



BROMLEY CIVIC CENTRE, STOCKWELL CLOSE, BROMLEY BRI 3UH

TELEPHONE: 020 8464 3333  
DIRECT LINE: 020 8313 4508  
FAX: 020 8290 0608

CONTACT: Keith Pringle  
*keith.pringle@bromley.gov.uk*

DATE: 29 October 2015

To: Members of the  
**EXECUTIVE**

Councillor Stephen Carr (Chairman)

Councillors Graham Arthur, Robert Evans, Peter Fortune, Kate Lymer, Peter Morgan and Colin Smith

A special meeting of the Executive will be held at Bromley Civic Centre on **MONDAY 9 NOVEMBER 2015 AT 6.30 PM**

MARK BOWEN  
Director of Corporate Services

*Copies of the documents referred to below can be obtained from  
<http://cds.bromley.gov.uk/>*

**A G E N D A**

- 1 APOLOGIES FOR ABSENCE**
- 2 DECLARATIONS OF INTEREST**
- 3 GATEWAY REPORT: PROPOSALS FOR A COMMISSIONED LIBRARY SERVICE**  
(Pages 3 - 42)
- 4 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006 AND THE FREEDOM OF INFORMATION ACT 2000**

The Chairman to move that the Press and public be excluded during consideration of the items of business listed below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**Items of Business**

**Schedule 12A Description**

- 5 GATEWAY REPORT: PROPOSALS FOR A COMMISSIONED LIBRARY SERVICE**  
(Pages 43 - 60)

Information relating to the financial or business affairs of any particular person (including the authority holding that information)

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Report No.  
DRR15/089

London Borough of Bromley

PART 1 - PUBLIC

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**Decision Maker:** Executive

**For Pre-Decision Scrutiny by Renewal and Recreation  
PDS Committee on:**

**Date:** 27<sup>th</sup> October 2015

**Decision Type:** Non-Urgent Executive Key

**Title:** **GATEWAY REPORT: PROPOSALS FOR A COMMISSIONED  
LIBRARY SERVICE - PART 1**

**Contact Officer:** Colin Brand, Assistant Director: Culture, Libraries & Leisure  
Tel: 0208 313 4107 Email: colin.brand@bromley.gov.uk

Hannah Jackson, Project Manager: Change & Regeneration  
Tel: 020 8461 7960 E-mail: hannah.jackson@bromley.gov.uk

**Chief Officer:** Nigel Davies, Executive Director, Environment & Community Services

**Ward:** All

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## 1. Reason for report

1.1 Following pre-decision scrutiny at the meeting of the Renewal & Recreation Policy Development and Scrutiny Committee on 18<sup>th</sup> March 2015, the Portfolio Holder decided that officers should progress work to implement a new approach to the delivery of library services in difficult financial circumstances; this included further exploration of the option to commission the library service. Officers were asked to enter into discussions with the London Borough of Bexley to develop a joint procurement strategy, undertake soft market testing and complete further consultation with library staff, library users and residents.

1.2 This report:

- Provides Members with an overview of the outcome of the soft market testing exercise. The detailed outcome is in a separate Part 2 report (DRR15/090) due to the commercially sensitive nature of the information.
- Provides Members with the outcome of the public consultation and staff engagement activities
- Considers alternative options for the future of the library service

- Sets out a proposed joint procurement strategy with the London Borough of Bexley to market test the library service
  - Identifies some commercially sensitive issues affecting the procurement strategy and contracting arrangements (detailed in a separate Part 2 report (DRR15/090))
- 1.3 This report also provides Members with an update on the separate procurement process being delivered to identify suitable community management options for the Council's six community libraries, and suggests an alternative option that could be considered should no such arrangements be agreed.
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## **2. RECOMMENDATIONS**

**2.1 Members of the Renewal & Recreation Policy and Development Committee are asked to review this report and provide their comments to the Executive for their consideration.**

**2.2 Members of the Executive are asked to:**

- **Note the outcome of the soft market testing exercise, public consultation and staff engagement, in addition to the alternative options presented and have due consideration to these factors in their decision making**
- **Instruct officers to market test the library service, beginning a formal procurement process jointly with the London Borough of Bexley**
- **Agree the procurement strategy and contracting arrangements set out in this report**
- **Note the progress made in a separate tender exercise to identify community management arrangements for community libraries**

### Corporate Policy

1. Policy Status: Existing policy. Library Service Strategy
  2. BBB Priority: Vibrant Thriving Town Centres. Supporting Independence. Children & Young People. Excellent Council.
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### Financial

1. Cost of proposal: Estimated cost none identified at this stage
  2. Ongoing costs: Recurring cost. Potential savings from the joint procurement process
  3. Budget head/performance centre: Libraries
  4. Total current budget for this head: £4.7m
  5. Source of funding: Existing revenue budget for 2015/16
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### Staff

1. Number of staff (current and additional): 105.1 FTE
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory requirement.
  2. Call-in: Call-in is applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): In 2014/15, Bromley's library service recorded 52,129 active users (an active user is defined as an individual who has had a transaction on their library account within the last year) The library service has a statutory duty to be available and accessible to all those who live, work and study in the borough. The 2011 census identified that 309,392 people lived in the London Borough of Bromley.
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments: Ward Councillor comments to be reported to the Committees.

### 3. COMMENTARY

**Estimated Contract Value:** £67.5m over 15 years (London Borough of Bromley only)

**Proposed Contract Period:** 10 + 5 years

- 3.1 Following pre-decision scrutiny at the meeting of the Renewal & Recreation Policy Development & Scrutiny Committee on 18<sup>th</sup> March 2015, the Renewal and Recreation Portfolio Holder approved a new approach to the delivery of library services in difficult financial circumstances. This decision followed a period of public consultation on these proposals.

The new approach sought to:

- Explore the option for community management at the Council's six community libraries
- Commission the whole library service, seeking an external provider to deliver direct management of the library service under the supervision of the Council, including oversight of community management arrangements.
- Explore opportunities to renovate and improve the physical condition of all library buildings and upgrade the IT infrastructure.

- 3.2 The Portfolio Holder decided that officers should take the following steps to begin implementation of the approach's second ambition – to commission the whole library service:

- Enter into discussions with the London Borough of Bexley to develop a joint procurement strategy for the library service
- Undertake a soft market testing exercise for the library service
- Undertake further consultation on the results of the soft market testing with library staff, library users and residents

- 3.3 This report:

- Provides Members with the outcome of the soft market testing exercise, public consultation and staff engagement
- Based on the outcome of these exercises, recommends that the Council commences a formal procurement process jointly with the London Borough of Bexley
- Sets out the proposed joint procurement strategy
- Identifies the implications of commissioning the library service on current arrangements, identifying some indicative costs and how risks will be managed.

- 3.4 This report also provides Members with an update on the process to find community management options for the Council's six community libraries.

#### Background

- 3.5 Bromley library service currently operates 14 libraries in the borough and the service is tiered to reflect the potential catchment areas and the range of services provided at each library. Currently, 98% of residents live within 1.5 miles of a library.

- 3.6 In 2014/15, there were 52,129 active library users; this represents 16.9% of the population of the borough. The number of active library users has seen a steady decline since 2011/12 when there were 72,754 active library users representing 23.5% of the population.

- 3.7 The most recent CIPFA PLUS (2012) survey results showed that 60% of customers visited the library to borrow a book, 20% of customers visited to use a computer, and 27% of customers visited to find information. (Some customers visited for more than one purpose).

- 3.8 Given that pressure on the Council's resources is unprecedented and the Council will be required to find significant savings in the next four years, the Council must look at all of its service areas to identify efficiencies, including those that it has a statutory duty to provide such as libraries.
- 3.9 The Council's Corporate Operating Principles include a commitment that services will be provided by whoever offers customers and council tax payers excellent value for money. This is underpinned by a commitment to be a commissioning organisation determining who is best placed to deliver high quality services based on local priorities and value for money principles.
- 3.10 Additionally, other local authorities have now commissioned their library services to achieve savings; namely the London Boroughs of Croydon, Ealing, Greenwich, Harrow, Hounslow and Wandsworth.
- 3.11 It is in this context that the Renewal & Recreation Portfolio Holder previously instructed officers to investigate the option for a commissioned library service.

### **London Borough of Bexley**

- 3.12 The problems facing the Council are not unique to Bromley and other local authorities experience similar budgetary pressures and concerns.
- 3.13 In January 2012, Bromley and Bexley Councils commenced a shared service for library back office and management functions to create efficiencies. This successful arrangement is due to expire in December 2017.
- 3.14 Building on the success of this joint working arrangement, and in light of both Councils' stated ambition to make savings, officers agreed to explore the options to develop a joint procurement strategy for their library services, subject to the outcome of market testing and consultation.
- 3.15 It was also anticipated that a joint arrangement had the potential to offer additional savings through economies of scale.

