



ADUR & WORTHING
COUNCILS

Scrutiny review of the Worthing Cultural Services procurement and contract process which was undertaken when the service was externalised in 2019

Report by the Joint Overview and Scrutiny Working Group

1.0 Summary

- 1.1 The Worthing Theatres & Museum Trust (WTM) was established as an independent charitable trust at the beginning of November 2019, following the Council's decision to lease its cultural venues to a single body offering a single focus on fostering and developing the cultural offer of Worthing and helping it to flourish over the longer term.
- 1.2 This report sets out a series of findings, research and recommendations from the Joint Overview and Scrutiny Committee (JOSC) Working Group which was established as part of the JOSC Work Programme to review the processes followed by Worthing Borough Council when making the decision to externalise the culture service in Worthing. These findings and research will help to assess whether or not the externalisation process was robust or not.
- 1.3 The Working Group sets out some recommendations and conclusions to be put to the Joint Strategic Committee and relevant Worthing Cabinet Members regarding the processes undertaken. This report will also be referred to the Joint Audit and Governance Committee which has asked to receive it pending any possible internal audits relating to the contract and procurement process.

2.0 Background and context to the externalisation of the culture service in Worthing

- 2.1 Worthing Borough Council had previously recognised that a strong cultural offer plays an important role in successful places, helps attract visitors and businesses into the areas, revitalises localities, improves health and wellbeing

and encourages volunteering and civic participation. At that time, allowing for a local multiplier, culture was categorised as being worth more than £5m to the Worthing economy based on the average spend of customers (2018 estimates). The original Adur & Worthing Councils strategic vision 'Platforms for our Places' highlighted the opportunity to develop the cultural offer in Worthing.

- 2.2 With the above factors in mind, at its meeting on 10 July 2018, the members of the Joint Strategic Committee (JSC) agreed to lease some or all of Worthing's Borough Councils cultural venues to an independent trust or similar body offering a single focus on fostering and developing the cultural offer of Worthing and helping it to flourish over the longer term. As part of this report a procurement exercise was agreed for this process.
- 2.3 At the meeting of the JSC on 5 March 2019, the Committee considered a report of the resultant procurement exercise and approved the award of the cultural services contract to the in-house team and at the same time delegating responsibility to the Director for the Economy to approve and execute the contract.
- 2.4 A detailed procurement process was undertaken prior to the award of the contract which involved an invitation to Tender published on the 30 November 2018 with a deadline for formal submissions of 12pm on Monday 28 January 2019. The Invitation to Tender (ITT) provided the relevant context; a detailed specification with 20 core requirements; instructions for the bidders and the method statement for evaluating the bids. The core requirements expressed the importance of a diverse, multi-arts programme that would respond to Worthing's changing demographic, ensuring it remained fresh and dynamic. Bidders were asked to present clear proposals for partnership working and articulate how they would develop the 'cultural landscape' in Worthing. The ITT highlighted the need for a well-balanced programme including film, theatre, dance, comedy and seasonal programming; together with the fullest exposure of the Museum collections with a focus on engaging young people; supporting academic research; and delivering high profile exhibitions. Throughout the ITT there was a focus on supporting local promoters and artists; fostering positive relationships with local communities; and nurturing talent. Ticketing arrangements were required to be fair and appropriate to the programme with emphasis placed on ensuring that a first-class customer experience was provided.
- 2.5 The key stages of the procurement exercise were: 16 October 2018 Prior Information Notice (PIN) Advertised; 30 November 2018 Invitation to Tender

(ITT) Release; 19 December 2018 Bidders Tour; 28 January 2019 Invitation to Tender Deadline for Responses; 14 February 2019 Moderation of Bids (Finance Panel); 15 February 2019 Moderation of Bids (Quality Panel). The tender opportunity generated significant interest with a number of organisations submitting an Expression of Interest in response to the PIN. Following the release of the formal ITT, the Project Team prepared for the Bidders Tour. This intervention was included to allow all applicants the chance to experience, and ask questions about, the venues first hand. This took place on 19 December 2018.

2.6 For the purposes of the tender process that was undertaken, following the ITT deadline, only 1 bidder formally submitted an application in response to the ITT and this was from the Council's in-house team. Their business case contained 101 representations of support and was based on their long term experience of delivering cultural services. Unfortunately the in-house team had unnecessarily set up a limited company to submit the tender through and this meant that the 'company' (Chalk & Clay) could not meet the essential criteria of a proven 'track record' of service delivery sufficient to meet the tender criteria. This meant that no award could be made as a result of the procurement process as the only bid received was from 'Chalk and Clay', and therefore technically, no suitable bids were received.

2.7 After review of this situation, Officers advised that as the market had been tested properly the JSC may subsequently agree to make a direct award under Regulation 32(2)(a) of the Public Contract Regulations 2015. The award was, therefore, made to the in-house team with a feature of that award being that they go on to establish an independent charitable organisation to contract with the Council and deliver the service (which was allowable under the tender process).

