

<b>SUBJECT:</b>	<b>ALTERNATIVE DELIVERY MODEL – PROGRESSION</b>
<b>MEETING:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>6<sup>TH</sup> JUNE 2018</b>
<b>DIVISION/WARDS AFFECTED:</b>	<b>All</b>

## **1. PURPOSE:**

To set out progress to date on the establishment of the ADM for Tourism, Leisure, Culture and Youth services further to Cabinet approval on 29 January 2018 and to describe the process stages that require completion ahead of final Council approval, setting out the opportunities for informing, shaping and developing the arrangements and agreements – ahead of enactment of the model.

## **2. RECOMMENDATIONS:**

- 2.1 To establish the 'lead' Council team and identify the resources required to support the process e.g. legal advice, etc.
- 2.2 To approve funding of £30,000 for Council's costs from the priority investment reserve to support the process for the Council.
- 2.3 To establish the interim ADM Lead Team.
- 2.4 To note the current draft Heads of Terms agreement as an illustration of the 'Management Agreement' and approve the development of the additional documents required to underpin the process and continue the development of the necessary agreements e.g. Draft Articles of Association for Teckal and Charity, Governance and Membership of Teckal and Charity Boards etc.
- 2.5 To enact Shadow Company Boards recruitment and operation in line with Audit Committee governance recommendations. Shadow structures to remain internal advisory bodies until such time as the Council approves the decision to enact company operation.
- 2.6 To approve the submission of legal incorporation documents in order to secure trading names, website, domains, etc. Companies to be established as shell companies at this stage and will therefore will remain dormant until such time that the Council makes the decision to enact company operation.
- 2.7 To prescribe the ADM as an 'admitted body' to the Gwent Pension Scheme.
- 2.8 To agree to commence the TUPE consultation for staff during the summer recess. The process will continue until the enactment of the companies.

## **3. KEY ISSUES:**

- 3.1 On 29 January 2018, the Council's Cabinet Committee approved the establishment of an ADM as the best means of enabling a sustainable and resilient future for Tourism,

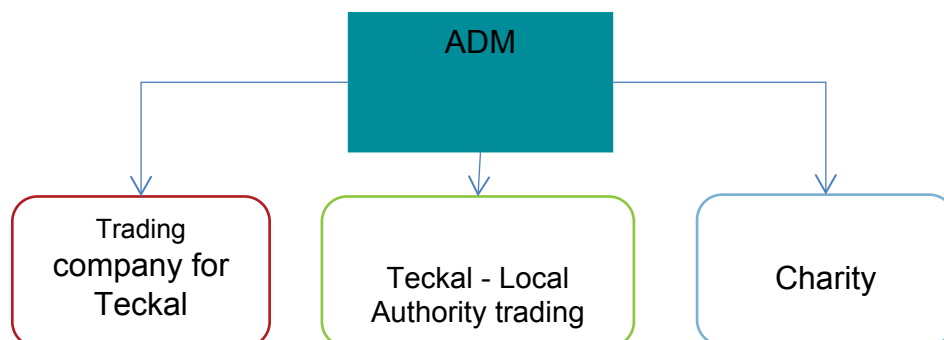
Leisure, Culture and Youth services. Further to this decision, on the 15 February 2018 Council agreed that £155,000 could be drawn from the priority investment reserve to fund 'start up' activity for the Alternative Delivery Model (ADM). For the purposes of this report the term "ADM" means the services which will be passing from the Council into the Charity and the Teckal company; and delivered by these vehicles.

3.2 This report seeks Cabinet approval to start to undertake the programme of activity, systems and structures that will be necessary in informing the agreements, arrangements and plans to secure approval to enact the ADM. The preparatory work needed to detail and set out governance arrangements, operational structures and capabilities; the first five year 'Management Agreement' governing the relationship between the council and the ADM, financial and resource matters and a future delivery plan, will be shared with and informed by Audit Committee and Economy and Development Select Committee prior to final onward approval by Full Council.

### 3.3 Form, Governance and Ethos

3.3.1 As previously approved, the ADM will be formed of three companies within one group as detailed in the diagram one below:

Diagram One: ADM Group Structure



3.3.2 The group structure allows the ADM to operate in close partnership with the Council through the wholly owned Teckal and trading company, giving the ADM the freedom to be enterprising, whilst having the benefits of independent charitable status for some of the work. Services within the Teckal will be Green Infrastructure (including Rights of Way and Biodiversity), Play and Tourism Development. The Charity will contain services such as Museums, Attractions, Leisure, Youth and Outdoor Education. The structure will provide full accountability back to the Council through the five-year Agreements with the Charity and the Teckal company, enabling the Council to deliver its strategic and policy objectives with confidence. ADM Board representation and participation will also feature prominently within this. Board formation of each of the ADM entities is a critical step. The ADM Boards will exercise their responsibilities by clearly setting out in the business plan for the Teckal company, and through the Grant five-year Agreement for the Charity, their delivery aims; ensuring ADM Executive Officers act in accordance with these directions and deliver against the aims and objectives identified by the Council.

