

ABERDEEN CITY COUNCIL

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| COMMITTEE | Council |
| DATE | 11 th October 2023 |
| EXEMPT | The covering report is not exempt; however Appendices B to F are exempt under paragraph 6 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973 because they contain information relating to the financial or business affairs of other organisations |
| CONFIDENTIAL | No |
| REPORT TITLE | Options Appraisal on working arrangements with our ALEOs |
| REPORT NUMBER | CFS/23/315 |
| DIRECTOR | Eleanor Sheppard |
| CHIEF OFFICER | Craig Innes |
| REPORT AUTHOR | Eleanor Sheppard |
| TERMS OF REFERENCE | 24.6 and 24.7 |

1. PURPOSE OF REPORT

- 1.1 At its meeting of 6th July 2023, the Finance and Resources Committee instructed the Chief Executive to undertake an Options Appraisal on all potential working arrangements with our ALEOs (Arms-Length External Organisations) and develop an Outline Business Case with the output from that Options Appraisal, and for that Outline Business Case, accompanied by a draft Project Plan underpinning the preferred option(s) to be submitted to full Council at its meeting of 11th October 2023. This report, and subsequent delivery of the associated recommendations, help satisfy the instruction.

2. RECOMMENDATIONS

That Council:-

- 2.1 note the process undertaken in order to determine advantageous working arrangements in collaboration with ALEOs; and note the closer working relationships evident across ALEOs and Aberdeen Sports Village Joint Venture and the potential to realise shared objectives in the longer term by maintaining regular joint working;
- 2.2 note the exempt Options Appraisal documentation in Appendices B to F;
- 2.2 in relation to Aberdeen Heat and Power Company Limited, Sport Aberdeen and Aberdeen Performing Arts, agree to maintain current working arrangements;

- 2.3 in relation to Bon Accord Care (i.e. Bon Accord Care Ltd, and Bon Accord Support Services Ltd), note that the Options Appraisal process has highlighted potential benefits in bringing the associated services in-house and integrating them into the Council structure; and instruct the Head of Commercial and Procurement Services, following consultation with the Managing Director of Bon Accord Care, to outline the benefits of this potential option and provide indicative delivery milestones within an Outline Business Case for consideration by Council in December 2023; and
- 2.4 in relation to Aberdeen Sports Village Ltd (ASV), instruct the Council's Chief Officer – Finance, following consultation with the Head of Commercial and Procurement Services, to explore the potential for the Council and the University of Aberdeen to amend the shareholder agreement and ownership and report back to Council in February 2024 to align with Council budget setting process.

3. CURRENT SITUATION

- 3.1 As per the report to the Finance and Resources Committee of 6 July 2023 (Reconfiguration of working arrangements with Arm's Length External Organisations (ALEOs) - COM/23/218), an Executive Steering Group comprising Managing Directors from each of the in scope ALEOs and Joint Venture was established in July 2023 and chaired by the Chief Executive of Aberdeen City Council. The Group agreed a Project Definition Document (PDD) outlining the purpose, goals, roles and responsibilities, governance arrangements and high level project deliverables (Appendix A). The Group committed to meeting on a monthly basis to oversee progress.
- 3.2 The Executive Steering Group agreed the establishment of a Working Group to progress work in keeping with the PDD with membership nominated by the Managing Directors. Working Group members committed to regular meetings and engagement through an established Teams site to enable collaboration around the Council instruction.
- 3.3 The Working Group established a set of clear objectives and weightings to help measure the strength of the different working arrangements being explored through the process. Objectives were agreed to be:
- Increased financial efficiencies
 - Decreased duplication and increased synergies
 - Increased performance in meeting the health and wellbeing needs of the population
 - Increased focus on harm reduction
 - Ability to add social and/or economic capital to the city
 - Ability to deliver on net zero targets.
- 3.4 The Working Group met to enable each ALEO/ASV the opportunity to present an outline of their business and share how they currently support improved outcomes for citizens, this information was then transferred into the 'current state' on the Options Appraisal documentation. The Working Group analysed the information and data made available by each ALEO/ASV and used this to agree the different working arrangements to be considered through the Options

Appraisal process. Each of the Options was then fully considered through a series of meetings with individual ALEOs/ASV and more latterly with groups of ALEOs/ASV where potential benefits from more aligned working practices had been identified.