### **Soft Market Testing**

- 3.16 To test the Councils' ambitions and assumptions, Bromley and Bexley Councils undertook a joint soft market testing exercise between 12<sup>th</sup> May and 26<sup>th</sup> June 2015, exploring the possibility that a jointly commissioned library service would reduce the Councils' operating costs and achieve better value for money than if the Councils continued to be responsible for their direct delivery.
- 3.17 The soft market testing exercise aimed to:
- Establish the level of market interest in the delivery of the Councils' library services
  - Test the capacity of the market to supply these services more efficiently
  - Seek views from the market on how the opportunity should be presented to achieve best value for money

with the intention that the information received would be used to inform the Councils' decisions about whether or not to begin a formal procurement process to commission their library services, and to inform the potential procurement strategy and tender/contract documentation.

- 3.18 This exercise was also important because the market for library services is relatively underdeveloped. Regionally, library services are already delivered by external providers in London Boroughs of Croydon, Ealing, Greenwich, Harrow, Hounslow, and Wandsworth. However, only two providers currently deliver these services: Carillion and Greenwich Leisure Ltd (GLL).
- 3.19 The soft market testing exercise was advertised openly and invited responses to a questionnaire. Those responses were further explored in a meeting between the respondents and officers representing both Councils.
- 3.20 The questionnaire provided respondents with the following information to inform their responses:
- Information relating to the purpose, scope and process of the soft market testing exercise
  - Borough profiles for both Bromley and Bexley which included resident demographics and trends
  - Information relating to the shared service for back office and management functions
  - An outline of the expected commissioned library service model, including community managed libraries
  - Service descriptions, including information relating to the service budgets, numbers of FTEs and staff roles
  - High level outcomes (including the existing Service Plan).
- 3.21 Seven responses to the questionnaire were received. The responses provided information relating to:
- The respondents' experience of running a library or similar services
  - Their contractual preferences
  - Their views on the scope of services to be included in the tender
  - Their preferences in relation to the management of the library buildings and assets
  - Their ability to make efficiencies
- 3.22 Six out of the seven respondents attended meetings with representative officers from both Bromley and Bexley.
- 3.23 The purpose of these meetings was to:
- Gain a better understanding of the business model and any interdependences
  - Clarify positions on issues that did not see a strong trend or consensus in the questionnaire responses.
- 3.24 Due to the commercially sensitive nature of much of the intelligence gained from the soft market testing exercise, a summary of the findings of the process is defined in more detail in a Part 2 report also considered on this agenda. However, this report notes that:
- A competitive market for the delivery of library services exists and there is market interest in a formal tender of Bromley and/or Bexley's library services
  - The reasons for market interest were varied
  - The market felt confident on their ability to offer value for money
  - The exercise demonstrated that the market thought that they could retain the range of library services currently on offer whilst reducing the Councils' operating costs
  - A joint procurement exercise between the London Boroughs of Bromley and Bexley had the potential to offer further savings



## Alternative Options

3.25 The outcome of the soft market testing exercise should be considered alongside an analysis of the alternative options considered for the future of the library service:

### Direct Delivery by the Council

3.26 One alternative option is that the Council continues to provide direct delivery of library services and looks to make efficiencies within the service in other ways. The scope for savings appears limited, not least because the library service made a significant reduction in opening hours in 2014/15 to meet a budget saving of £300k. This followed additional budget savings in previous years. The net controllable budget of the library service has reduced in total by approximately £1m per annum over the last 5 years. This included reducing the library staffing budget and investing in new technologies to enable independent borrowing.

3.27 To make further efficiencies, the Council could consider:

- Further reducing opening hours  
Given the Council's statutory duty to provide a 'comprehensive and efficient' library service, a significant reduction in opening hours is not recommended as it would be likely that such a reduction would compromise the Council's ability to meet this duty. However a modest saving of approximately £90k per annum could be realised by closing Central, Beckenham and Orpington libraries an additional one day per week. However, the likely saving is limited because this would only result in a saving to the staff budget; there would be no or very minimal savings to running costs (such as utilities or cleaning) and the saving is likely to be reduced by as that there is likely to be a loss of income usually taken at the libraries on those days.
- A reduction in the library book fund  
The Council could reduce the money that it spends on new books, but this will have a direct negative impact on the quality of the service received by service users. A budget of £500k per annum is currently set aside in the library service budget for new stock. This was previously reduced over the last 10 years by almost 40% from £800k. During the same period, and influenced by this reduction, the number of items borrowed has also reduced by 35%.
- Closing libraries  
Counsel's advice from November 2014 concluded that it may be possible for the Council to close up to three of its community libraries and meet its statutory obligations. An additional three libraries could also be considered for closure, however this would require a careful cost-benefit analysis based on equality impact and needs assessments to ensure that the Council's public sector equality duties are discharged. The six libraries identified are community libraries; the Council is currently seeking community management arrangements that will keep these libraries open to the public, reduce the Council's operating costs and enable them to be considered part of the Council's statutory provision of library services.

3.28 If the Council continues to erode library services in this way, they risk further decline in visitor numbers and issues. The library service has already suffered from a lack of investment; for example the People's Network machines now have limited usability, are outdated and unsupported. Library visitor and issue numbers for the borough are already in decline.

## Shared Library Services

- 3.29 Another option is that the Council establish a shared library service with another Council(s). Again the potential to make savings appears limited; the Council already operates a shared service for back office and management functions with the London Borough of Bexley which resulted in an annual saving of £340k. Therefore any additional savings which could be achieved through a completely shared service with the London Borough of Bexley would likely result in a reduction in service level, either through a reduction in opening hours and therefore staff, the book fund or by closing community libraries. This is because the Council already operates a baseline staffing structure across frontline services.

## Trust or Industrial and Provident Society

- 3.30 The Council could set up a new organisation to deliver the library service, such as an Industrial & Provident Society (IPS) or a charitable trust, either independently or in partnership with the London Borough of Bexley. This approach has been adopted elsewhere; Suffolk County Council established a IPS to run their library service, Redbridge established a charitable trust (Vision Redbridge) who deliver their library service in addition to other leisure or cultural services, and Kent County Council are also in the process of establishing a trust to deliver library services on their behalf. This model tends to be more popular with County Councils who, due to the size of their library services can overcome some of the issues London Boroughs face because of their scale.
- 3.31 The benefit of this approach is that a modest level of saving could be achieved because:
- The new organisation would be likely to benefit from rate relief
  - The new organisation may be able to secure additional work by competing in the market to deliver other authorities' library services, and offer better value for money – however this does require the new organisation to build in capacity to bid for other services within their bid (and this is a service not currently provided).
- 3.32 However, this approach carries some significant risks, and the financial benefits are dependent upon a number of issues being resolved – for example, to what extent could the trust reduce costs for support services, and could the trust secure the additional discretionary rate relief. The key issue however is that unless the trust can find a way to recover VAT, the option is not viable. This is because the Council does not currently pay VAT, whereas it is likely that a charitable trust or IPS would be required to meet this tax liability. Any benefit that the new organisation would gain from rate relief would be offset by this increased liability for VAT.
- 3.33 This model has not been successful in all circumstances; both Hounslow and Wigan took back their library services after awarding a contract to a trust.
- 3.34 On reflection, this approach is not recommended. The level of risk associated with the business model outweighs the limited financial benefits that could be achieved.

## Re-organise property assets

- 3.35 The Council could consider selling the existing library buildings, relocate library services into cheaper accommodation and use the proceeds from the sale to offset the ongoing costs of the library service.
- 3.36 There are a number of reasons why this approach is not recommended:

- The location of the borough's libraries directly affects the Council's ability to meet their statutory obligation to provide a 'comprehensive and efficient' library service. Although the case law demonstrates that there is no specific requirement for the library service to maintain libraries that are within a certain distance from residents' homes, the service must be 'accessible to all residents using reasonable means' – this is a judgement that must be made with knowledge of local conditions. Based on a detailed Needs Assessment and Equality Impact Assessment, it is suggested that should the Council choose to relocate libraries from their existing locations, this would need to be within a one mile radius of the current location on the condition that there is comparable accessibility (for example, public transport links). This limits the potential scope for relocation, and makes it difficult to identify cheaper accommodation that would be appropriate for library services. Currently, there are no alternative properties that have been identified to achieve this aim.
- Library buildings have no market value in their existing use, and a report by Michael Rogers LLP in 2014 identified that potential for development that would generate a significant capital receipt at most sites is limited. Where development potential does exist, the Council has undertaken to bring this forward as part of the third strand of the Council's new approach to library services (to explore options to renovate and improve the physical conditions of library buildings). The Council have already delivered projects that have improved library facilities at Biggin Hill, Penge and Orpington and are currently exploring development options at Chislehurst. However, this is a long-term aim which can only be brought to fruition under favourable market conditions and will not achieve the level of savings to the service budget required before 2017/18.