3.3.3 The detail now required to flesh out the operational arrangements above, will be developed through work with the Audit Committee (governance, evaluation and

accountability) and all pre-decision scrutiny work will be carried out via the Economy and Development Select Committee (overall arrangements). The resultant frameworks, arrangements, evaluation matrices and agreements sitting under the 'Agreements with the ADM vehicles will be put forward for approval by Full Council prior to the enactment of the ADM. In order to ensure the processes implemented are 'tried and tested' and provide opportunities for experiential learning, it is important that Shadow Company Board recruitment commences, in accordance with the Nolan Seven Principles of public life. By twin tracking the recruitment process with the work of the Audit Committee and Economy and Development Select Committee, the shadow board's establishment will follow best practice guidelines from the outset and provide Members with the opportunity to iterate, develop and hone governance, evaluation and accountability before a final Council decision is taken. These shadow structures will remain internal advisory bodies until go live. Proper enactment will not take place until such time as the whole complement of legal and contractual documentation is approved by Council, as stipulated in the previous Council report.

### 3.4 Council lead team / client role

- 3.4.1 The service specification agreed between the Council and the ADM, as stipulated within the five-year 'Agreements', will drive good governance on account of the requirement for compliance with its terms. This will include how the ADM reports to the Council on the annual business plan and how periodic reports are submitted to the Council for scrutiny and other purposes. The council's 'client' role in this regard will be of real importance in leading, directing and importantly, developing and fostering good relations. It is therefore proposed that a Council 'lead' team is appointed to comprise of Peter Davies, Chief Officer for Resources and Cath Fallon, Head of Enterprise and Community Development. Both officers have recent experience in establishing CSC Foundry Ltd on behalf of the CCR City Deal and current director-level responsibility within Y Prentis. The client role, will be responsible for developing, directing and enacting the Council's requirements and ensuring that the strategic and policy direction of the Council is sufficiently embedded within the directional, operational and performance plans and arrangements of the ADM. The ADM client team will be responsible for concluding all negotiations and providing advice and counsel to Cabinet and Full Council on the enactment of the ADM and provide the lead role in all subsequent and ongoing monitoring and evaluation.
- 3.4.2 To support the Council through the process resources will be required, mainly comprising of legal advice. A notional budget of £30,000 is required for this purpose.
- 3.4.3 The key to the success of the ADM will not only be the group's ability to work together as one but also the working relationship between the ADM and the Council. It is essential therefore that the Council's Lead team works closely with the ADM Lead team in a spirit of partnership, given that both parties are equally invested in making the ADM a success and a positive driver for wellbeing and wellness across the whole of the county.

