
FULL COUNCIL REPORT

Date Written	3 rd August 2020
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Service Area	Community Regeneration
Exempt/Non-Exempt	Non-Exempt
Committee Date	9 th September 2020

To: Mayor, Ladies and Gentlemen

Cyfarthfa Heritage Area Special Purpose Vehicle

1.0 SUMMARY OF THE REPORT

- 1.1 On 21st October 2017 the Design Commission for Wales and the Welsh School of Architecture at Cardiff University held a design charrette at Cyfarthfa Castle. The event - supported by the Council as well as by the Merthyr Tydfil Leisure Trust and the Merthyr Heritage Trust - brought together more than 60 creative minds.
- 1.2 The charrette led to the publication of a report – *Crucible: Design Charrette Report – Cyfarthfa Heritage Area* – which was considered by the Council on 6th June 2018.
- 1.3 At that meeting the Council accepted unanimously the report and its recommendations and charged an ‘Interim Working Group’ with exploring the establishment of an appropriate development vehicle to realise the proposals.
- 1.4 To ensure that there is no unnecessary loss of momentum following on the publication of the Masterplan, the Crucible Working Group and the consultants have recommended that the Special Purpose Vehicle be established immediately with charitable status.
- 1.5 The proposed draft Memorandum and Articles of Association (attached as background papers) would create a company, limited by guarantee, incorporated under the Companies Act 2006. It would seek charitable status from the outset.
- 1.6 It is proposed that the company/charity be named “The Cyfarthfa Foundation”, a name conveying a sense of place and weight but also having an educational connotation.

- 1.7 The Members of the company would include the directors of the company and a range of stakeholders, including Merthyr Tydfil CBC and other community representatives. It is envisaged that the membership could develop as the project proceeds and matures.
- 1.8 The Board of the Foundation would be limited to 12, and would include two elected members of Merthyr Tydfil CBC, community representation and a range of relevant specialist expertise.
- 1.9 The first Members of a charitable company will normally be subscribers to the Memorandum & Articles of Association. The role of the members would be to elect directors and to scrutinise how the directors exercise their duties, but would not be directly involved in its day-to-day affairs.
- 1.10 In the case of the Cyfarthfa Foundation it is likely that Board membership will be small in the first instance and may take some months to achieve the permitted maximum.
- 1.11 It is considered that this project cannot be delivered by Merthyr Tydfil Leisure Trust due its specialist nature. The Trust has many differing responsibilities centred on the community. This project requires a sole focus and the retention of high-level expertise, some of it specialist, at board and staff level, drawn from Wales, the UK and beyond.
- 1.12 It is proposed the interests of the Council will be safeguarded as the proposal seeks to balance the charitable trust's requirement for autonomous governance with the need to safeguard the interests of the Council and the people of Merthyr Tydfil.
- 1.13 Subject to this report being approved a number of further reports will be presented to Council.

2.0 RECOMMENDATIONS that

- 2.1 The new SPV be named "The Cyfarthfa Foundation".
- 2.2 The SPV's Memorandum and Articles of Association to enable the new SPV to be established and the charitable registration process to commence be approved.
- 2.3 A bank account be opened for the new SPV and £5,000 be deposited in the bank account by the Council.
- 2.4 The first director(s) be appointed.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 On 21st October 2017 the Design Commission for Wales and the Welsh School of Architecture at Cardiff University held a design charrette at Cyfarthfa Castle. The event - supported by the Council as well as by the Merthyr Tydfil Leisure Trust and

the Merthyr Heritage Trust - brought together more than 60 creative minds. This intense day of ideas generation considered how Cyfarthfa Castle, its extended landscape and built heritage, might become an international quality visitor destination and experience.

- 3.2 The charrette led to the publication of a report – *Crucible: Design Charrette Report – Cyfarthfa Heritage Area* – which was considered by the Council on 6th June 2018.
- 3.3 At that meeting the Council accepted unanimously the report and its recommendations and charged an ‘Interim Working Group’ with exploring the establishment of an appropriate development vehicle to realise the proposals. In doing so it accepted that the delivery of the proposals would require “human and financial resources beyond those of the local authority itself”.
- 3.4 The working group – known as the Crucible Working Group – has steered progress since that date. It is composed of Council Officers, Carole-Anne Davies, Chief Executive of the Design Commission for Wales (DCFW) and Geraint Talfan Davies, Advisor to the DCFW.
- 3.5 A key recommendation of the charrette report had been

“That a Special Purpose Vehicle be created to steer this project, to bring all governmental and community stakeholders together with the best specialist expertise and to ensure continuity of vision over the long term and beyond political cycles.”
- 3.6 The report went on to say that experience with projects of this scale suggests that a special purpose vehicle with charitable status would be essential as a framework within which

“to marshal the right mix of skills, to develop the proposals and to seek funding from major trusts and foundations.”
- 3.7 In the summer of 2019, following a very competitive process, Ian Ritchie Architects – a world-renowned practice – was appointed to lead a multi-disciplinary team of consultants to develop a Masterplan for an interpretative centre of international quality that would showcase the town’s role as a crucible of the industrial revolution. It was envisaged that the Masterplan process would take 12 months. It is, therefore, due to be completed in September 2020.
- 3.8 The work of the consultants is nearing completion. The initial phase of research and exploration was completed early in March 2020. The second phase, in which options were tested, was completed in early July 2020. The final Stage 3 report was delivered on 3rd August 2020, and its public launch is scheduled for October.
- 3.9 To ensure that there is no unnecessary loss of momentum following on the publication of the Masterplan, the Crucible Working Group and the consultants have recommended that the Special Purpose Vehicle be established immediately with charitable status.