## **Public Consultation**

- 3.37 Following the outcome of the soft market testing exercise, and as required by the Council's duty to consult, a public consultation exercise was undertaken commencing on 27<sup>th</sup> July and closing on 16<sup>th</sup> September 2015. The London Borough of Bexley undertook a separate public consultation exercise with their residents which ran concurrently.
- 3.38 The purpose of this consultation exercise was to seek views from those who live, work or study in the London Borough of Bromley on a commissioned library service, given what the Council had learned from the joint soft market testing exercise. The aim was to determine:
- Whether or not the public support the proposal to commission the library service in the context of the Council's reducing budget, and the likelihood of maintaining the current range of services and their ease of access
  - How the proposed changes might affect individuals or groups
- 3.39 The outcome of this consultation does not represent a referendum, nor does it give the Council a mandate to act. However it should be one of the considerations informing Members' decision about whether or not to begin a formal procurement exercise and commission the library service.

## Previous consultation

- 3.40 Between December 2014 and February 2015, the Council had publicly consulted on a new approach to library services; this had included asking respondents to what extent they supported alternative management options for the library service. The outcome of this consultation was considered by the Renewal & Recreation Policy Development & Scrutiny Committee at their meeting on 18<sup>th</sup> March 2015, before the Renewal & Recreation Portfolio Holder agreed that officers should undertake a soft market testing exercise. 1,837 people completed a questionnaire about the future of the library service. A summary of the

consultation results relating specifically to alternative management options is provided in the table below:

<b>Alternative Management Option</b>	<b>Consultation Response</b>
The library service is run directly by the Council	83% of respondents were supportive this option; only 3% were not supportive.
A shared library service with another Council or Councils	64% of respondents were supportive of this option; 28% were not supportive
The library service is run by a trust or charitable provider	57% of respondents were supportive of this option; 35% were not supportive
The library service is run by a private sector or commercial provider	Only 16% of respondents were supportive of this option; 77% were not supportive.

3.41 The decision to undertake a second round of consultation following the conclusion of the soft market testing exercise was based on the following considerations:

- The soft market testing exercise enabled the Council to say with more certainty what a commissioned library service might mean for service users
- The Council's analysis of other options demonstrated that it would not be beneficial to consider a complete shared service with another local authority or to directly establish a trust or IPS to run the library service. This meant that there only remained two options for consideration: a commissioned library service or a library service directly delivered by the Council.
- The previous consultation had been criticised by the trade unions because some respondents had indicated that they did not feel that they understood what the library service delivered by an external provider would mean for them. This second round of consultation represented an opportunity to clarify what was meant by a commissioned library service so that respondents could take a more considered view.

3.42 In summary, the options for consideration had evolved, and the Council had a much clearer position on which to consult.

### Methodology

3.43 The Council appointed an independent market researcher to deliver this consultation exercise.

3.44 The opportunity to participate in the consultative process was advertised online, in libraries, using social media and in adverts run in the local press. It was also directly publicised to local organisations and stakeholders via email.

3.45 Two surveys ran as part of this second round of consultation:

1. Self-completion survey
2. Street survey

3.46 These two different surveys asked the same questions, with slightly different audiences in mind. The consultation was designed to seek views from library users in addition to people who live, work or study in the borough but who do not necessarily use the library service at all or regularly. Therefore a street survey was also undertaken which aimed to capture the views of those who might not otherwise have responded to the survey, because they did not visit the library during that time, or because they had not seen the survey advertised. In addition to asking the same questions, both surveys offered the same background information

- 3.47 The self-completion survey ran both online and on paper between 27<sup>th</sup> July and 16<sup>th</sup> September, with paper questionnaires readily available in all of the borough's libraries. Paper surveys were completed on site and given back to library staff. The link to the online survey was promoted and available through the Council's website. In total, there were 1,493 responses to the online and paper survey (exactly 650 online responses and 843 responses on paper).
- 3.48 A total of 400 street interviews were undertaken; 200 in Bromley High Street, 100 in Orpington High Street and 100 in Beckenham High Street. These were completed between 4<sup>th</sup> and 14<sup>th</sup> August 2015 and were completed at random across different days of the week. To qualify for interview, respondents had to live, work or study in the borough. The sample size of 400 interviews was chosen to have statistical significance.

### Results of the consultative process

- 3.49 Overall 94% of respondents to both the self-completion and street surveys lived in the borough. Of those that completed the self-completion survey, 99% were library users. By contrast, in the street survey, 75% of respondents had used a library in the last year, and 25% had not – however as the number of active library users indicates, this is not reflective of the overall proportion of residents, more who was willing to complete the survey.
- 3.50 After having considered the background information about a commissioned library service, respondents were asked which of the following two proposed options they would prefer:
- Option 1: A commissioned library service which means that library users continue to have access to the range of services and activities that they currently have, all delivered by suitably qualified staff.
- Option 2: The Council does not opt for a commissioned library service and continues to be responsible for its delivery, which will mean that it will probably need to reduce the range of services and activities that are provided, for example by reducing opening hours
- 3.51 Respondents could also answer that they did not know.
- 3.52 The results were:

	<b>Self-completion Survey</b>
<b>Option 1</b> (preference for a commissioned library service)	43%
<b>Option 2</b> (preference that the library service continues to be directly delivered by the Council).	49%
<b>Don't know</b>	8%

	<b>Street Survey</b>
<b>Option 1</b> (preference for a commissioned library service)	61%
<b>Option 2</b> (preference that the library service continues to be directly delivered by the Council).	33%
<b>Don't know</b>	6%

3.53 Respondents were then informed that the Council must save more than £60million across all Council services and whether this made them feel more or less likely to support the idea of a commissioned library service in comparison to how they felt before they heard about the £60 million saving.

3.54 The results were:

	<b>Self-Completion Survey</b>
Much more likely	15%
A bit more likely	16%
Neither more or less likely/no change	43%
A bit less likely	3%
A lot less likely	20%
Don't know	3%

	<b>Street Survey</b>
Much more likely	19%
A bit more likely	22%
Neither more or less likely/no change	44%
A bit less likely	4%
A lot less likely	9%
Don't know	3%

3.55 Respondents were then asked if they had any other ideas about how the Council could make significant savings. Most commonly suggested alternatives are presented below, with an explanation of why it is not recommended that these are pursued:

- The Council should use its reserves to run the library service  
The Council could use its reserves to maintain the delivery of services. However, this is not a viable long term economic solution to the Council's budgetary pressures and therefore, the Council would have to face the same difficult choices at a later date, except that they would have lost any annual income from those reserves.
- The Council should raise Council tax to protect the library service  
At their meeting on 11<sup>th</sup> February 2015, the Executive Committee took the decision to raise council tax by 1.99% for 2015/16 and will continue to review council tax rates on an annual basis. The Council cannot raise Council tax by more than 2% without holding a referendum which is very costly, and which is not proposed.

- The Council should increase opportunities to generate income by:
  - Charging a membership fee or charging users to borrow items.  
The Council is prohibited from introducing charges for most library services under the Public Libraries & Museum Act 1964; this includes charging a membership fee. The service does already make charges for some services where it is legal to do so.
  - Increasing fees and charges.  
Whilst the Council may charge for the late return of borrowed items or for some library services, it has a statutory duty to ensure that the library service is accessible to those people who live, work and study in the borough and meets their requirements. If fees and charges were increased significantly, the Council would risk making the service less accessible and disadvantaging groups with protected characteristics under the Equality Act.
  - Introducing new, income generating, uses such as a café or Amazon lockers.  
The Council does generate income, however, this approach requires initial investment to cover implementation costs, and some new uses would carry significant risks.
- The Council should increase use of information technology to:
  - Put more library services online (for example, e-borrowing)  
The library service already offers online services such as e-books, e-audio and e-magazines.
  - Increase capacity for self-service so that fewer staff are required  
The Council will continue to look at ways of developing the library service so that it continues to meet the changing demands of its users, and this will include considering new technologies. Should the library service be commissioned, the continued development of the service will be required, under the supervision of the Council.
- The Council should review the way that it staffs libraries to:
  - Reduce the number of staff
  - Increase the use of volunteers

The Council recently re-structured staff to establish a baseline staffing structure which enables the library network to maintain the current opening hours (see paragraph 3.26). Any further reductions in staff would therefore result in a reduction in opening hours and therefore a reduction in the level of service.

