



CABINET AS TRUSTEES OF BLACKWOOD MINERS INSTITUTE 15TH MAY 2019

SUBJECT: BLACKWOOD MINERS' INSTITUTE – MEMBERSHIP REVIEW

REPORT BY: INTERIM CORPORATE DIRECTOR COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To advise Cabinet as Trustees of Blackwood Miners' Institute of the options for reviewing the membership of the trustees to include arts and commercial sector expertise.

2. SUMMARY

- 2.1 At the Cabinet as Trustees meeting of Blackwood Miners' Institute held on the 16th January 2019 it was resolved that Officers seek advice in respect of reviewing the membership of the trustees to include arts and commercial sector expertise, to maximise opportunities within the BMI, and ensure that revenue remains sustainable and resilient and that a further report be brought in response (4.(ii)).
- 2.2 Currently the local authority acts as sole corporate trustee and has a legal duty to operate the charity in accordance with the governing document and has a legal obligation to account for the charity's finances in accordance with the Charity Act 2011. All charities must produce annual statements of accounts under charity law.
- 2.3 There are a number of ways that the Council can effect a change in the membership in order to progress towards delivering a sustainable and resilient service, as follows:
- Incorporate the charity;
 - Appoint new Trustees under the existing Trust;
 - Set up Holding Trust;
 - Set up an Advisory Group.

3. RECOMMENDATIONS

- 3.1 It is recommended that Cabinet consider option 5.1.2 outlined in section 5 of the report to 'Appoint new Trustees under the existing Trust' as its favoured option.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To respond to the previous request of the trustees to seek advice on reviewing the membership of the trust.
- 4.2 To present the trustees with an option whereby external arts and commercial sector expertise can be engaged without delay and at little expense.

5. THE REPORT

5.1 Blackwood Miners' Institute was conveyed as a charitable trust to Islwyn Borough Council, and (subsequently to Caerphilly County Borough Council) in 1990. The objects of the charity are set out in the Trust Deed dated 15th October 1990 and include:

- To promote, improve, develop, maintain and advance public awareness and participation in, and encourage an appreciation of the art and science of, music, dance, drama, literature and the visual arts.
- To promote, through appropriate activities, the education and training, mental and spiritual capacities of people who are unemployed, young people and pre-school children.
- To educate the public in the geography, history and architecture of the area and set out the Institute's responsibility in safeguarding against drug and alcohol abuse.

Blackwood Miners' Institute was registered as a charity with the Charity Commission (registered as Blackwood Arts Centre) on 13th November 1990.

Local authorities are empowered by Section 139 of the Local Government Act 1972, to receive and hold gifts on charitable trusts, and the local authority is currently the sole corporate trustee for this charity, holding a legal duty to operate the charity in accordance with the charity's Trust Deed and strictly in furtherance of its stated objects.

The benefits that are often cited for the conversion to Trust status include:

- Tax and business rate benefits in the form of Rate relief, VAT recovery and gift aid opportunities.
- Access to funding not available to the Public Sector such as grant giving charitable trusts.
- Greater appeal to attract donations, bequests and sponsorship income.
- Scope for enhanced efficiency savings.
- Development opportunities.
- Control of any reserves generated to reinvest.
- Freedom from bureaucracy.
- Free from local authority funding constraints.
- Dynamic flexibility to innovate and respond to opportunities.

The disbenefits can include the following:

- Loss of control and accountability over strategic facilities.
- Loss of 'absorbed' costs such as HR, payroll, ICT, procurement, marketing and financial support.
- Prospect of redundancies.
- Reputational damage through stakeholder perceptions.
- Consideration of TUPE and pension costs.
- Potentially reduced service availability.
- Set up / transfer costs.
- Inability to obtain asset backed investment funding / loans.
- Increasing maintenance liabilities.
- Risk retained by the local authority if a trust fails financially.
- Contract monitoring and management costs.

The options to effect a change to the membership of the trustees are outlined in more detail below:

5.1.1 Incorporating the Charity

The Council could convert the structure of the charity from an unincorporated trust to a Charitable Incorporated Organisation (CIO) or a Charitable Company. This potentially has the advantage of widening participation in the running of the charity. Incorporation would establish

the charity as a separate legal entity to the Council, which would be managed by its appointed trustees, members and/or directors depending on the model chosen. All assets of the Charity would transfer over to the new organisation, including staff who would be employed directly by the CIO or Charitable company.

The Council would no longer play any part in the Charity, although it would be possible for individual members of the Council to become a Trustee, member or director of the CIO or Charitable Company. Set up and administration costs for CIO's or charitable Companies are likely to be high due to formalities required to be followed with the Charity Commission and Companies House. Due to the complexity of these matters, they can take some time to put in place.