- 3.5 Options for each ALEO broadly included (i) a maintaining the status quo option, (ii) an improving performance and financial efficiencies within the status quo option, (iii) a considering readiness for the merging of some/all of the organisations into a more efficient entity option, and (iv) an aligning ALEOs to the Council/Group structure option.
- 3.6 The unique nature of each ALEO/ASV was taken into account in agreeing the options to be explored. Good collaboration between ALEOs, ASV and Council Officers was evident throughout the process and these stronger relationships now present an opportunity for further collaboration and on-going transformation.
- 3.7 As options were more fully scoped, each option was scored against the agreed weighted objectives by individual ALEOs, ASV and Council Officers with a 'best fit' sought for the recommendations presented to Council. Taking this approach helped ensure transparency and secure broad agreement on recommendations. All ALEOs/ASV were encouraged to look at the scoring undertaken by others and to offer support (by way of further synergies that might offer further benefits) and challenge.
- 3.8 Assurance was sought from Internal Audit on the impartiality of the scoring process post completion. Internal Audit confirmed that they did not identify any major concerns or challenge how the process was carried out based on their sampling of the data provided by the Interim Director Children and Family Services.
- 3.9 The Working Group presented the completed Options Appraisals to the Executive Steering Group for approval on Monday 18th September. The Executive Steering Group endorsed the output of the Options Appraisal process undertaken by the Working Group.
- 3.10 As a result of undertaking this Options Appraisal process, it is proposed that Aberdeen Heat and Power Company Ltd, Sport Aberdeen and Aberdeen Performing Arts remain as ALEOs with efficiencies considered as part of the Council budget setting process in keeping with current practice.
- 3.11 The working group identified that there may be benefits to be realised by winding up BAC Ltd and BASS Ltd and bringing the associated services in-house and integrating them back into the Council structure. It is proposed that the Head of Commercial and Procurement Services, following consultation with the Managing Director Bon Accord Care, outline the benefits of this potential option and provide indicative delivery milestones within an Outline Business Case for consideration by Council in December 2023.
- 3.12 The current shareholder agreement in place between Aberdeen City Council and Aberdeen University prevents changes to current working arrangements

for the Aberdeen Sports Village Ltd (ASV). It is suggested that the Council's Chief Officer – Finance, following consultation with the Head of Commercial and Procurement Services, explore the potential for the Council and the University of Aberdeen to amend the shareholder agreement and ownership and report back to Council in February 2024 to align with Council budget setting process.

3.13 One of the direct benefits of undertaking this process has been the building of stronger relationships across the ACC Group. Maintaining these close working relationships has the potential to realise further efficiencies and benefits to citizens of Aberdeen in the longer term and this planned collaboration has been built into the Project Delivery Plan. A number of key Council priorities have already been identified for exploration including:

- A need to better articulate the role of the ACC Group in delivery of the Council Delivery Plan and associated Local Outcome Improvement Plan
- A need to establish a multi-agency group, similar to the Physical Education, Physical Activity and Sport (PEPAS) Group associated with the Children's Services Board, to ensure a coordinated response to the physical wellbeing needs of our adult citizens
- A need to work together to review potential efficiencies by contracting services together in order to realise more favourable terms
- A need to work together, along with Aberdeen City Council, to more routinely consider assets and explore opportunities for co-location to reduce costs.

These will be taken forward as part of the Transformation Programme.

3.14 Given the importance of ensuring that ACC resources are focussed around the prevention agenda and that resources are more fully aligned to upstream activity, some focussed work will be undertaken with Public Health Scotland to fully explore the extent of the preventative work currently undertaken with Council funding to help inform our work around prevention. Mapping/auditing all activity focussed on prevention to determine how working together across the Group and with NHS Grampian and Public Health could elicit a stronger response, will help the Council further demonstrate best value and improve the provision of preventative services.

4. FINANCIAL IMPLICATIONS

4.1 The Medium Term Financial Strategy (MTFS) is a 5 year plan which sets out our commitment to provide services that meet the needs of people locally and represents value for money. The MTFS is aligned to the Council Delivery Plan, which in turn aligns the Council's commitments to the vision and priorities of the Local Outcome Improvement Plan. The MTFS presumes a saving from ALEOs as part of the Transformation Programme.

4.2 Given the importance of working within available budget, a considerable weighting of 40% of the total points available to score within the Options Appraisal was allocated to finance savings.