The Council already offer 129 volunteering opportunities in the Home library service, and there are also volunteers who support branch activities, the Summer Reading Challenge and the Local Studies and Archives service.

- The Council should make savings in other service areas and stop funding non-essential works like public realm improvements.

The Council is reviewing all of its service areas to identify savings, and the library service is not immune from such considerations. Despite these difficult financial pressures, the Council remains committed to securing the long term future of the borough by investing in business opportunities and employment. The Council has successfully secured grant funding to bring about capital improvements, such as those in Bromley North Village.

- The Council should co-locate library services with other services and maximise opportunities for community partnerships

The Council will continue to look at opportunities for co-locating services as it looks at options to renovate and improve the library buildings. The library at Biggin Hill is already collocated with the leisure centre. Similarly, opportunities for community partnerships which will reduce the Council's operating costs are being proactively sought under a separate tender exercise to identify community management arrangements at community libraries.

3.56 Other suggestions included those which were considered at paragraph 3.27 and included closing smaller libraries, moving libraries to cheaper locations and reducing opening hours.

3.57 Respondents were also asked if there was anything else that they would like the Council to consider in terms of its proposals for the library service. This was an open ended question, and although most people did not know or had no further comment, some of the frequent themes and responses were:

- Keep libraries open / running / going
- Leave the library service the way it is
- The library service is essential / important / useful / needed / a high priority
- Children need books / libraries
- The Council should run the library service
- The service should be valued and free to access for all
- Keep the good / valuable / qualified staff
- Libraries have a social function / community benefit / support vulnerable people

3.58 An indication of how respondents felt that the proposal for a commissioned library service would affect them or their organisation was requested. The results were:

	<b>Self-completion Survey</b>
The proposal will 'not affect' me or my organisation	17%
The proposal will affect me or my organisation 'a little'	14%
The proposal will affect me or my organisation 'a lot'	31%
I 'don't know' how the proposal will affect me or my organisation	37%



	<b>Street Survey</b>
The proposal will 'not affect' me or my organisation	64%
The proposal will affect me or my organisation 'a little'	12%
The proposal will affect me or my organisation 'a lot'	8%
I 'don't know' how the proposal will affect me or my organisation	17%

3.59 Finally, respondents were asked in what way the proposals for a commissioned library service would affect them or their organisation. This was an open-ended question; a summary of the most frequent responses is included below:

- This will not effect me or my organisation
- It depends on any changes to the service or changes to the way the service is run
- There will not be an effect as long as services stay the same
- It may reduce staff, opening hours, books, services or activities
- The service or the quality of the service will deteriorate, be less efficient or not what was promised.

## **Engagement with staff and their representatives**

### Staff Engagement

3.60 The Assistant Director for Culture, Libraries & Leisure led staff engagement during soft market testing and public consultation and prior to this report being considered.

3.61 On 18<sup>th</sup> May, the Assistant Director wrote to staff to inform them that the Council would be conducting a soft market testing exercise in partnership with Bexley Council to explore the possibility of jointly commissioning their library services, including shared service arrangements. A copy of this letter is at Appendix 1. Staff were provided with a copy of the questionnaire, and were also invited to participate in the exercise by submitting a questionnaire (should they wish to).

3.62 Another letter was sent on 24<sup>th</sup> July ahead of public consultation commencing (Appendix 2). This letter summarised the outcome of the soft market testing exercise and set out the purpose of the public consultation. Staff and their representatives were invited to respond to proposals or raise any queries via a shared mailbox. No comments were received before the deadline of 16<sup>th</sup> September. This deadline was therefore extended to 5<sup>th</sup> October, although no further comments were made.

3.63 Subsequently, the Assistant Director arranged staff briefing meetings on 29<sup>th</sup> and 30<sup>th</sup> September and 5<sup>th</sup> October at Central, Orpington and Beckenham libraries respectively. The purpose of these meetings was to notify staff of the main recommendations of this report, and to respond to any queries or concerns that they had at that stage. In summary:

- Staff were concerned about the impact that these proposals would have on their employment, particularly their terms and conditions.
- Staff felt that the public consultation exercise was biased
- Staff wanted to know why the Council would not use their reserves to fund the library service.
- Staff wanted to know how the Council would protect service levels

Minutes from this meeting are at Appendix 3.

### Engagement with Trade Unions

- 3.64 Officers have ensured that all staff engagement included engagement with trade unions and department representatives and that these representatives have had an opportunity to be engaged in the process and to comment on the proposals.
- 3.65 A representative from Unite responded to the second letter (dated 24<sup>th</sup> July) and raised the following concerns:
- That Members were angry that the Council was continuing to explore the proposal for a commissioned library service given the outcome of the previous consultation exercise
  - Requesting that the Council identify who had participated in soft market testing and who had expressed an interest in community management.
- 3.66 Officers explained why a second round of consultation was being undertaken (see paragraph 3.41) and explained that it would not be revealing participating or interested parties given the commercially sensitive nature of this information. A copy of this correspondence is at Appendix 4.
- 3.67 Officers are meeting with the trade unions and departmental representatives on 16<sup>th</sup> October. Comments from this meeting will be reported at the Committee meetings.

### **Community Right to Challenge**

- 3.68 Between 27<sup>th</sup> July and 16<sup>th</sup> September, the Council also invited expressions of interest in the library service under the Community Right to Challenge legislation. No expression of interest was made before the deadline of 16<sup>th</sup> September.

### **Equality Impact Assessment**

- 3.69 Under the Council's Public Sector Equality Duty the Council must have due regard to the elimination of discrimination, harassment and victimisation, advancement of equality of opportunity and the fostering of good relations with persons who share a protected characteristic such as disability, age, ethnicity and religion or belief.
- 3.70 A full Equality Impact Assessment (EIA) has been completed to assess the impact of the proposals to commission the library service on service users and people who live, work and study in the borough.
- 3.71 In summary the EIA establishes that:
- There will be a minimal impact on people working and living in the borough. Specialist and other services which are of particular benefit to people with protected characteristics will be maintained under this proposal as the new provider would be required to meet the needs of

protected groups and to ensure that the level of service currently provided directly by the Council is maintained.

- Bromley libraries had 52,129 active users in 2014/15 (meaning that they have used their library card at least once in the last year) – this represents 16.9% of the borough population. An analysis of collected data shows that the women and people aged over 65 are over-represented in the borough's population. These groups will not be adversely affected by the proposals for a commissioned library service because it is not anticipated that there will be an impact on front-line services.
- The assessment does not identify any specific communities who will be disproportionately affected by the proposals, as a commissioned library service will be required to offer culturally and socially diverse services that reflect the needs of the local area.
- It is anticipated that the proposal to commission the library service will contribute to improved performance in relation to social and economic sustainability and environmental wellbeing through offering added value that different organisations can offer, such as more opportunities for community partnerships, volunteering, and improvements to stock or facilities or minimising environmental impacts.

## **Recommendation**

3.72 In summary, the work undertaken to further explore the option for a commissioned library service has demonstrated that:

- There is a market for the borough's library service if it is commissioned either independently or jointly with the London Borough of Bexley's library service, and soft market testing has revealed that a commissioned library service could protect the level and range of services currently offered whilst offering budget savings to the Council
- The alternative options considered present higher risks and will most likely result in a reduction in the level or range of services offered as part of the library service. This includes if the Council continues to directly deliver the library service.
- Through appropriate contracting arrangements (see paragraphs 3.87 – 3.88 below), the Council would continue to set the strategic direction of the library service if it was commissioned and would supervise an external provider to ensure quality services
- The consultation exercise shows that Bromley library users especially value the library service. However overall there is not an overwhelming preference from respondents for a commissioned library service or a library service that is directly delivered by the Council. The outcome of the consultation is not a referendum or a mandate to act, but should inform decision making.
- Many Members of staff and the trade unions oppose the proposal to commission the library service.
- An equalities impact assessment anticipates that a commissioned library service will not negatively impact on the Council's ability to meet their statutory equalities duties.

3.73 With these considerations in mind, it is recommended that the Executive Committee agree to market test the library service and begin a formal procurement exercise in partnership with the London Borough of Bexley.

