

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Strategic Commissioning
<b>DATE</b>	29 <sup>th</sup> August 2019
<b>REPORT TITLE</b>	APA Memorandum and Articles of Association
<b>REPORT NUMBER</b>	COM/19/319
<b>CHIEF OFFICER</b>	Craig Innes
<b>REPORT AUTHOR</b>	Mark Bremner
<b>TERMS OF REFERENCE</b>	Remit 4.4

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### 1. PURPOSE OF REPORT

To advise of a request from the Board of Aberdeen Performing Arts (“APA”) for approval to amend its Memorandum and Articles of Association, to increase the maximum number of Board members from 12 to 16.

### 2. RECOMMENDATIONS

That the Committee:-

- 2.1 Considers and takes a decision on APA’s request to amend its Memorandum and Articles of Association.

### 3. BACKGROUND

- 3.1 APA is a company limited by guarantee with charitable status established as an Arm’s Length External Organisation (“ALEO”) of the Council in 2004. APA operates the Music Hall, His Majesty’s Theatre and The Lemon Tree, as well as managing three festivals and the Box Office for 20+ venues in the region. APA has a turnover of over £12m per a year, is one of Scotland’s biggest performing arts companies and a Creative Scotland Regular Funded Organisation (“RFO”) receiving £1m towards programming over 2018 – 2021.
- 3.2 APA delivers a diverse programme of performing arts at small, mid and large scale including touring drama, musical theatre, children’s theatre, opera, ballet, dance, comedy and music across the venues. Alongside this programme, APA produces and commissions new work under the banner of Freshly Squeezed Productions, supports and provides a platform for emerging talent in the north-east, runs an associate artist programme in schools and communities, curates three festivals, runs a youth theatre and youth music programme, offers creative learning activity for all ages and abilities and supports the local amateur arts scene.

3.3 APA's Memorandum and Articles of Association which govern the management and operations of the organisation were reviewed by their Finance, Audit and Property Sub-Committee and it was subsequently agreed at the APA AGM on the 19<sup>th</sup> November 2018 that it would be desirable to make a number of changes, including increasing the number of board members from a maximum of 12 to a maximum of 16. APA's Director of Finance and Corporate Services submitted a formal request to Aberdeen City Council to amend the Memorandum and Articles of Association on the 28<sup>th</sup> May 2018. The rationale APA has presented to officers for these changes are as follows;

- To enable the organisation to achieve a more diverse and inclusive membership within its board and demonstrate commitment to 'Open House', their Equalities Diversity and Inclusion action plan, as well as alignment to the principles of the Broadcasting Entertainment Cinematograph and Theatre Union's Action Plan for Diversity. An increase to member numbers would allow APA to allocate seats to represent groups with protected characteristics.
- Deliver on 'Open House' action plan point 1.7: ' M&A updated to allow for improved governance – increased Board membership to 16, increased no of places for open recruitment, % of protected characteristics on Board increased to 20%, more Board members available to serve on sub committees'.
- To support board succession planning by ensuring the proper depth of skills, experience and representation is present within membership to manage rotation as per OSCR code of good practice. A change to membership numbers reduces the potential risk of skills and expertise gaps arising if a number of members retire from their position at the same time.
- To ensure that within the board membership there is a strong composite of relevant competencies in areas such as financial planning and management to provide an appropriate level of scrutiny and oversight for APA Sub-Committee business.

3.4 The APA Memorandum and Articles specifies under clause 2.1 that no changes relating to the composition of the Board of Directors 'shall be made without the express written consent of the Council or their statutory successors for such a period of time as the Council or their statutory successors retain the right to nominate some of the Directors of the Company'. At present the Council is entitled to nominate up to four Directors. APA's proposed amendment to the Articles would increase the board appointed Directors from seven to eleven, while the Council nominated Directors would remain at four. The remaining Director appointment would be elected by the employees of the Company pursuant to Article 7.3, which would be concurrent with the present Articles of Association. This brings the number of Directors to 16.

#### 4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications arising from this report.

#### 5. LEGAL IMPLICATIONS

5.1 APA's proposal is to increase its maximum board membership to 16 from 12, but not to increase ACC Councillor Board members. This results in a smaller percentage of ACC membership. However, any future changes to the Memorandum and Articles of Association will still require Council written approval therefore there is no real material change in terms of control by the Council.

5.2 Furthermore, Council oversight, accountability and good management of ALEOs is essential. APA is monitored by the Council's ALEO Assurance Hub which assesses each ALEO's ongoing arrangements for the management of risk, finance and governance. This model has been identified by the Accounts Commission as one of best practice. Guidance states that: - "Councils are ultimately accountable for how they spend public money, including the services they commission through ALEOs. This means having clear oversight and appropriate governance arrangements in place." (Accounts Commission - Councils' use of arm's-length organisations - May 17, 2018).

#### 6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
<b>Financial</b>	Insufficient scrutiny and relevant expertise within APA governance places organisation at financial risk.	(L)	APA report financial performance and governance to the Boards and present their annual accounts for scrutiny by an external auditor. Increasing the Board membership will ensure the appropriate skillsets are in place for good financial management.
<b>Legal</b>	Increase in Board membership numbers could reduce the Council's overall influence in decision making or delivering on	(L)	Commercial and Procurement Services are currently reviewing ALEO service level agreements to ensure they remain robust

	Council outcomes.  GDPR Compliance		and fit for purpose.  The Strategic Commissioning Committee will have oversight of how ALEOs are achieving Council outcomes and complying with the terms of their service level agreements.  All ALEO's GDPR compliance is reviewed by the ALEO Hub to provide the Council with assurance that legislation is being followed and good practice adhered to.
<b>Employee</b>	No direct risks arising from the report's recommendations.		
<b>Customer</b>	No direct risks arising from the report's recommendations.		
<b>Environment</b>	No direct risks arising from the report's recommendations.		
<b>Technology</b>	No direct risks arising from the report's recommendation		
<b>Reputational</b>	APA's corporate governance or service delivery failure has a negative impact on the Council's reputation.	(M)	The proposed increase to the maximum number of Directors will strengthen the governance capacity and skills resource.  The ALEO Hub will continue its oversight of APA to provide assurance to the Council that the organisation has effective governance, financial planning and policies in place to continue to deliver an effective service.

## 7. OUTCOMES

<b>Design Principles of Target Operating Model</b>	
	<b>Impact of Report</b>
<b>Governance</b>	<p>The report recommendations support the principles outlined in the Accounts Commission's "Following the Public Pound" assurance on the robustness of ALEO governance arrangements.</p> <p>Furthermore there is an alignment with the 'Partners and Alliances' design principles in respect to collaborative service delivery.</p>

## 8. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	Completed, change to board membership numbers has been assessed as a positive impact in respect to Equality Act.
<b>Privacy Impact Assessment</b>	Not required
<b>Duty of Due Regard / Fairer Scotland Duty</b>	Not applicable

## 9. BACKGROUND PAPERS

None

## 10. APPENDICES

**Appendix 1** – 'Open House – Diversity, Equality and Inclusion Action Plan 2018/19 – 2020/21' Aberdeen Performing Arts.

## 11. REPORT AUTHOR CONTACT DETAILS

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