- 3.10 The following draft Memorandum and Articles of Association for the SPV are based on extensive discussions between the Crucible Working Group and the Council's legal advisers, Blake Morgan LLP.

4.0 MEMORANDUM AND ARTICLES OF ASSOCIATION

- 4.1 The proposed draft Memorandum and Articles of Association (attached as background papers) would create a company, limited by guarantee, incorporated under the Companies Act 2006. It would seek charitable status from the outset.
- 4.2 It is proposed that the company/charity be named "The Cyfarthfa Foundation", a name conveying a sense of place and weight but also having an educational connotation.
- 4.3 The Foundation would be autonomous in structure and governance, using its resources wholly in pursuit of its Mission and Vision, aligned with its charitable objects and powers.
- 4.4 The Members of the company would include the directors of the company and a range of stakeholders, including Merthyr Tydfil CBC and other community representatives. It is envisaged that the membership could develop as the project proceeds and matures.
- 4.5 The Board of the Foundation would be limited to 12 and would include two elected members of Merthyr Tydfil CBC whose first duty is to 'The Cyfarthfa Foundation', community representation and a range of relevant specialist expertise decided and agreed by the Council. A minimum quorum of five would normally be required to include Elected Members.
- 4.6 Members must act in the company's interest to the exclusion of their own, or a third party's interest. Members exercise their rights by voting at a general meeting or by passing written resolutions and also elect the directors of the company. Membership is often a way of engaging key stakeholders in a project.
- 4.7 Members would serve for two periods of three years, but a further term of three years could be allowed 'in exceptional circumstances'. Council Elected Members would be required to step down prior to local authority elections.

5.0 COMPANY / CHARITY OBJECTIVES

- 5.1 The objects are restricted specifically to the following, in each case for the benefit of the public and in particular the area of Merthyr Tydfil:
- 5.2 The promotion and advancement of arts, culture, heritage, education and the environment, in particular but not necessarily exclusively by:
- holding, managing, repairing, maintaining, preserving and protecting heritage and cultural assets and making them available to the public;
 - establishing and maintaining a museum and/or art gallery;

- providing facilities, parks and open spaces, in the interest of social welfare, for recreation and leisure time occupation; and
 - undertaking and promoting the conservation protection and improvement of the physical and natural environment in connection with the heritage and cultural assets, facilities, parks and open spaces held by the Charity,
- 5.3 The pursuit of such other charitable purposes analogous to the above as the Trustees in their absolute discretion shall determine.
- 5.4 The Charity would also have the power to improve existing facilities and to construct any new facilities needed, as well as the normal range of powers, including the employment of staff, which any charity needs to fulfil its purposes. Heads of Terms are to be agreed by the various parties.

6.0 BUSINESS CASE

- 6.1 It is proposed the structure will be a 'company limited by guarantee' (CLG) with charitable status. This is the most common structure adopted by sizeable charitable organisations in the cultural sector – museums, galleries, heritage, arts and education organisations. A CLG has no shareholders. It will be established exclusively for charitable purposes, defined in the company's objects.
- 6.2 The company law framework in which CLG's operate is well established and understood. The familiarity of this structure - tried and tested - will give comfort to potential donors, including the major charitable trusts. Examples of CLGs: Wales Millennium Centre, National Botanic Garden of Wales, Welsh National Opera, Ironbridge Gorge Museum Trust, universities, theatres etc.
- 6.3 The first Members of a charitable company will normally be subscribers to the Memorandum & Articles of Association. The role of the members would be to elect directors and to scrutinise how the directors exercise their duties, but would not be directly involved in its day-to-day affairs.
- 6.4 The current proposal is for a board of 12 people. The Memorandum & Articles of Association usually specify a maximum figure for board membership. In practice, the actual size of boards is less than the permitted maximum:

	<i>Maximum</i>	<i>Actual</i>
National Museum Wales	17	15
National Botanic Garden of Wales	20	13
Wales Millennium Centre	Unlimited	10
Ironbridge Gorge Museum Trust	20	11
Beamish Museum	15	15
Serralves Foundation, Portugal	Not stated	9

- 6.5 In the case of the Cyfarthfa Foundation it is likely that board membership will be small in the first instance and may take some months to achieve the permitted maximum.