5. LEGAL IMPLICATIONS

- 5.1 Under section 14 of the Local Government and Planning (Scotland) Act 1982, the Council has a duty to “*ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities*”. The Council also has a duty under section 1(3) of the Education (Scotland) Act 1980 to secure for pupils in attendance at schools in their area “*the provision of adequate facilities for social, cultural and recreative activities and for physical education and training*”. These duties require adequate provision and do not stipulate precisely what facilities must be provided.
- 5.2 The Council does not have a statutory obligation to provide heat networks or heating, however it does have the power to produce and supply heat and electricity under the Local Government (Scotland) Act 1973.
- 5.3 The Council has a variety of duties and powers in relation to the provision of care for the elderly. These powers and duties come from a number of different pieces of legislation including, but not limited to, the Social Work (Scotland) Act 1968, the NHS and Community Care Act 1990, the Adult Support and Protection (Scotland) Act 2007 and the Social Care (Self-directed Support) (Scotland) Act 2013.
- 5.4 AHP, APA and SA are private companies limited by guarantee without share capital. BAC and BASS and ASV are private limited companies (i.e. limited by shares). Each of APA, SA and ASV have charitable status.
- 5.5 ASV was established in 2007 as a limited company with charitable status and is a joint venture between ACC and the University of Aberdeen (‘AU’). The current operating agreement with ASV cannot be terminated before 2034 unless the Joint Venture Agreement (containing annual Grant obligations) with AU is terminated, which would require to be negotiated with AU. Such negotiation has not been within the scope of this project to date.
- 5.6 In terms of section 16 of the Charities and Trustee Investment (Scotland) Act 2005, an ALEO with charitable status may be amalgamated with another body only with the consent of OSCR (Office of the Scottish Charity Regulator). Such consent would need to be sought at least 42 days prior to any proposed amalgamation.
- 5.7 If either APA or SA were brought in-house, OSCR consent would similarly be required under the 2005 Act to wind them up and any assets owned by them would, in terms of those charities’ governing documents, require to be transferred to some other charitable body (or bodies) with similar objects. Any current benefits of charitable status would be lost.
- 5.8 For any ALEO being brought in-house, the company would require to be wound up after novating any necessary third-party contracts to ACC.

- 5.9 If AHP were to be brought in-house, the Council would require prior consent to trade from the Scottish Ministers, in terms of the Local Authorities (Goods and Services) Act 1970.
- 5.10 In terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006, employee rights are safeguarded when the business, or part of the business, in which they work changes hands from one employer to another. When the TUPE Regulations apply, their effect is that the employees' contracts of employment transfer automatically from the current employer (Transferor) to the new employer (Transferee). There are two types of TUPE transfer, namely (i) the transfer of a business or undertaking, and (ii) a service provision change. TUPE covers the following scenarios:-
- Outsourcing – where a contract to deliver services is awarded to a contractor.
 - Re-assignment – where a contract is re-let to a new contractor.
 - Insourcing – where services are brought back in house.
- 5.11 Directors of a company owe certain statutory duties to the company under the Companies Act 2006. These duties are to act within powers, to promote the success of the company, to exercise independent judgment, to exercise reasonable care, skill and diligence, to avoid conflicts of interest, not to accept benefits from third parties and to declare interests in proposed transactions or arrangements with the company. Similarly, the trustees of a charity must act in the interests of the charity, operate in a manner consistent with the charity's purpose, act with care and diligence, manage conflicts of interest and otherwise comply with the Charities and Trustee Investment (Scotland) Act 2005. A director of a charitable company will also be a charity trustee.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 The Council and partners continue to work towards ambitious net zero targets. Given the importance of this, a weighting within the Options Appraisal was allocated to net zero.

7. RISK

| Category | Risks | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H) *taking into account controls/control actions | *Does Target Risk Level Match Appetite Set? |
|-----------------------|---|--|---|---|
| Strategic Risk | Risk that the current provision of services delivered through ALEOs is reduced to | Considerable time has been invested in looking at efficiencies and synergies to enable more efficient delivery of services | L | Yes |

| Category | Risks | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H) *taking into account controls/control actions | *Does Target Risk Level Match Appetite Set? |
|--------------------|--|--|---|---|
| | take account of reducing resource and that this impacts on the delivery of our strategic outcomes | in keeping with the Council Delivery Plan in order to mitigate this risk. | | |
| Compliance | <p>Risk of not complying with legislative duties concerning provision of sport, leisure, cultural and adult care services.</p> <p>Risk of not complying with TUPE, charity legislation or company legislation.</p> | <p>This risk is being mitigated by working to identify options which will enable the provision of services to continue within a smaller funding envelope.</p> <p>Full integrated impact assessments will be undertaken as part of the process to ensure our Public Sector Equality Duty is met.</p> <p>Project Plans would make allowance for the time needed to ensure compliance with such legislation (e.g. seeking OSCR consent and arranging for any transfer of assets and liabilities).</p> | L | Yes |
| Operational | Risk that staff are uncertain of the implications of any change in working arrangements | <p>Mitigated through on-going engagement with Trade Unions and staff</p> <p>Mitigated through the instruction to refer</p> | L | Yes |