## Outline Contracting Proposals and Procurement Strategy

3.74 It is recommended that the Council undertake a joint procurement process with the London Borough of Bexley because:

- This will increase the attractiveness of the contract to the market and will potentially generate more market interest
- There is the potential to create additional savings if both authorities award contracts to the same provider
- It allows both Councils the opportunity to sustain and potentially increase savings that were generated from the shared back office and management function.
- A shared client unit could be considered which would create further efficiencies

### Framework

3.75 Initially, the Councils agreed to explore the opportunity to establish a framework agreement for library services. A framework agreement would enable other authorities to contract with a service provider from a list of a limited number of economic operators for a defined period of time.

3.76 The benefits of this approach are:

- The Councils could generate income from other authorities making use of the agreement through an access fee of between £1k and £2k per use, or through a rebate fee in our contract price.
- A framework agreement would further increase the attractiveness of the contract with potential providers. The soft market testing exercise found that 6 out of 7 respondents favoured the use of a framework citing the following reasons:
  - It would increase their ability to offer value for money
  - It would appeal to bidders wishing to expand their business in London and/or the South East of England
  - The increased opportunity to extend reach into the library market was important for those organisations that do not yet deliver library services in the UK.

3.77 There are some significant disadvantages to this approach however:

- A framework agreement is likely to be offered to other London authorities, or to the South East of England. Many of the library services in these areas already have arrangements in place, or are not actively looking to commission their services. Realistically, the likely income that would be produced is not significant particularly given the risks associated with setting up a complex framework agreement.
- The specification would need to be broad enough to enable other local authorities to reflect their local needs. Not only would this give the Councils less control over the delivery of localised elements of the library service, but it would also narrow the scope for negotiation impacting on the Councils ability to find a solution for library services which meets the primary aim of safeguarding services whilst reducing operating costs.
- A framework agreement usually has a length of four years as a maximum. The length of the framework agreement means that:
  - The length of joining authorities contracts would be restricted which goes against the soft market testing feedback on contract length.
  - The number of authorities likely to use the framework is further reduced by their readiness to make use of the agreement in that length of time.

- The Councils would significantly increase their risk of legal challenge; if a user of the framework is challenged, the Councils could also face costly legal challenges as the owners of the framework. Given the sensitivity around changes to library services, the likelihood of legal challenge appears high, and the Councils would have limited control over this.
- There is an administrative and advice led function that the Council would be required to undertake in relation to the operation of the framework – it is anticipated that this would require creating between 1 and 2 additional posts which offsets any income that a framework agreement would generate.
- Setting up a framework agreement is complex, and will delay procurement (which the market warned against)

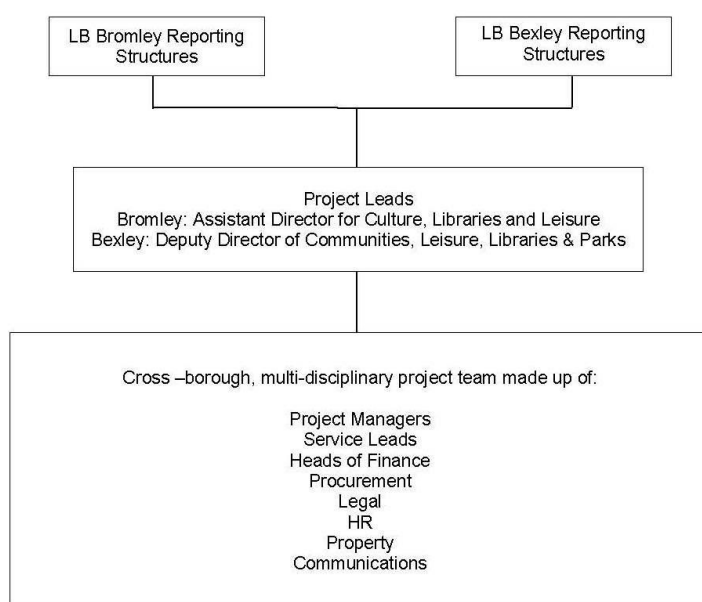
3.78 On balance, it is recommended that the disadvantages of establishing the framework outweigh the benefit that could be obtained and that the Councils do not create a framework for this tender.

3.79 However, whilst the framework may not be a financially sensible route, the Councils do recognise that there may be benefit in exploring whether or not there are any opportunities for collaborative working with other local authorities.

3.80 With this in mind, the Assistant Director for Bromley and Bexley’s Deputy Director have written to all London Boroughs outlining the outsourcing opportunity and inviting them to join this procurement exercise as a ‘named bidder’, aiming to identify where immediate collaborative opportunities exist that may otherwise have been missed.

Tender Documents and Project Team

3.81 In order to deliver this project, officers have established a cross-borough multi-disciplinary project team which reports the Bromley Council’s Commissioning Board via the Project Lead (the Assistant Director for Culture, Libraries & Leisure).



3.82 The project team has been working to develop the tender documentation, should Members decide to commence a formal procurement exercise. These documents include:

- Specification
- Contract terms and conditions
- Instructions for tendering, including a Pre-Qualification Questionnaire and the Invitation to Tender
- Evaluation Criteria

Specification

3.83 The successful contractor would be responsible for:

- Management of the core Council library services in both boroughs, including Local Studies and Archives Centres and the Home Library Service, and including the back office and management functions
- Overseeing between two and six Bexley community managed libraries. Bexley are currently running a procurement exercise to identify community management options for four of its libraries; two are already managed by the community. It is anticipated that any arrangements for those remaining four libraries will be agreed prior to commencing a formal procurement exercise.
- Overseeing up to six Bromley community managed libraries (see 3.100)

London Borough of Bromley: Core Libraries	London Borough of Bromley: Libraries being considered for community management
<ul style="list-style-type: none"> <li>• Beckenham Library</li> <li>• Biggin Hill Library</li> <li>• Central Library (Bromley)</li> <li>• Chislehurst Library</li> <li>• Orpington Library</li> <li>• Penge Library</li> <li>• Petts Wood Library</li> <li>• West Wickham Library</li> </ul>	<ul style="list-style-type: none"> <li>• Burnt Ash Library</li> <li>• Hayes Library</li> <li>• Mottingham Library</li> <li>• Shortlands Library</li> <li>• Southborough Library</li> <li>• St Paul’s Cray Library</li> </ul>

3.84 A joint output based specification has been developed in partnership with the London Borough of Bexley. The specification is structured around three sections and reflects the existing baseline standard of current service delivery:

1. Library Services  
This includes:
  - Frontline services
  - Back office and management functions
  - Local Studies and Archives (including the museum service)
  - Home Library Service
  - Oversight of any Community Management arrangements
2. Operational Sustainability  
This includes:
  - Fees and charges
  - Customer Services
  - Staff Management

- Library Management System
- Stock purchasing
- Business Continuity

### 3. Facilities Management

This includes:

- Building and asset management
- Cleaning
- Security
- ICT, equipment and telephony
- Health and safety

- 3.85 Whilst most outputs are jointly applicable, where there are elements of the service that relate to the local requirements of one authority only, these are specified as Bromley or Bexley only requirements. For example, the requirement to provide museum exhibitions is unique to Bromley for the purposes of this specification.
- 3.86 The specification is being developed with residents' and customers' interests as the central focus to ensure that in so far as possible, the same facilities, services and opportunities to participate as are currently provided at the Council's core libraries continue.

### Contract

- 3.87 It is recommended that the Council develop a contract for this service which:
- Has a contract length of 10 years with the option to extend for an additional five years on review
  - Has contract terms allowing for review to enable changes to service delivery or property arrangements and therefore contract price to be negotiated in the future, should this be required.
  - Is joint with the London Borough of Bexley, but that the contract should allow for one authority to proceed to award exclusively, so that should one Council decide not to award a contract, the other still has the ability to proceed. Similarly, the contract will be flexible enough to allow for one authority to make changes or terminate without it causing the other to terminate also. The potential impact on pricing arrangements is described at paragraph 3.96.
- 3.88 The contract terms will also make clear provisions on contract monitoring and ensure that the Council has the ability to apply proportionate and appropriate sanctions where the Service Provider fails to deliver the services to the required standards, which will be agreed in the contract documentation. The Council will retain a client unit who will be responsible for monitoring the contract, setting the strategic direction for the service and working with the successful provider to enhance service delivery.