5.1.2 **Appoint new Trustees under the existing Trust**

It is possible to add, remove or replace trustees under the powers contained in a Charity's governing document (where a power exists). The 1990 Deed of Conveyance does not contain any express powers of appointment; however, it does contain a power of amendment, which can vary the terms of the Trust to possibly add new trustees, although this cannot be used to change the Charity objects. Statutory powers contained in the Trustee Act 1925 can also be used to add Trustees to the Charity. The Council could make the changes it desires by formal resolution of Cabinet, which would then authorise the Trust Deed to be varied.

5.1.3 **Holding Trust**

In addition to adding new trustees, or replacing itself as Trustee, the Council could establish itself as a holding trustee for the purpose of the assets, with a separate group of managing trustees, making the day to day decisions. Initial advice on any proposal should be sought from the Commission as in some circumstances the Commission may use its own powers to establish a scheme for the Charity, which would replace the existing governing document.

5.1.4 **Set up an Advisory Group**

Cabinet sitting as Trustees could resolve to establish a working or advisory group with terms of reference, which possibly could be made up of internal officers and members, as well as outside experts. This is a more informal option as the group will not have any decision making responsibility, but will report back to Cabinet for approval of matters. This is within the current scope of the Trustees powers and does not change the Charity's governing arrangement. It will not require any further approvals or consent.

5.2 **CONCLUSION**

- 5.2.1 Officers were asked to seek advice in respect of reviewing the membership of the trustees to include arts and commercial sector expertise to maximise opportunities within the BMI and ensure that revenue remains sustainable and resilient.
- 5.2.2 Incorporating the charity is a time consuming and potentially costly option that will require extensive staff consultation, a comprehensive review of current operations and assets and there are several organisational variants of how this transfer could be achieved that are being explored in more depth through the BIP work. Pursuing this option would likely require external 'expert' support in order to implement.
- 5.2.3 Appointing new trustees is the most expedient option that can be undertaken with a potentially lower cost and implementation period that would allow external trustees to be appointed.
- 5.2.4 The Council's legal team are still awaiting a reply from the Charity Commission in respect of a holding trust.
- 5.2.5 Whilst an advisory group could be achieved in good time and at little expense, the power of an advisory group does not carry with it the same authority as the Trustee Board in holding a legal duty to operate the charity in accordance with the charity's Trust Deed and strictly in furtherance of its stated objects.

- 5.2.6 The ongoing reduction in Local Government funding is forecast to continue and will impact on funding for non-statutory areas of public sector spending and in order to enable Blackwood Miners Institute to thrive and build its resilience it would benefit from broadening the experience and commercial knowledge of its trustees to include trustees external to the organisation with relevant experience of operating within the art and cultural environment that the Blackwood Miners Institute sits within.
- 5.2.7 This can be achieved without a significant impact on employees currently working at the Institute by pursuing option 5.1.2.
- 5.2.8 As part of the Business Improvement Portfolio work a report has been drafted that explores a number of alternative delivery models that option 5.1.1 relates to in more detail and is intended to be brought forward as part of the Caerphilly 2022 transformation programme.

6. ASSUMPTIONS

- 6.1 It has been assumed that the financial pressures on local authority budgets will continue in the medium term as outlined in the Council's Medium Term Financial plan combined with continuing inflationary pressure's expected on wage and non-wage expenditure.
- 6.2 Population growth by 2029 is only expected to rise by 1% from 180,795 (2017 mid-year estimate) to 183,000, limiting the potential catchment area for venues like Blackwood Miners Institute that remain community focussed in their audiences.
- 6.3 It is also assumed changes in the age distribution of the population and changes to the composition of family structures will impact on entertainment and leisure choices and the need to adapt to future service provision accordingly.

7. LINKS TO RELEVANT COUNCIL POLICIES

- 7.1 Effective financial planning, governance and the setting of balanced budgets and efficient delivery of services is at the heart of everything the Council does and is fundamental to the future of local service delivery.

The report links to the following Council policies:

- The Value of Historic Places, Conservation Strategy for the Historic Environment 2014 – 2019, CCBC.
- A Foundation for Success 2018-2023' - Regeneration Strategy for Caerphilly County Borough.

7.2 Corporate Plan 2018-2023

Blackwood Miners Institute is a creative hub and houses the Council' Arts Development Service and the South East Wales Arts & Education Service that along with the Institute support a number of policy areas and contributes to the following corporate objectives:

Objective 1 - Improve education opportunities for all

Objective 2 - Enabling employment

Objective 5 - Creating a county borough that supports a healthy lifestyle in accordance with the sustainable Development Principle within the Wellbeing of Future Generations (Wales) Act 2015

The proposal will help to ensure the viability and vitality of Blackwood Miners Institute and its creative and cultural role in the community.

8. WELL-BEING OF FUTURE GENERATIONS

- 8.1 Blackwood Miners Institute contributes to the Well-being goals through the generation of additional footfall, economic benefits and contributing to a vibrant educational, cultural and heritage offering.