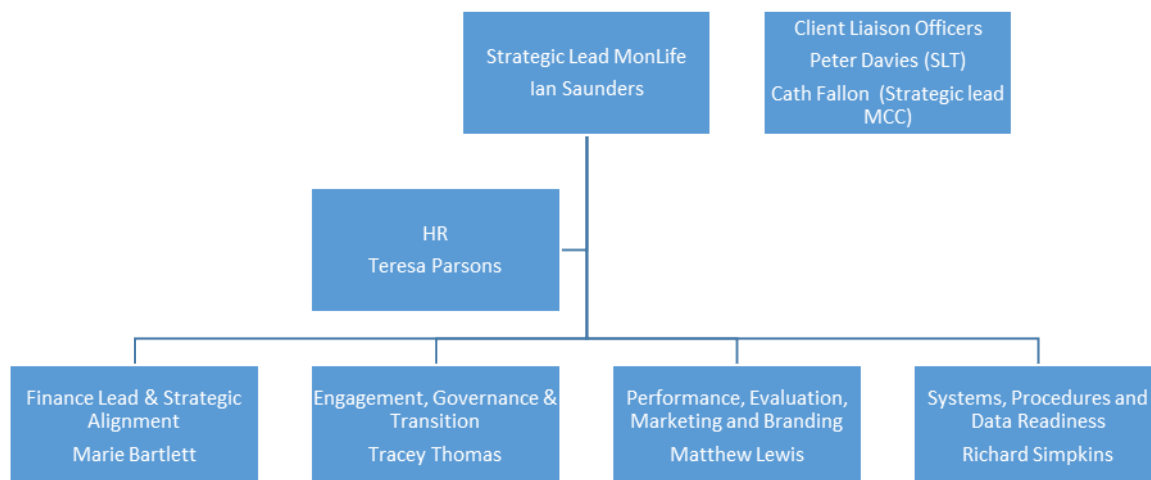
### 3.5 Company Incorporation

3.5.1 In preparation for trading, the individual entities comprising the ADM will need to be established in order to protect potential trading names and to avoid delays once final decisions are made. It is therefore proposed that Articles of Association are prepared for both the charitable company and the Teckal company and their associated trading subsidiaries. These articles will determine matters pertaining to the detailed treatment of issues and matters such as employment, property treatment and so on. For the Teckal company, a Shareholder Agreement will also need to be prepared to reflect the Council's stake in the company. Both the Teckal company and the charitable company will need to be limited companies; the Charity limited by Guarantee and the Teckal company limited by shares. During this process, the Council's Lead team will consider tax efficiency of the ADM alongside the Council's own Commercial and Investment Strategy, should a more efficient model be identified, then a further report will be brought before Cabinet for consideration. Once the companies have been established they will remain dormant until such time that the Council makes the decision to enable company trading.

3.5.2 Workforce Matters – Interim ADM Lead Team, Structure Changes and TUPE

3.5.3 To maximise success it is essential that all staff within the ADM group work together as a single staff team, under the interim leadership of the ADM Lead Officers. ADM lead officers – Ian Saunders, Marie Bartlett, Tracey Thomas, Matthew Lewis and Richard Simpkins have been seconded to the ADM programme for the period during which it has been under development as a Council-led proposal. In the interim to decisions to finally enact the ADM and thus, in the period up until a formal Recruitment and Selection process can be run, it is proposed the positions set out below are formalised and the group of officers form the interim ADM Lead Team.

Diagram Two: Interim Lead ADM Team



- 3.6.2 Job profiles for these key posts are detailed in Appendix 10. The appointment of the individuals to these roles identified will therefore enable the team to move forward at pace in line with the Council's ambition to commence trading within the ADM in December 2018.
- 3.6.3 At the point of staff transfer into the ADM, the pensions benefits built up by staff are not protected under the TUPE regulations however there is a requirement to offer a similar scheme and the Council wish to protect the staff's access to the Local Government Pension Scheme. It is therefore essential that the ADM is given admitted body status in order to comply with these obligations, approval is therefore requested for the interim Lead ADM team to progress with this requirement and for the ADM to be prescribed as an 'admitted body' to the Gwent Pension Scheme.
- 3.6.4 To ensure that timescales are adhered to, there will be a need to commence the preliminary TUPE consultations. This does not prejudice any political decision in the future and can be terminated at any stage during the process.
- 3.6.5 To ensure that services are continuing to operate within their financial envelope, there will be a requirement to undertake an internal restructure for the attractions and outdoor education services over the summer period. This will not effect the staged processes of the ADM and will be completed prior to TUPE consultations taking place. Legal advice has been sought to ensure that a restructure can take place prior to TUPE and the reasoning meets the criteria of economic, technical or organisational.
- 3.6.6 The Draft 'Heads of Terms'

The Heads of Terms (HoT) agreement will record what has been agreed in principle between the parties before the next stage of entering into formal documentation / management agreements. It will present a clear and unambiguous starting point for drafting the next documentation. The HoT will focus on the key points of the arrangements and ensure that the principles inform the detailed negotiations. The initial draft HoT are attached in appendix 3 and 4.

#### **4. REASONS:**

- 4.1 Further to a full options appraisal and approval by Council of the option to establish an ADM, there is now a need to implement the operationalisation process. To date the work has been facilitated by an-house team, with all detailed analysis, legal advice, dual diligence and professional assurance support coming from independent experts Anthony Collins, however there is now a need to move towards the establishment of interim Lead teams to move things forward.
- 4.2 The move to the ADM enables the Council to exercise its role as strategic enabler – setting out expectations of strategic direction and having the necessary tools and levers to ensure operational delivery fulfils expectations. The approval of this next set of recommendations enables this process to take place.

#### **5. RESOURCE IMPLICATIONS:**

- 5.1 As per agreement at Full Council, the proposal is that the ADM will maintain and deliver these services at a cost of £21,440m. The MTFP will also need to take account of extra

pressures of 30k in 2019/20, 57k in 20/21, 70k in 21/22 and 65k in 22/23. Delays to the start date could result in the amounts as indicated above changing marginally.

- 5.2 To support the Council through the process resources will be required, mainly comprising of legal advice for the client role of £30,000 is required for this purpose.