### Negotiated Procedure

- 3.89 Under the 2015 procurement regulations, library services fall within the rules for the Light Touch Regime. This means that, while there are a number of rules about how the service is procured there is increased flexibility to design a fair and transparent process that is best suited to meet the needs of this specific contract.
- 3.90 Following advice from the Councils' procurement specialists, it is suggested that a negotiated procedure is adopted for this procurement exercise. This is because:

- Although the soft market testing exercise showed market interest in the opportunity, it also showed that there is not one defined delivery model, and that the type and capacity of the organisations that were interested in the opportunity was varied. A negotiated procedure would give the Councils the flexibility to work with bidders to develop different business models that would realise savings.
- There are a number of elements of the specification that are likely to change depending on the outcome of separate processes to identify community management at some of the Councils' libraries. A negotiated procedure gives the Councils the flexibility to alter these requirements when a firmer position is established.
- A negotiated process enables the Councils to discuss price with tenderers. If prices initially offered were too high, there would be the flexibility to refine requirements in order to reach a best and final offer. The specification does however set out some minimum requirements that ensure that the outputs that shape the Council's 'comprehensive and efficient' library service are sustained, and that the service levels and ease of access are not negatively impacted.

3.91 It is intended that the Councils will undertake a two stage negotiated process which will include a pre-qualification exercise, followed by an invitation to participate in the negotiated process.

3.92 The pre-qualification questionnaire will test the applicant's previous experience, existing capacity and compliance with relevant legislation and their ability to demonstrate that there are no formal grounds for exclusion in order to shortlist between 5 and 8 applicants who will be invited to tender.

3.93 An indicative timetable for the joint procurement exercise is provided in the table below:

<b>Activity</b>	<b>Target date</b>
Issue advert	November/December 2015
Closing date for expressions of interest	January 2016
Closing date for submission of PQQs	February 2016
Evaluation of PQQ finalised	March 2016
Invitations to tender	March 2016
Initial solutions submitted	April 2016
Evaluation of initial solutions completed	June 2016
Initial negotiation	June 2016
Detailed solutions submitted	August 2016
Evaluation of detailed solutions completed	August 2016
Negotiation on detailed solutions	September 2016
Final tenders submitted	October 2016
Evaluation of final tenders completed, including clarification interviews	October 2016
Preferred supplier identified	October 2016
Contract award	Autumn/Winter 2016
Mobilisation	Winter/Spring 2016/17
Go live	Spring 2017



## Evaluation Criteria

3.94 Tenders will be evaluated in line with the Chartered Institute of Public Finance and Accountancy (CIPFA) model as described in their Standing Guide to the Commissioning of Local Authority Services.

3.95 Tenders will be evaluated against:

- Price – 60% weighting
- Quality – 40% weighting

3.96 Pricing

Tenderers will be asked to provide separate contract prices for the London Borough of Bromley and the London Borough of Bexley. They will also be asked to submit a percentage discount that could be applied to both prices should both authorities make a contract award to the same provider.

These contract prices will be itemised against relevant section of the specification.

The advantages of this approach to pricing are:

- It will aid negotiation and enable closer scrutiny for evaluation
- Under the new procurement regulations, this approach will provide additional flexibility for varying the contract in the future as it will show that competitive prices for the variable element had already been achieved.
- This approach enables other authorities (who are named on the notice) to join the contract at a later date.

Members should be aware that, should one authority decide not to award a contract, or decide to terminate the contract early, it may be that there would be a loss of the percentage discount fee.

3.97 Quality

Tenderers will be asked to submit a number of method statements that clearly establish how they will deliver various aspects of the contract. These method statements will enable the Council to assess the quality of the tenderer's proposal, and which should demonstrate their operational competence, technical ability, approach to customer care and service development, and sustainability.

The Council will have an evaluation panel which is independent to the London Borough of Bexley's evaluation panel. The evaluation panel will adopt a consensus scoring approach to the evaluation of proposals against pre-defined quality criteria.

## Property Considerations

3.98 Property considerations relating to leases, maintenance liabilities and rent are set out in a Part 2 report also being considered on this agenda.

## Other considerations

3.99 Other considerations relating to IT and pensions are set out in a Part 2 report also being considered on this agenda.

## Community Management at Libraries

### Progress Update

- 3.100 On 18<sup>th</sup> March 2015, the Renewal & Recreation Policy Development & Scrutiny Committee and Portfolio Holder agreed that officers should commence a procurement exercise to identify community management arrangements for the borough's six community libraries:
- Burnt Ash
  - Hayes
  - Mottingham
  - Shortlands
  - Southborough
  - St Paul's Cray.
- 3.101 Community management offers a way of retaining library services in these community locations whilst reducing operating costs to avoid making closures. As community libraries are the smallest in the borough, make the lowest number of issues and have the lowest number of visits, the Council thought there was an opportunity to try and secure community management arrangements that made these libraries work more effectively for the very communities that they serve.
- 3.102 An advert seeking expressions of interest in community management opportunities was published on 12<sup>th</sup> May 2015, and a detailed Information Pack was issued. The Information Pack contained a full range of procurement documents as was required under the new procurement regulations, and gave prospective bidders detailed information about what would be required from any successful community management arrangements.
- 3.103 The opportunity was advertised widely among residents, library users, local businesses and community and voluntary sector organisations. Officers also hosted an information event prior to the deadline for expressions of interest.
- 3.104 In order to express their interest, organisations were asked to submit an application form which gave a high level overview of their vision for community management at the relevant libraries before 5pm on 26<sup>th</sup> June 2015.
- 3.105 Expressions of interest were received by five organisations and there were at least three expressions of interest at each community library.
- 3.106 Three organisations were shortlisted and invited to submit a full business plan for each library, and were provided with some additional information relating to the library premises and existing staffing arrangements.
- 3.107 The shortlisted organisations' business plans will provide detailed information about their plans for community libraries and will need to demonstrate that they have adequately considered and planned for the responsibilities of community management, and that their proposals are sustainable.
- 3.108 The process to identify suitable community management arrangements is also a negotiated procedure, and it is therefore anticipated that the Renewal & Recreation Portfolio Holder will consider recommendations about a potential contract award in the New Year.
- 3.109 Members should be aware that all those organisations who expressed an interest in community management arrangements anticipate charging a management fee to provide

community management, on the understanding that this fee should significantly reduce the Council's operating costs at community libraries. The negotiated procedure provides the Council with an opportunity to negotiate the management fee (contract price), and therefore officers will present the best and final offers that the community can offer in relation to these libraries

3.110 Should contracts be awarded, it is anticipated that the Council will novate any responsibilities that they have under an agreement with the community management provider to the successful bidder for the contract to deliver the whole library service. This arrangement was met with some nervousness by potential bidders during soft market testing and it is recommended that these arrangements are a negotiable element of the tender.

Alternative option for community libraries

3.111 Officers will work with shortlisted organisations to try and identify suitable community management arrangements that significantly reduce operating costs. However, it cannot be guaranteed that the level of saving offered will match Members' ambitions.

3.112 Should it not be possible to identify suitable community management arrangements, the Council would need to reconsider the future of these libraries, and the options available may include closure.

3.113 However, during the course of the soft market testing exercise, another option was presented. Some respondents suggested that they could deliver direct management of community libraries and achieve the projected level of saving previously identified.

3.114 Because of this response, the Council's consultation exercise detailed above included the following question:

'If no suitable community management arrangements can be found for these libraries, to what extent do you support the idea of the six community libraries being directly managed by an external provider as part of a commissioned library service?

3.115 The results were:

	<b>Self-Completion Survey</b>	<b>Street Survey</b>
Strongly support	17%	25%
Tend to support	28%	43%
Tend to oppose	12%	8%
Strongly oppose	34%	18%
Don't know	10%	7%

3.116 Cross tabulations show that, respondents who said that they used community libraries most often were more likely to oppose this proposal than those respondents who said that they used one of the eight core libraries most often.

3.117 It is recommended that, should no suitable community management arrangements be found for one or more of the community libraries, these libraries are considered for inclusion in the tender for the whole library service. The outcome of the tender process to identify community management arrangements will be reported to the Renewal & Recreation Policy Development and Scrutiny Committee in the New Year. Members' decisions will inform clarification and updates made to the tender for the whole library service under the negotiated procedure.