The Well-being of Future Generations (Wales) Act 2015 sets out seven Well-being Goals which aim to make a positive impact upon the social, economic, environmental and cultural well-being of the area or community concerned. The visitor attractions within the service through their programme of activities and focus align with the following Well-being Goals:

- **A prosperous Wales**
Venues such as Blackwood Miners Institute play a key role in the community providing a focus and structure to entertainment, destination and consumer spending choices creating economic prosperity through direct employment in the creative and visitor economy generating valuable secondary spending to support local industry employment.
- **A healthier Wales**
Social prescribing has been highlighted by Public Health Wales as an opportune tool to support a healthier Wales through recognition of the impact of social determinants on health and well-being. Blackwood Miners Institute is a community asset that offer opportunities to support volunteering and through the enjoyment of cultural and art performance and participatory activity that can help improve self-esteem, mood, social contact and the development of transferable skills nurturing creativity.
- **A more equal Wales**
The provision of a range of opportunities to participate in art and creative activity across the county borough can help remove cultural, geographic, economic and social barriers to life enhancing participation and engagement benefits contributing to a more equal Wales.
- **A more resilient Wales**
Arts and cultural provision can help nurture innovation and creativity reaching beyond their realm, though they are its natural nurturing ground. Creativity is a skill that can be used to bring innovative solutions to familiar problems, and encourage new ways of thinking and living.
- **A Wales of Cohesive Communities**
The provision of venues such as Blackwood Miners Institute that are engineered to deliver educational, creative and cultural activities in a safe environment can increase individual and community confidence and sense of self-worth, building social cohesion by creating friendship and a sense of 'belonging'. It can make people feel safer and more positive about where they live, taking a pride in their own culture, heritage and background.
- **A Wales of vibrant culture and thriving Welsh language.**
The service provides a range of activities across the entertainment and art areas contributing significantly to the cultural vibrancy of the area. Over 35,000 participate or engage with a programme of cultural activities at Blackwood Miners' Institute over a diary of 200 performances / shows per year.
- **A Globally Responsible Wales**
Arts, heritage and culture help us to appreciate and understand the world we live in, inspiring and exciting us to question, explore and bring new insights to familiar challenges and can unlock our creativity and imagination, helping us to become more engaged, active and fulfilled citizens.

The report is consistent with the five ways of working as defined within the sustainable development principle in the Act:

Long term

The report provides options to ensure the long term sustainability, viability and role of Blackwood Miners Institute in contributing to the economic prosperity of the region by providing a range of options to meet the financial challenges ahead without submitting to short term objectives that could be detrimental to the long term needs of future generations.

Prevention

Having identified the financial challenges that lie ahead, the report aims to provide a range of options that can be considered that address the issue of sustainability and prevent problems arising in the longer term whilst still allowing the local authority to support the creative industry through the provision of art and cultural provision.

Integration

The Council's well-being objectives for the period 2018-2023 support a number of national objectives and the hosting of the South East Wales Arts & Education Service is an example of how Blackwood Miners Institute is integrating to the work of the Arts & Education Service in supporting wider learning in schools in the Expressive Arts and the delivery of the new Welsh Curriculum.

Collaboration

There are a number of options identified in the report that provide an opportunity to engage and collaborate with external stakeholders.

Involvement

The Council provides opportunities for our residents to participate and represent their and their community's interest in achieving their well-being goals through participation in the 'Nights out' scheme and 'Get Creative' festival and in relation to Blackwood the bicentennial celebrations planned for 2020.

8.2 There are a number of 'national indicators' that are used to measure progress against the Well-being of Future Generations (Wales) Act that relate to Blackwood Miners Institute including:

- No 28: *Percentage of people who volunteer.*
- No 35: *Percentage of people attending or participating in arts, culture or heritage activities at least three times a year.*

9. EQUALITIES IMPLICATIONS

9.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified; therefore a full EIA has not been carried out

10. FINANCIAL IMPLICATIONS

10.1 There are set up and administration costs that will need to be explored and determined if Cabinet acting as trustees is minded to agree option 5.1.2 (appointing new trustees under the existing trust) as its preferred option. Option 5.1.4 is likely to incur lower level costs in respect of advertising and likely remuneration expenses.

11. PERSONNEL IMPLICATIONS

- 11.1 Option 5.1.1 and 5.1.3 would involve staff transferring to a new Trust entity under the Transfer of Undertakings Regulations (TUPE) where the new Trust entity would assume all statutory and contractual rights as the new employer.
- 11.2 The preferred option (5.1.2) does not give rise to any significant personnel related issues.

12. CONSULTATIONS

- 12.1 The comments from consultees have been included in this report.

13. STATUTORY POWER

- 13.1 Charities Act 2011, Local Government Act 1972 and the Trustees Act 1925.

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