### **Residual impact to the Council**

- 5.3 Central costs have been estimated at £970k and although the ADM is expected to continue to use the vast majority of back office and central support services, there is likely to be an immediate additional cost implication to the Council of £143k. Further implications to the authority could occur in future years should the ADM wish to source those services elsewhere. If this did happen, then further financial consequences could be further £71k at the end of year 3 and £109k by year 5.
- 5.4 The Council's Lead team will commence work in advance in order to manage and eliminate these pressures through future rationalisation and restructuring of back office

### **Staffing and Workforce**

- 5.5 Engagement with staff has been a fundamental element of this ongoing process. Not only has engagement been undertaken from the initial stages of the process, it will continue to be an integral aspect that will be continuously implemented and monitored in a proactive way. A review in October 2017 established 68% of staff are motivated and willing to enhance services for the future to create resilience and purpose, whilst ensuring services are progressive and recognised for their excellence. Engagement with employees will continue to be prioritised in order to build upon values and ensure they are embedded in behaviours and practice. This will be particularly important in supporting the TUPE transfer of workforce from the Council to the ADM.

### **Assets**

- 5.6 The Council will need to determine the exact treatment of assets but the Council will retain ownership of the assets and lease to the ADM - it is only the provision and management of services that will transfer from the Council to the ADM. One of the key aspects of the ADM is that the Council will retain ownership of the assets and therefore it is in the interest of the Council to maintain these assets. The assumption is that the ADM would be responsible for day to day maintenance and the Council would retain major maintenance duties. The business plan for the ADM assumes a capital investment of £1m in assets in years 2 and 3 which is funded by additional income generation. In this arrangement the Council will fulfil the role of 'borrower' with debt servicing costs funded by the ADM through income generation activities. The additional benefits of a charitable organisation is that it can access other opportunities through restoration grants and projects that could lessen the burden.

## **6. SAFEGUARDING IMPLICATIONS**

- 6.1 The ADM will be as committed to ensuring that people living within the County are safe and protected. The workforce shares a responsibility, both collectively and individually, to ensure that children and adults at risk are protected from harm. Within the ADM, services will continue to prioritise safeguarding measures, reflect on current practice

and continue to train staff to the appropriate levels. Employees, volunteers and contractors who come into contact with children or adults at risk in the course of their duties will be expected to understand their responsibility and where necessary take action to safeguard and promote the welfare of vulnerable people. The ADM would seek to continue its representation on the Monmouthshire County Council Whole Authority Safeguarding Group and will ensure compliance with all policies and procedures.

## 7. CONSULTEES

<b>Organisation/Consultees</b>	<b>Frequency of engagement</b>	<b>Purpose/Outcomes</b>
Senior Leadership Team Finance Legal	Frequently throughout the past 30 months	To receive scrutiny; guidance and critical advice to aid the process to achieve the optimum recommended position for the authority to present for political decision
Joint Select Committee	September 2016 February 2017 July 2017	To scrutinise draft Outline BC; draft Business Case and provide guidance and recommendations on next steps
Cabinet	May 2016 October 2016	To receive OBC; draft BC and eliminate options to prepare for final decision on optimal model for TLCY services
Council	October 2016 March 2017	To receive OBC; draft BC and eliminate options to prepare for final decision on optimal model for TLCY services
All four political parties of MCC	January 2018	To discuss the Full Business Case and papers being presented at full Council
Members Seminars	February 2016 June 2016 December 2016 June 2017	To discuss specifics around Governance; options appraisal and finance.
Anthony Collins Solicitors	Through various face to face and skype calls over period of project	To support the project team and give expert advice through the stages of this project
Other established Trusts	Aspire Social Care, Salford Aspire Leisure, Salford Vivacity, Peterborough Torfaen Leisure, Aneurin Leisure, Newport Live	As part of a reconnaissance exercise to glean information on the setting up of these trusts: processes undertaken; milestones achieved; learning; barriers and achievements made
Town and Community Councils	21 Community Councils and 5 Town Councils	To share potential models for TLCY services and the benefits/consequences. Overall responses were positive and in main supported an ADM model.
Trade Unions	Quarterly through JAG; informal TU/MCC mtgs/ specific TU/staff conferences/Project team mtgs specifically geared to	To share detail of each stage of the process and to give opportunity for queries to be raised and dealt with at the appropriate meeting level.