#### **4. POLICY IMPLICATIONS**

- 4.1 The Renewal & Recreation Portfolio Holder approved a new approach to the delivery of library services following pre-decision scrutiny of the Renewal & Recreation Policy Development & Scrutiny Committee on 18<sup>th</sup> March 2015.
- 4.2 The approach is consistent with the Council's ambitions around Vibrant, Thriving Town Centres, Supporting Independence, Children & Young People, and an Excellent Council under its vision for Building a Better Bromley.
- 4.3 The Council's Corporate Operating Principles include a commitment that services will be provided by whoever offers customers and council tax payers' excellent value for money. This is underpinned by a commitment to be a commissioning organisation determining who is best placed to deliver high quality services based on local priorities and value for money principles.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 The net controllable budget for the library service is £4.7m.
- 5.2 This report is seeking authority to begin a formal joint procurement exercise process with the London Borough of Bromley. It is anticipated that this exercise will result in efficiency savings; however at this stage the level of saving cannot be quantified.
- 5.3 It should be noted that the organisations who have expressed an interest in community management arrangements anticipate charging a management fee and therefore the maximum full year saving of £250k reported in November 2014 and March 2015, is unlikely to be achieved. As highlighted in 1.109, officers will present the best and final offers that the community can offer in relation to these libraries following the negotiated procedure.
- 5.4 JB Market Research was appointed to undertake the consultation work, at a cost of £8.2k. This was funded from within the Recreation budget for 2015/16.

#### **6. LEGAL IMPLICATIONS**

- 6.1 There are a number of pieces of legislation that affect the authority's decision making in relation to its library service, in particular:
  - 1. The Public Libraries & Museum Act 1964 requires the authority to provide a 'comprehensive and efficient' public library service. The terms 'comprehensive' and 'efficient' are not defined within the Act; however the Act does require local authorities to provide free of charge access for people who live, work or study in their area to borrow or refer to books and other material in line with their needs and requirements.

In fulfilling our duty we are required to have specific regard to the desirability of

- (a) securing, by the keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures, gramophone records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements both of adults and children; and
- (b) encouraging both adults and children to make full use of the library service, and of providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it; and

- (c) securing, in relation to any matter concerning the functions both of the library authority as such and any other authority whose functions are exercisable within the library area, that there is full co-operation between the persons engaged in carrying out those functions.

2 Section 149 (1) of The Equality Act 2010 establishes the public sector equality duty. The PSED requires public authorities to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it This involves having due regard to the needs to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (and )
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Section 149(6) makes it clear that compliance with the PSED in section 149(1) may involve treating some people more favourably than others, but that is not to be taken as permitting conduct that would otherwise be prohibited by or under the Act.

The law does not expressly require equality impact assessment to be undertaken to demonstrate that "due regard" has been had to the equality duty. However decided case law makes it clear that it will be difficult to demonstrate due regard without evidence that appropriate analysis of the equality implications of a particular decision has been undertaken and in many cases such analysis will be facilitated by an EIA

Where changes are proposed to library services then it is expected that a full and complaint consultation process is undertaken.

6.2 Whilst the service is subject to the light touch regime under the Public Contracts 2015 which gives greater discretion on the process to be followed, that process must be fair and transparent.

## **7. PERSONNEL IMPLICATIONS**

7.1 Consultations with staff and their representatives around the soft market testing of the library service and public consultation has been ongoing since the Renewal & Recreation Policy Development Committee and Renewal & Recreation Portfolio Holder agreed that officers should undertake those two activities on 18<sup>th</sup> March 2015.

7.2 There are 105.1 FTE and an additional 26 casual staff working across the library service, including the Bromley employed staff in the shared service and staff currently working in community managed libraries. Of these staff 11 FTE are assigned to community libraries.

- 7.3 It is clear from the staff/trade union consultations to date that staff and their representatives would prefer to retain the current in house service delivery option. The redundancy implications of retaining the in house model, arising of course from having to reduce service provisions/cut costs, were not addressed in the staff feedback to date.
- 7.4 A tabulated summary of the key issues and concerns raised during the staff and trade union consultations, including the additional meeting with the unions and other staff representatives on 16<sup>th</sup> October 2015 will be prepared and tabled at the Committee meeting for Member consideration and scrutiny.
- 7.5 There are no obvious equality issues for staff as a result of the proposal to market the library services or award the services to an external provider. However, the significant personnel/employment law implications relate to the application (or not) of TUPE (Transfer of Undertaking and Protection of Employment) Regulations 2006 as amended by the 2014 Regulations, or/and redundancies depending on the choice between the external versus the in house options. As normal the equality implications of any redundancies affected by the Council will be properly assessed partly by looking at the equality profile of affected staff vis-à-vis the Council's workforce profile. The staff and trade union consultations to date do not supplant or replace the Council's legal responsibility to formally consult with staff and their representatives on any collective redundancies or/and TUPE related arrangements, pursuant to the Collective Redundancies Consultation regulations.
- 7.6 If a formal tendering process is commenced, provision would also need to be made in respect of pension arrangements in accordance with the regulations in force at the time of the transfer. This might include consideration of admitted body status being granted to enable transferring employees to continue membership of the Local Government Pension Scheme.

<b>Non-Applicable Sections:</b>	None
Background Documents: (Access via Contact Officer)	<p>Update on the Library Service Strategy – report to Renewal &amp; Recreation Policy Development &amp; Scrutiny Committee 18<sup>th</sup> March 2015</p> <p>Library Service Strategy – report to the Renewal &amp; Recreation Policy Development &amp; Scrutiny Committee 18<sup>th</sup> November 2014</p> <p>Equality Impact Assessment for Proposals to Commission the Library Service.</p>



18<sup>th</sup> May 2015

Dear Colleague

**JOINT SOFT MARKET TESTING OF BEXLEY AND BROMLEY'S LIBRARY SERVICES, INCLUDING THE SHARED SERVICE**

Further to my letter dated 12<sup>th</sup> May 2015 regarding Community Managed Libraries I am writing to inform you that the Council will also be conducting a joint soft market testing exercise with the London Borough Bexley to explore the possibility of commissioning both of the Councils' Library Services, including the Shared Service arrangements.

This exercise is in line with Bromley Council's commitment in its Corporate Operating Principles to be a commissioning organisation, determining who is best placed to deliver quality and value for money services, and was approved by the Council's Renewal & Recreation Policy Development & Scrutiny Committee and Portfolio Holder on 18<sup>th</sup> March 2015.

You will remember that outsourcing of the library service was also the subject of staff consultation between 19<sup>th</sup> December 2014 and 31<sup>st</sup> January 2015 and public consultation between 1<sup>st</sup> December 2014 and 2<sup>nd</sup> February 2015.

The purpose of the joint soft market testing exercise is to establish if there is sufficient and suitable market interest in the delivery of the Councils' Library Services.

Market providers will be invited to provide information by completing a questionnaire, a copy of which will be forwarded to you once the advert for the soft market testing exercise has been published in the relevant publications.

The soft market testing exercise will include community libraries, and will seek views on community management and on direct management of community libraries.

Should the soft market testing exercise establish that a market for the delivery of the Councils' Library Services exists; the results of the joint soft market testing exercise will be the subject of further consultation with library users and staff. The outcome of this consultation will be used to help inform the Councils' decision on the future of their Library Services.

The soft market testing exercise will include making contact with other Local Authorities to explore opportunities for collaborative working at the current time. This approach will ensure that the eventual proposals put forward for further public consultation take account of any wider opportunities should they emerge as options.

The soft market testing exercise will commence mid-May 2015 and it is expected that it will be finalised by the end of June 2015. It is anticipated that public consultation and staff engagement on the outcome of the soft market testing exercise will commence in July 2015.

The outcome of the joint soft market testing exercise and subsequent consultation and engagement will be considered by the Councils' relevant Committees in autumn 2015, before any next steps are agreed. If a decision is made at that time to proceed with outsourcing that is when the full procurement exercise would begin (late autumn 2015).

If you would like to participate in this soft market testing exercise, you can provide your views by completing the questionnaire. Please note that you must submit your questionnaire using the Council's e-procurement system ProContract at [www.londontenders.org](http://www.londontenders.org). If you require support to register or access the opportunity, please contact [community.development@bromley.gov.uk](mailto:community.development@bromley.gov.uk).

I understand that this exercise creates some uncertainty about the long term future of the Library Service; however I want to assure you that staff engagement will be our ongoing priority and we will seek to provide regular updates.

If you have any questions or queries in the meantime, please do not hesitate to contact me.

Yours sincerely



**Colin Brand**  
**Assistant Director, Environment and Community Services**





Telephone: 020 8464 3333

Direct Line: 020 8313 4107

Email: [colin.brand@bromley.gov.uk](mailto:colin.brand@bromley.gov.uk)

Fax: 020 8313 4460

Internet: [www.bromley.gov.uk](http://www.bromley.gov.uk)

DX5727 Bromley

24<sup>th</sup> July 2015

Dear Colleague

**UPDATE FOLLOWING JOINT SOFT MARKET TESTING OF BEXLEY AND BROMLEY'S LIBRARY SERVICES, INCLUDING THE SHARED SERVICE**

Further to my previous letter dated 18<sup>th</sup> May 2015, I am writing to update you that the Council has now completed a joint soft market testing exercise of Bexley and Bromley's library services, including the shared library service. The soft market testing exercise established that there is market interest in the delivery of the Councils' Library Services, and that the market believed that they had the ability to continue to deliver the range of library services currently offered whilst reducing the Councils' operating costs.