| Category | Risks | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H) *taking into account controls/control actions | *Does Target Risk Level Match Appetite Set? |
|---------------------|--|---|---|---|
| | <p>and this impacts on morale</p> <p>Risk that services to citizens are reduced.</p> | <p>through the budget process which will ensure that decisions are taken in the wider context of the full budget.</p> <p>Mitigated by recommending that further more detailed planning be undertaken for BAC before decisions are taken.</p> <p>Closer working arrangements amongst ALEOS will help realise further efficiencies.</p> | | |
| Financial | <p>Risk of negative impact on the Council in terms of non-domestic rates.</p> | <p>Delivery of the recommendations within this report will help mitigate this risk.</p> <p>Budgetary implications of bringing ALEOs back in-house have been considered as part of the Options Appraisal process. This has included tax implications and non-domestic rates implications. These implications have influenced the scoring of options.</p> | L | Yes |
| Reputational | <p>Risk of citizens perceiving a reduction in services.</p> | <p>The report recommends that some of the options</p> | M | Yes |

| Category | Risks | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H) *taking into account controls/control actions | *Does Target Risk Level Match Appetite Set? |
|------------------------------|--|--|---|---|
| | | are referred to the budget process. The savings required through more efficient ALEOs delivery will be realised over a number of years. This will enable services to continue to be shaped and prioritised around demand. | | |
| Environment / Climate | Risk that decisions taken do not contribute to Net Zero targets. | A weighting within the Options Appraisal was allocated to net zero. | L | Yes |

8. OUTCOMES

| <u>COUNCIL DELIVERY PLAN</u> | |
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| | Impact of Report |
| Aberdeen City Council Policy Statement | Delivering services in keeping with the financial envelope will enable the continued delivery of a broad range of Council services and more comprehensive delivery of the Aberdeen City Council Policy Statement. |
| <u>Aberdeen City Local Outcome Improvement Plan</u> | |
| Economy stretch outcomes: <ul style="list-style-type: none"> No one will suffer due to poverty by 2026 400 unemployed Aberdeen City residents supported into Fair Work by 2026 | All three economy stretch outcomes are impacted by this report. Aberdeen Heat and Power play a major role in supporting those most impacted by poverty through the provision of |

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| <ul style="list-style-type: none"> • 500 Aberdeen City residents upskilled/ reskilled to enable them to move into, within and between economic opportunities as they arise by 2026. <p>Prosperous People:</p> <ul style="list-style-type: none"> • 90% of children and young people will report that their experiences of mental health and wellbeing have been listened to. • 95% of care experienced children and young people will have the same levels of attainment in education, health and emotional wellbeing, and positive destinations as their peers • Healthy life expectancy (time lived in good health) is five years longer by 2026 • Rate of harmful levels of alcohol consumption reduced by 4% and drug related deaths lower than Scotland by 2026. <p>Prosperous Place:</p> <ul style="list-style-type: none"> • Addressing climate change by reducing Aberdeen’s carbon emissions by at least 61% and adapting to the impacts of our changing climate | <p>affordable heat. All other ALEOs offer subsidised or prioritised provision for those most in need. All ALEOs offer training and employment opportunities to local people and offer a range of pathways into employment. All three of these stretch outcomes are reflected in the Objectives and scoring matrix.</p> <p>Four of the prosperous people outcomes are particularly impacted by this report although, in real terms, all have the potential to be impacted. Supporting the health and wellbeing of citizens and more vulnerable groups has been reflected in the Objectives and scoring matrix.</p> <p>Climate change is a key area of focus for this ALEO review and this has been reflected in the Objectives and scoring matrix.</p> |
| <p>Regional and city strategies</p> <p>Climate Change Plan 2021-2025</p> <p>Council strategies</p> <p>Medium Term Financial Strategy</p> | <p>The proposals within this report support the delivery of the Climate Change Plan 2021-25 as net zero has been a objective within the process.</p> <p>The Medium Term Financial Strategy assumed a saving has been realised by our ALEOS and therefore a 40% weighting was applied to financial saving as part of the process.</p> |

9. IMPACT ASSESSMENTS

| Assessment | Outcome |
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| Integrated Impact Assessment | Stage 1 impact assessments have been completed for all options. These will continue to be developed as options are presented to the Council budget or are brought back to Council for formal approval. |
| Data Protection Impact Assessment | Not required |
| Other | None |

10. BACKGROUND PAPERS

None

11. APPENDICES

Appendix A - Project Definition Document
Appendix B – Options Appraisal: Aberdeen Heat and Power
Appendix C – Options Appraisal: Bon Accord Care
Appendix D – Options Appraisal: Aberdeen Performing Arts
Appendix E – Options Appraisal: Sport Aberdeen
Appendix F – Options Appraisal: Aberdeen Sports Village

12. REPORT AUTHOR CONTACT DETAILS

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