2.8 Following the direct award of the contract as referred to above, Worthing Theatres & Museum (WTM) was established as an independent charitable trust at the beginning of November 2019, following the Council's decision to lease its cultural venues to a single body offering a single focus on fostering and developing the cultural offer of Worthing and helping it to flourish over the longer term.

3.0 Background to the Joint Overview and Scrutiny Committee review

3.1 Following receipt of a public scrutiny request it was agreed by the Joint Overview and Scrutiny Committee (JOSC) as part of the JOSC Work Programme for 2019/20, to set up a Working Group to review the

processes followed by the Councils when making the decision to externalise the culture service in Worthing via WTM and to assess whether or not the externalisation process was robust or not. The aim of the review was to gain a better understanding of the decisions undertaken regarding the Cultural Service in Worthing and the processes undertaken in reaching those decisions.

- 3.2 Councillors Margaret Howard, Paul Mansfield, Jane Sim and Carl Walker were originally appointed to the Working Group. Due to membership changes of the main JOSC, Councillors Ann Bridges, Richard Nowak and Jon Roser were appointed to the Working Group for 2021/22 in place of Councillors Mansfield, Sim and Howard. Councillor Howard was appointed as the Chairman of the Working Group in 2019 and in 2021 stepped down from JOSC and the Working Group to be replaced by Councillor Walker. Councillor Walker was replaced by Councillor Richard Nowak for the meeting of the Working Group on 2 March 2022 for the conclusion of the review as Councillor Walker had stood down as a member of JOSC.
- 3.3 The Working Group held meetings in September 2019 and February 2020 to gather evidence and formulate findings and recommendations. The outbreak of the Covid-19 Pandemic put the review on hold as time and resources were devoted to providing community support during the pandemic but further meetings were held in September 2021 and March 2022.
- 3.4 The Working Group discussed and agreed the following Terms of Reference and project objectives for the review:-
1. To review the processes followed by the Councils when making the decision to externalise the culture service in Worthing via a new charitable organisation and to assess whether or not the externalisation process was robust or not;
 2. To question the Worthing Executive Member for Customer Services, any other Worthing Executive Members and Senior Council officers on the decisions and the processes undertaken to reach that decision referred to in 1 above; and;
 3. To consider if there is a need for any recommendations to be put to the Joint Strategic Committee/Worthing Executive Member for Customer Services on the decisions made.

Outcomes expected - A better understanding of the decisions undertaken regarding the Cultural service in Worthing and the processes undertaken in reaching those decisions.

4.0 Method of the review

- 4.1 From the start of the review, the Working Group wanted to ensure that it was briefed on as much background and information as possible relating to the procurement process involved in the externalisation of the culture service in Worthing. As part of this, the Working Group was also provided with a copy of the contract agreement relating to the management and operation of the Borough Council's cultural portfolio.
- 4.2 The Working Group has held an evidence gathering meeting with the Director for Economy at Adur and Worthing Councils and also the Solicitor for Adur and Worthing Councils who provided detailed advice which was given to the Council on the procurement and externalisation process. The Working Group also received detailed background information relating to the contract process.
- 4.3 The Working Group wanted to speak with Councillor Dr Heather Mercer, the Worthing Executive Member for Cultural Services, who had been closely involved in the process, however, it was not possible for this to be undertaken or to receive any written information response because, at the time of the review, Councillor Mercer had been unwell and had undergone surgery. However, Councillor Mercer had spoken formally to the Chairman of the Working Group outside of the meetings and confirmed that she did not have anything to add to the discussion of what had already been provided by Officers. The Working Group was disappointed that it had not been possible to interview Councillor Mercer or receive written responses due to circumstances outside of its control.

5.0 Worthing Theatres and Museum (WTM) - Independent charitable trust - Performance since November 2019

- 5.1 At the time of writing its report, the Working Group received early information on the performance of WTM which indicated that less than 5 months after it was formed in March 2020, the Covid-19 Pandemic meant that each of the Worthing Theatres and Museum venues closed and along with it, the opportunity to raise income through its core businesses of shows, events and exhibitions.
- 5.2 In line with the terms of its contract with the Council, WTM presented

operational and financial reports at quarterly review meetings chaired by the 'Council Officer' (the Director for the Economy). In such an exceptional year (20/21), it quickly became apparent at the review meetings that key performance indicators around aspects such as attendance; occupancy rates; venue hire; and ticket income could not be achieved. Unsurprisingly, projected annual income from ticket sales and event hires of over £3.5m of income became only £128k in reality. Sadly, 25 members of staff were made redundant during the year and many of the contracted hours that WTM offered in association with events and shows were not available.