<b>Organisation/Consultees</b>	<b>Frequency of engagement</b>	<b>Purpose/Outcomes</b>
	discussions around future models for TLCY services	
Local Access Forum	May 2017	To update and consult on the options for a new delivery model including for countryside access services which the forum noted.
Staff within TLCY	4 conferences; 16 staff workshops (vision,; values; culture; customer journey); 19 service team meetings; 25 ambassador team meetings	To ensure staff are communicated appropriately and furnished with details at appropriate stages of the process; opportunity to ask questions; and be an integral part of the process
15 January 2018	Joint Select Committee	To receive FBC and give strutinise.
29 January 2018	Cabinet	To receive FBC and give approval to progress ADM option
15 <sup>th</sup> February 2018	Council	To receive FBC and give approval to progress ADM option and agree financial support to assist with next steps
27 <sup>th</sup> February 2018	Mr A Crowhurst, CAIR Monmouthshire	Concerns raised around equality which have been noted and papers duly change to reflect Equalities Act

## **9. BACKGROUND PAPERS**

- Appendix 1 Evaluation Criteria
- Appendix 2 Future Generations Evaluation
- Appendix 3 Draft Heads of Terms for Teckal
- Appendix 4 Draft Heads of Terms for Charity
- Appendix 5 Draft Charity Articles for MonLife
- Appendix 6 Draft Articles MonLife Trading
- Appendix 7 Draft Articles MonLife Plus Ltd
- Appendix 8 Summary of Articles on MonLife Plus
- Appendix 9 MonLife Charity Law Advice
- Appendix 10 Paper on Membership of the Teckal, Shareholder Committee and Charity
- Appendix 11 Paper on Shadow Board
- Appendix 12 Role profiles for Interim Project Team

## **10. FUTURE GENERATIONS IMPLICATIONS**

The completed Future Generations Evaluation can be found in Appendix B however the main positive and negative impacts of the proposal are as follows:

The purpose of the proposed Alternative Delivery Model is to ensure much valued local services are maintained and by their nature continue to provide employment, growth and an increasingly skilled workforce. The proposed Alternative Delivery Model will enable services to be kept open but with more community focus and



coordination, helping knit communities together. Activities in establishing the Alternative Delivery Model will require positive engagement and coordination with community focused services as well as income generation and investment in key aspects of the business to ensure the culture and business thrives. Incorporated services will contribute greatly to our local culture, heritage and art with the promotion of activity, health and wellbeing forming part of its key drivers.

#### **11. AUTHORS:**

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#### **12. CONTACT DETAILS:**

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#### **13. CONSULTEES:**

**Senior Leadership Team**

## Appendix 1

## Evaluation Criteria – Cabinet, Individual Cabinet Member Decisions & Council

<b>Title of Report:</b>	<b>Alternative Delivery Model – Progression</b>
<b>Date decision was made:</b>	<b>6<sup>th</sup> June 2018</b>
<b>Report Author:</b>	<b>Peter Davies / Cath Fallon</b>

### What will happen as a result of this decision being approved by Cabinet or Council?

As a result of this decision a new entity will be established which will deliver Tourism, Leisure, Cultural and Youth Services on behalf of MCC. A new organisation will be formed with new management structure and a shadow board will be appointed to deliver the first year of a business case/plan approved by MCC. Further to this agreed governance and service level agreements will be developed dependant on the nature of the various business and service relationships with MCC and partners. The go live date is currently planned to be December 1<sup>st</sup> 2018 so if this decision is reviewed in 12 months the new entity should be fully operational.

12 month appraisal

Was the desired outcome achieved? What has changed as a result of the decision? Have things improved overall as a result of the decision being taken?

### What benchmarks and/or criteria will you use to determine whether the decision has been successfully implemented?

The set-up and establishment of the organisation and charity, the recruitment of a board and team – there is an evaluation framework included in the business plan. The decision to establish a new entity will be measured against timescales suggested for implementation of December 1<sup>st</sup> 2018, HR and legal frameworks, performance over the coming years by annual reports where finance, core KPI's and the evaluation/outcome framework will be scrutinised.

12 month appraisal

*Paint a picture of what has happened since the decision was implemented. Give an overview of how you fared against the criteria. What worked well, what didn't work well. The reasons why you might not have achieved the desired level of outcome. Detail the positive outcomes as a direct result of the decision. If something didn't work, why didn't it work and how has that effected implementation.*

### What is the estimate cost of implementing this decision or, if the decision is designed to save money, what is the proposed saving that the decision will achieve?

The costs of the decision are highlighted in the report of £30,000 which is to support the Council through this process (mainly legal costs). All other budget figures regarding the option are including in the business case and business plans.

12 month appraisal

*Give an overview of whether the decision was implemented within the budget set out in the report or whether the desired amount of savings was realised. If not, give a brief overview of the reasons why and what the actual costs/savings were.*

Any other comments