

EXECUTIVE BOARD

1ST JULY 2019

Oriel Myrddin Trust Governance & Resilience Review

RECOMMENDATIONS / KEY DECISIONS REQUIRED:

1. To consider the nature of the future relationship with Oriel Myrddin Trust (OMT);
2. To delegate authority to the Director of Communities, in consultation with the lead member for Culture, Sport and Tourism, to agree the management arrangements between the Trust and CCC over a transition period.

REASONS:

1. A Governance & Resilience review ("the review") of the OMT and its plans for redevelopment was commissioned during 2018 with a view to clarifying the roles and responsibilities of the stakeholders and informing structures to support a capital redevelopment plan.
2. The review concluded in January 2019 and the Trust have started to put in place the recommendations of the report.
3. A Governance Road map has been produced which charts the journey of the Trust through a transition period in which CCC has a key role to play.
4. The Trust has submitted applications to Arts Council Wales (ACW) and CCC for capital funding to support the redevelopment of the gallery. The application to CCC will be the subject of a future report.
5. Changes in the governance structure are necessary whether or not the capital redevelopment project is supported.

Exec Board Decision Required YES – 1st July, 2019

Council Decision Required NO

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:-

Cllr. Peter Hughes-Griffiths (Culture, Sport & Tourism Portfolio Holder)

Directorate: Communities Name of Head of Service: Ian Jones Report Author: Jane Davies	Department for Communities Designations: Head of Leisure Senior Cultural Services Manager	Contact details: IJones@sirgar.gov.uk 01267 228309 JaneDavies@sirgar.gov.uk 01554 742180
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1ST JULY 2019

ORIEL MYRDDIN TRUST GOVERNANCE & RESILIENCE REVIEW

1. Background

Oriel Myrddin (OMT) is a charitable trust governed by a Charity Commission scheme of 11 November 1993 and registered as a charity in England and Wales (charity registration number 1031498). The Scheme provides for Carmarthenshire County Council (CCC) to appoint trustees and to be the 'custodian trustee' for the Trust of the existing gallery building (OMG).

The current trust board consists of eight County Councillors and two Town Councillors. The operations of the gallery are undertaken by staff employed by CCC and utilising CCC systems and practice. It has become apparent that the role of CCC as custodian trustee and the wider corporate role should be more clearly maintained to comply with the requirements of charity law and recognised good practice within the sector.

A Governance & Resilience review was commissioned in order to propose a way forward and in parallel to the trust's ambition to redevelop the gallery. The review was concluded in January 2019 and the Trust have started to put in place the recommendations of the report.

2. Purpose

CCC should now consider the form and nature of its future relationship with OMT and develop the substance of how that relationship is managed.

Advice has been taken from Geldards LLP on behalf of CCC and VWV are advising the Trust. Golant Media Ventures are the lead consultant advising on the Governance & Resilience review and the parallel capital project application.

3. Governance & transition

The legal advisers agree that OMG should be treated as a wholly separate and independent organisation – specifically

"OMG has been established by the Scheme and should be treated as a wholly separate and independent organisation. We note that Golant Media Ventures ("GMV") have already advised on this aspect and the need to have independence from CCC and we agree with this aspect of their advice. To be clear, a charity is run by trustees who have a legal duty to act only in furtherance of the charitable objects for the public benefit." Geldards LLP Mar 2019

In order to achieve this the composition of the Trust Board must be such that there can be non-conflicted decisions made by a quorum of Trustees (4). At the Board's meeting on 25th January and in consultation with CCC as the key stakeholder the Board agreed to advertise for, select and recommend for appointment five trustees with no relationship to CCC or CTC to ensure compliance with legal and regulatory responsibilities and to make decisions with an appropriate degree of independence from CCC / CTC. Recruitment is well underway and looks likely to identify the required numbers for nomination at the next Board meeting scheduled for late April.

The Trusts legal advisers have mapped out the process for the legal and regulatory changes required to develop the trust clearly in their "Governance Road Map" paper. One of the priority actions is to establish a new incorporated charity and in a controlled and managed way migrate the assets and operations from the existing unincorporated trust.

The road map is supported by a note of "Transitional Arrangements". This paper concludes that the "separation" of OMT from CCC is in essence a demerger the practical steps for which would be delivered over a "transitional period". The paper is silent on the length of a "transitional period" which would be the subject of negotiation between the non-conflicted trustees and CCC.

4. Resilience

It is understood that during the transition period the interests of CCC, OMT and ACW are aligned to ensure there is sufficient capacity to:

- a. Continue running the Gallery building and programme as currently
- b. Setup NewCo and manage the transition to it (per the roadmap)
- c. Recruit new staff
- d. Support revenue fundraising and advocacy
- e. Deliver the capital project
- f. Relaunch the gallery

Steps a and b are necessary whether the capital project goes ahead or not.