- 5.3 The Council's contract payment to the Trust in 2020/21 was £1,460,010. The Council made this payment in 2020/21 to ensure that the Trust could continue to operate when possible and in compliance with government guidelines regarding support for suppliers. Contained within the contract is a clause governing how any profits made by the Trust will be treated. The contract between the Council contains a profit share arrangement which enables WTM to build up a risk reserve and at the end of the contract, 50% of any unused reserve will be returned to the Council, the Director of the Economy agreed to that contractual change.

6.0 Conclusions and recommendations

- 6.1 The Working Group would like to thank the Director for the Economy and Solicitor who contributed to the evidence for this review.
- 6.2 The Working Group has been briefed on and has reviewed in detail the procurement process undertaken relating to the externalisation of the culture service. The Working Group has also reviewed confidential information connected with the procurement and the contract process and the bid received and has noted the following issues:-
- The Council was satisfied that the procurement process was robust and that the in-house team had produced a strong bid which met the relevant criteria. As the Council only received one bid, it was open to the Council to make a direct award under Regulation 32. Rather than incur the cost of running a whole process again, when there were clearly no other tenderers wishing to take part. In using Regulation 32, the Councils had to award the contract on the same terms that had been tendered on and this was done. The Council has included a mechanism in the contract to ensure that the Trust are held to account for their performance which is made via regular reporting through the Director for the Economy and reporting to the Joint Strategic

Committee. JOSC will also review the performance as part of its Work Programme.

- That there needed to be a complete separation of information during the procurement exercise and contract negotiations. It was important that the Officers who were delivering the culture service could not be part of the procurement process or have any knowledge of it, other than what was to be published to all potential tenderers on the Intend Portal. There needed to be in effect a 'wall' between the two entities in relation to the procurement. The Head of Place and Economy was appointed to oversee the inhouse Cultural team and to run the procurement process and who had no contact with and was totally separate from the in-house team run by Amanda O'Reilly. There was a line and the Director for Economy also set up a formal Working Group to run the procurement process in a transparent and fair way and there needed to be very clear checks and balances. The team running the service and the team running the procurement process were split apart to guard against any inside knowledge of the procurement process. It was recognised in law that any in-house team would have some inside knowledge of the service and therefore a natural advantage, because they were the in-house team already running the service and this is a recognised and lawful benefit to the incumbent supplier.
- It is perfectly lawful for an inhouse team to bid against other tenderers and should be encouraged to ensure that the inhouse team meets a certain standard. The bid from the in-house team was evaluated. The Council needed to consider the overall purpose for outsourcing the service and to consider the potential funding aspect as well. The Council had an aspiration to raise the cultural offer but reduce the costs to the Council and with this bid there was an opportunity to achieve more public funding.
- The Worthing Theatres is now a Charitable Company Limited by Guarantee (CIC). This is because they wanted to set up as a Charitable Trust which allows the option for them to be more commercial. A CIC is expected to make a profit/surplus whereas a charity is not for profit. CICs are expected to reinvest their surpluses but can also pay a proportion of this out to the owners or investors. With a charity, surpluses or reserves are possible but should not be excessive. This usually means that a charity must have a policy for how much surplus it retains in case income falls in the future. Charities are required to produce financial statements in charity format and are

regulated by the charity commission as well as Companies House. Charities are eligible for rate relief of up to 100% at the discretion of the local authority. A charity has to comply with the Charity Commissions' risk management policies and there are strict guidelines on governance of charities.

- 6.3 The Working Group is mindful of the the length of time taken to undertake the review which has been due to the Covid-19 pandemic and delays in trying to get information from the Executive Member for Cultural Services.
- 6.4 The Working Group has noted the processes followed by the Councils when making the decision to externalise the culture service in Worthing via a new charitable organisation.
- 6.5 Having considered the evidence and other information presented to the Working Group it is considered that the externalisation process, including the procurement aspects, were robust and in accordance with the legal requirements of such processes.

7.0 Recommendations

- 7.1 That the Joint Overview and Scrutiny Committee note the contents of the Working Group report and the findings and refer the report to the Worthing Joint Strategic Sub Committee.**
- 7.2 That Officers be commended for their work when making the decision to externalise the culture service in Worthing via a new charitable Organisation and for bringing the issues to a conclusion.**

Reason - To note the work undertaken in resolving these issues.

- 7.3 That for the reasons set out above in Section 6 of the report, the Working Group is satisfied that the processes followed by the Councils when making the decision to externalise the culture service in Worthing via a new charitable organisation were correct and this externalisation process was robust;**

Reason - The Council has followed the relevant procedures and the Working Group can find no gaps in these processes.

- 7.4 That the findings and recommendations in this report be referred to the Joint Audit & Governance Committee to assist it in reviewing the need for any further internal audit work on Theatres.**

Reason - Because the Joint Audit & Governance Committee has asked to see the report before considering the need for any further audit work on Theatres as part of the Internal Audit Work Programme.

Local Government Act 1972

Background Papers:

None

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