives which benefit the population of South Lanarkshire in general whilst also targeting inequalities and aiming to improve the life chances of the most disadvantaged. In doing so, SLLC both supports the Council's vision of improving the quality of life of everyone in South Lanarkshire and contributes to a wide range of national and local priorities related to improving health, wellbeing and learning.
- 6.3 One of the early outcomes from the CPWG was the inclusion of SLLC's General Manager on the CPP Board. This appointment encourages closer alignment between SLLC priorities and the priorities of the Council and the Community Planning Partnership. Given the nature of this issue and consensus from the CPWG, SLLC's General Manager has attended the CCP Board since 9 September 2020.

## **7. Future Service Provision**

- 7.1 The CPWG recognised the importance of culture and leisure provision and the invaluable contribution that these services can make within a community setting and to an individual's health and wellbeing.

7.2 As part of the review process, consideration was given to future service provision, based on current supply and demand, local and national trends, the existing asset portfolio, and the need to maintain accessibility for all. This process involved an online consultation survey, to understand which services are of greatest importance to our communities, as well as a series of engagement meetings with individual clubs and interest groups.

7.3 In conclusion, the CPWG considered that, at this point in time, it is important that the Council retains the level of community assets. It is, therefore, recommended that the Council continues to manage the SLLC estate in line with available resources. At the same time, the CPWG recognised that the condition of many of the assets, in particular community halls, are such that consideration to future investment is required to ensure long term sustainability.

## **8. Community Asset Transfer**

8.1 As noted in section 7 above, the CPWG concluded that the current asset base would be retained but, at the same time, it recognised the benefits that can arise from Community Asset Transfers (CAT). In addition, a recent increase in asset transfer enquiries to the Council demonstrates that communities and organisations have a growing appetite for community empowerment. From this, there was general consensus that there should be increased efforts towards proactive consultation and engagement with communities to facilitate such CAT.

8.2 The above position reflects the 2021/2022 budget setting process which confirmed the Council's commitment towards assisting local communities to take over public assets, having agreed a fund of £250,000 to facilitate community ownership of public assets, unlocking community capacity to use these assets for social and economic benefits within their communities.

8.3 Taking these two aspects together, the Council and SLLC recognise that options for proactive consultation and engagement will now need to be considered and developed, in conjunction with the Community Engagement Team and Estate Services, to harness community interest, to support the capacity and sustainability of community organisations and to empower those organisations to gain wider community support for proposals.



## 9. Summary and next steps

- 9.1 The key findings from the work of the Cross Party Working Group are summarised below, along with the proposed required action:

Theme	Key Findings	Action / Proposals
Governance	The current governance model is out-dated and no longer reflects the needs of either the Council or SLLC.	New governance arrangements should be developed whereby SLLC is converted to a Scottish charitable incorporated organisation ("SCIO").
Pricing	The current pricing system is cluttered and over complicated and does not reflect market conditions.	Pricing policy should be revised with the Council retaining the final decision on concessionary pricing schemes given that these prices are in place to deliver on the Council's social and community objectives, however SLLC should be given scope to adjust commercial pricing without prior approval by the Council.
Partnership	There is a need to develop stronger relationships with the Community Planning Partnership based around shared outcomes.	SLLC's General Manager now included on the CPP Board to ensure closer alignment between SLLC priorities and the priorities of the Council and the Community Planning Partnership.
SLLC Estate	At this point in time, it is important that the Council retains the level of community assets.	The Council should continue to manage the SLLC estate in line with the resources available.
Community Asset Transfer	It is recognised that there is a keen interest in community asset transfer, and that the Council is committed to facilitating community ownership of public assets.	The Council in partnership with SLLC will undertake proactive consultation and engagement to harness community interest and support the capacity and sustainability of community organisations.

## 10. Employee Implications

- 10.1. There are no direct implications for SLLC employees as a result of this report.
- 10.2 SLLC employees have been kept up to date on the work of the CPWG through regular 'Team Talk' updates, which is SLLC's method of communicating with all staff. The SLLC Senior Management Team were also directly involved in compiling information for various reports which were submitted to the CPWG.
- 10.3 The work of the CPWG is being regularly discussed at team meetings as employees begin to return to work having been furloughed on the Job Retention Scheme during lockdown and has been a regular focus of discussion at SLLC's scheduled Trade Union meetings.

## 11. Financial Implications

- 11.1. The council are working closely with SLLC to assess the impact of the projected financial shortfall for 2021/2022, as a result of Covid-19, in order that appropriate management action can be taken to help ensure SLLC's financial viability for the forthcoming year and beyond.

11.2 The ability for SLLC to adjust commercial pricing will allow it to respond quickly to variances in the market, attracting and retaining more customers than would otherwise have been the case, and maximising the income generation potential of SLLC.

11.3 By protecting and investing in its community assets, the Council will help safeguard leisure and culture provision for the future benefit of communities.

## **12. Climate Change, Sustainability and Environmental Implications**

12.1. There are no climate change or environmental implications as a result of this report.

## **13. Other Implications**

13.1. There are no other implications at this stage.

## **14. Equality Impact Assessment and Consultation Arrangements**

14.1. It is recognised that SLLC will require to complete an equality impact assessment as part of the process for developing revised pricing policy proposals.

**Michael McGlynn**

**Executive Director (Community and Enterprise Resources)**

3 June 2021

### **Link(s) to Council Values/Ambitions/Priorities**

- ◆ Improve health, care and wellbeing
- ◆ Deliver and communicate the Council Plan and ensure high standards of governance.

### **Previous References**

- ◆ Review of South Lanarkshire Leisure and Culture Ltd – Update, Executive Committee, 13 March 2019
- ◆ Cross Party Working Group and Business Plan - South Lanarkshire Leisure and Culture, Executive Committee, 29 May 2019

### **List of Background Papers**

- ◆ None

### **Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:

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