- 6.6 The creation of an autonomous charity / company is the only practical way in which to assemble the necessary funding – from governmental, national lottery, business, and charitable sources. Demonstrating the independence and autonomy of the SPV will be critical to achieving this investment. The Foundation will establish an organisation whose sole focus will be the development of Cyfarthfa and to consider other heritage assets in the County Borough of Merthyr Tydfil (but particularly within the footprint of the Crucible project) to maximise the benefits for the borough – economic, education and social – and the nation.
- 6.7 It is considered that this project cannot be delivered by Merthyr Tydfil Leisure Trust due its specialist nature. The Trust has many differing responsibilities centred on the community. This project requires a sole focus and the retention of high-level expertise, some of it specialist, at board and staff level, drawn from Wales, the UK and beyond.
- 6.8 The aim of this scheme is to create a centre of national and international significance and quality – a new national institution for Wales rooted in Merthyr Tydfil’s story. As such it will have three advantages:
- It will assemble a board that will draw on the best national expertise in projects of this kind as well as extensive legal, financial and corporate experience.
 - With a soundly based strategy based on a thorough Masterplan prepared by a world-renowned team, it is more likely to attract the support of the National Lottery
 - As a new national institution, and one that will be central to the concept of the Valleys Regional Park, it is also likely to command the support of the Welsh Government. The Welsh Government is already assisting in the preparatory work, with a grant of £80k to develop a sound basis of knowledge through an intensive trawl of all relevant archives. This exercise will be of great assistance in developing Merthyr Tydfil’s own archives.
- 6.9 It is proposed the interests of the Council will be safeguarded as the proposal seeks to balance the charitable trust’s requirement for autonomous governance with the need to safeguard the interests of the Council and the people of Merthyr Tydfil.
- The Cyfarthfa Foundation will be a charity established to further a range of public purposes, including a powerful education remit. It will be a not-for-profit organisation. Its objects and its performance will be overseen by the Charity Commission.
 - Merthyr Tydfil Council will be a founding Member (a founding member is one of the parties who was party to the initial setting up of the Foundation) of the company and will have two representatives on its board.
 - The Council will also take a view of the borough’s interests in the subsequent negotiation over the transfer of the heritage assets from the Council to The Cyfarthfa Foundation.

- To the extent that the development will seek public funding – whether from the Council or from the Welsh Government – that funding will be conditional on the delivery of agreed public purposes.
- 6.10 In addition to the presentation of local interests – the Council and Community organisations – the aim will be to recruit top-level expertise in the following fields:
- Legal / Corporate governance
 - Financial
 - Investment / Fund-raising
 - Urban design, planning and architecture
 - Landscape planning
 - Sustainability and decarbonisation
 - Heritage and Museum sector
 - Tourism
 - Arts / Culture / History
- 6.11 Subject to this report being approved a number of further reports will be presented to Council as highlighted in section 7 below.

7.0 NEXT STEPS

- 7.1 It is anticipated that in Autumn 2020 the following actions will be undertaken solely by the Council:
- Council approves Memorandum & Articles of Association
 - Agree with the Council the founding Members
 - Registration of the company
 - Prepare application for charitable status
 - Appointment of the first director(s)
 - Creation of bank account with minimum deposit of £5k
 - Appoint legal advisers to the new SPV
 - Management Agreement / Lease
- 7.2 The next step upon completion of 7.1 will be the recruitment of further Board members via public process
- 7.3 Following 7.2 the following actions will need to be undertaken:
- Establish budget and funding/staffing needs for first 12 months.
 - Secure initial funding for first 12 months
 - Review Masterplan recommendations to decide priority actions
 - Begin recruitment of initial core staff team.
- 7.4 Upon completion of 7.3 the following will be completed:
- Appointment of initial core staff
 - Assemble necessary information for negotiation on transfer of assets
 - Negotiation on transfer of assets and associated funding
 - Programme of events

- Transfer of assets
- The Foundation begins management of the assets

8.0 FINANCIAL IMPLICATIONS

8.1 Blake Morgan costs associated with the establishment of the SPV which amount to £5,000 to date. This cost will be funded by MTCBC. A further £5,000 fee has been agreed with Blake Morgan to continue advising the Council in respect of this project.

8.2 The SPV's bank account cost of £5,000 will be funded by the Council.

9.0 INTEGRATED IMPACT ASSESSMENT

	Positive Impacts	Negative Impacts	Not Applicable
1. Merthyr Tydfil Well-being Objectives	3 of 4	0 of 4	1 of 4
2. Sustainable Development Principles - How have you considered the five ways of working: <ul style="list-style-type: none"> • Long term • Prevention • Integration • Collaboration • Involvement 	5 of 5	0 of 5	0 of 5
3. Protected Characteristics <i>(including Welsh Language)</i>	2 of 10	0 of 10	8 of 10
4. Biodiversity	1 of 1	0 of 1	0 of 1
<p><u>Summary:</u></p> <p>The main positive impacts are that the creation of the SPV to deliver the Cyfarthfa Heritage Area Masterplan will support Well-being Objectives and Sustainable Development Principles through targeting economic growth, the protection of key heritage assets and the development of the landscape. The project will have a positive effect on the economy, socially and on heritage.</p> <p>No negative impacts have been identified.</p>			

ALYN OWEN
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COUNCILLR GERAINT THOMAS
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BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Does the report contain any issue that may impact the Council's Constitution?		No

Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.