Steps c to f assume that the capital project is supported and the business plan includes financial modelling for this scenario. The financial modelling is based on full independence in a social enterprising culture where investment in posts in the staffing structure around fundraising and business development generates returns in grants from Trusts and foundations & philanthropic giving in excess of their cost.

Current capacity is underpinned by

- a. The continuation of revenue funding from CCC;
- b. The continuation of support from CCC;
- c. The continuation of trading services by CCC on behalf of OMT;
- d. The existing staffing, currently employed by CCC on behalf of OMT;
- e. The appointment of new trustees and their active involvement led by OMT Chair in overseeing, directing and proactively supporting steps (b)-(f) above; and
- f. The continuation of revenue funding by ACW

The financial modelling for the current and future operations is based on a continuation of current levels of support to the Gallery, specifically annual grants of £88k, £47k and £4.5k respectively from CCC, ACW and CTC. This is supported by CCC's revenue budget 2019-20 to 2021-22. Assuming ACW and CCC agree in principle to this funding continuing then points b – f above will be the subject of negotiation between CCC and OMT constructed in such a way that when OMT / New OMG's boards deem that they have sufficient capacity they can withdraw from the agreements and by so doing bring the transition period to an end.

5. Capital Project

OMT approved the submission of its proposals for the capital redevelopment to CCC at its Board meeting on 25th January with an application for further funding, now confirmed at £1,094,000. This is in addition to the agreement for the use of 26/27 King Street and the nature of the arrangements by which those properties will be made available to the scheme is for further consideration. This would take the total level of investment in the scheme to £1,345,000.

CCC has taken legal advice on its options for ensuring that the scheme, if it is to progress, is sufficiently protected for future public benefit with minimal risk.

There are three ways in which CCC might achieve a reduction in investment risk referred to in the advice from Geldards LLP. The preferred option is option 3 in which non conflicted trustees of OMT agree with CCC management arrangements for a transition period.

OMT would have to achieve independence by the end of a transition period however and the supplemental advice indicates

"This is of course a matter for negotiation between CCC and the charity trustees of the Charity and would need to be proportionate to the amount of the grant /funding/ contributions provided by CCC to the Charity. However, as a guide, it is not uncommon for such a term to be for 25 years, perhaps with a break exercisable at 12 years.

Following on from this and linked to option 3 outlined in our Advice dated 28.2.19, CCC could explore the possibility of leasing the additional two buildings that it has acquired (assuming these have been acquired by CCC using its own funds and not funds it is holding for the Charity a custodian trustee) supplemented by a management/operation agreement." Geldards LLP March 2019.

What is emerging therefore is a model in which OMT/ New OMG, as an entirely independent organisation, with sufficient non conflicted trustees, enters into agreements with CCC for the delivery of services during a transition period, in which it retains controlling influence, but which satisfies concerns from CCC around operational risks to such an extent that it would consider investment. Mitigating factors to reduce the risk might be included as part of CCC's offer of grant.

Likewise CCC would have an outcomes led agreement with OMG for the delivery of the principles of its Arts Strategy 2018 – 2022 which would form the basis for payment of the annual revenue grant. This is akin to the existing arrangement between OMT and ACW.

6. Recommendations

A “demerger” of OMT and CCC is necessary in order to comply with the legal and regulatory environment in which the trust operates. The status quo as has existed to the end of 2018 is therefore not an option. It is assumed that CCC will continue to support OMG with its revenue support grant.

The options for CCC are therefore to support the Trust to improve, without capital investment or to support the Trust to improve and invest in the capital scheme. The potential of the capital scheme is the subject of a separate report. A series of agreements will need to be negotiated with the trust in either scenario and it is therefore suggested that authority is delegated to the Director of Communities, in consultation with the lead member for Culture, Sport and Tourism, to progress with those agreements and define the nature of the relationship throughout the transition period and beyond.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: Ian Jones

Head of Leisure

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NO	YES	NOT AT THIS STAGE	NO	NO	NO	NOT AT THIS STAGE

Legal

The steps outlined in the report are necessary for the legal and regulatory framework within which the Trust will now need to operate.

SPM

CONSULTATIONS

Title of Document	Locations that the papers are available for public inspection
GMV Final report - Jan 2019	Oriel Myrddin Gallery
VWV Governance Roadmap – Feb 2019	Oriel Myrddin Gallery
Geldards LLP Advice to CCC – Mar 2019	Oriel Myrddin Gallery
Minutes of Oriel Myrddin Trust Meetings	Oriel Myrddin Gallery