Given these findings, the Council will now publicly consult on the proposals to commission its library services. This public consultation will focus on explaining what is meant by a 'commissioned' library service to ensure that respondents can make an informed response. The purpose of the consultation is to establish whether a commissioned library service which continues to deliver the existing range of library services is preferable to a library service which is directly delivered by the Council, but must make service reductions to achieve savings.

The consultation period will run between 27<sup>th</sup> July and 16<sup>th</sup> September 2015. The public will be invited to respond to a questionnaire by either:

- Completing a paper version of the questionnaire available from the library
- Completing the questionnaire online
- Participating in a face to face survey with a market researcher.

Staff and their representatives are also invited to respond to the proposals or raise any queries that they have by emailing [community.development@bromley.gov.uk](mailto:community.development@bromley.gov.uk) by 16<sup>th</sup> September 2015.

The results of this consultation will, along with the outcome of the soft market testing exercise, inform the Councils' decision about whether or not to commission its library services.

Alongside public consultation, the Council will invite expressions of interest under the Community Right to Challenge. Under the Localism Act, voluntary and community groups, charities, parish councils, and local authority employees can submit expressions of interest to deliver part or all of a local authority service. The authority must consider expressions of interest and where they accept them then go on to run a procurement exercise for the service. From Monday 27<sup>th</sup> July, you will be able to get further information, or express an interest, by visiting [www.bromley.gov.uk/CommunityRightToChallenge](http://www.bromley.gov.uk/CommunityRightToChallenge)

The outcome of the soft market testing exercise and public consultation, and the response to the Community Right to Challenge notice will be considered by the Council's Executive Committee in a committee report in the autumn. At this time the Executive will also consider any comments from staff and their representatives that have been received in relation to the Council's proposals to commission its library services. It will be at this committee meeting that the Council will decide whether or not to go to the market. I will ask Tim Woolgar to notify you when the date for this meeting is confirmed.

I will be in contact again before the committee report is considered to update you on:

- The outcome of the public consultation
- The outcome of the Community Right to Challenge notice
- The recommendations that the committee report will make
- A summary of any responses received from staff and/or their representatives

As this is a joint exercise with the London Borough of Bexley, a separate letter has been sent by Bexley Council to Bexley library staff which outlines their process.

### **Update on community management at community libraries**

Further to my letter dated 12<sup>th</sup> May 2015, I also write to provide you with a short update on the Council's advert seeking registrations of interest from groups or organisations who were interested in providing library services at Burnt Ash, Hayes, Mottingham, Shortlands, Southborough and St Paul's Cray Library.

We have received a good number of expressions of interest for all of these libraries and are now in the process of evaluating these to shortlist the number of organisations who will be invited to submit a business plan at the next stage.

I will write to you after the evaluation has been completed to provide a more detailed update.

Please note that the second stage of the procurement process for community libraries will commence in August but will not complete until later in the year. It is anticipated that the Council's Renewal & Recreation Portfolio Holder will make a decision about community libraries in the New Year.

I appreciate that uncertainty about the long term future of the library service remains; however I wanted to remind you of our ongoing commitment to staff engagement and to providing regular updates. Market testing or tendering services is commercially and politically sensitive and therefore there are various elements of the process that it is not possible to share with you in its fullest detail. However, please be assured that following any member decisions which impact on staff, you will be fully consulted on the consequences these proposals will have on your position in line with the Council's Procedures for Managing Change.

A copy of this letter has been sent to trade unions and departmental representatives for information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Colin Brand', with a stylized flourish at the end.

**Colin Brand**  
**Assistant Director, Environment and Community Services**

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### Proposed Library Service Strategy – Outcome of Engagement

The purpose of this document is to set out the engagement with staff, Trade Unions and Departmental Representatives since the Renewal & Recreation Policy Development and Scrutiny Committee on 18<sup>th</sup> March 2015 decided that officers should progress the implementation of the strategy's second ambition, to commission the library service. This included entering into discussions with the London Borough of Bexley to develop a joint procurement strategy, undertaking soft market testing and completing further consultation with library staff, library users and residents.

There have been several letters sent to staff, Trade Unions and Departmental Representatives to update on the situation and 3 engagement meetings were arranged in September and October to inform staff of the main points contained in the Committee report. A separate meeting was arranged with the Trade Union and Departmental Representatives on 16<sup>th</sup> October. HR attended all these meetings to answer any questions relating to HR matters.

There were a number of questions and themes that came out of the staff discussions at these meetings and these are listed below:

- There was a comment that public consultation was biased

Management response: An independent specialist market research company was engaged to carry out the consultation. The consultation questions contained more detail about what a commissioned library service would mean for users as there was some criticism of the previous consultation that there was insufficient information to judge the merits of a commissioned service.

- Concerns were raised that the results of the self-completion survey and street survey were not presented as one whole figure.

Management Response: There are two separate methodologies for these surveys and to present them as one figure would undermine their statistical relevance. However, the report to be considered by Members will clearly identify the differences between the two surveys, including the number of respondents.

- It was raised that the Council has reserves and managers where asked why reserves are not being used to offset the significant savings that the Council has to find to balance the budget in the long term.

Management response: The Council have previously rejected this approach as it does not represent an economically sustainable strategy in the long-term.

- Concern was expressed about other transfers that have happened and could the Council guarantee no changes to terms and conditions. There were also some concerns raised about the level of qualified staff.

Management response: The circumstances affecting other transfers are different to those affecting proposals to commission the library service. The Council would not guarantee that terms and conditions would not change after transfer if this was to happen. It is anticipated that the specification will

require suitably qualified staff to be used by any organisation taking on the running of the library service.

- A question was asked about what would happen if the Council could not find anyone to run the Community Managed Libraries.

Management response: There could be different arrangements for each community library or groups of community libraries. It may be that community management arrangements can be found for none, some or all of the community libraries. The Council will make a decision about whether or not to agree community management arrangements in the New Year. Should no suitable community management arrangements be secured, one further option for Members to consider arising from the soft market testing is that the community libraries could be included in the contract for the direct management under the same conditions as the core libraries..

- Questions were asked about TUPE and pensions:

HR response: Until decisions are made about the future of libraries it is difficult to enter into discussions because we do not know what the proposals are as yet. The Council's managing change procedures will be followed should a decision be made to transfer staff and at this time the appropriate consultations with staff will take place.

- Staff were concerned about how maintenance liabilities for library buildings would be addressed within the contract

Management response: It is anticipated that library buildings will be leased to the successful contractor, should proposals go ahead. Responsibility for maintenance liabilities will be clearly identified.

- Staff were unsure of the message to give to customers about the future of the library service.

Management Response: When decisions are made a statement will be prepared so that staff are prepared to share this information with customers.

- There were concerns about how the contract would protect service levels and how it would be monitored if the service was commissioned.

Management response: The specification and contract terms will include monitoring mechanisms such as establishing service levels and key performance indicators, and will set penalties for non-performance, including financial penalties. There will be a client unit monitoring the service and ultimately any organisation undertaking this service would be accountable to Members; this will include being held to account at Committee meetings.

**From:** Brand, Colin  
**Sent:** 10 August 2015 10:55  
**To:** Kasab, Onay  
**Subject:** RE: Update Following Joint Soft Market Testing

Dear Onay

I acknowledge receipt of your e mail and whilst I note your comments, I have nothing further to add at this stage.

Kind regards

Colin

Colin Brand  
Assistant Director  
Leisure and Culture  
London Borough of Bromley  
0208 313 4107  
[colin.brand@bromley.gov.uk](mailto:colin.brand@bromley.gov.uk)

**From:** Kasab, Onay [<mailto:Onay.Kasab@unitetheunion.org>]  
**Sent:** 07 August 2015 16:35  
**To:** Brand, Colin  
**Subject:** RE: Update Following Joint Soft Market Testing

Dear Colin,

I too have taken another look at the report from the Council.

Para 3.5.25 in bold states:

"Given that the Council needs to save £60 million over the next four years how do you feel about the overall proposals for the library service"

51% were not supportive of the Councils proposals. This clearly is not a big enough majority for the Council to take notice of.

Yet, when the Council asks about the Community management proposal and as reported in para 3.4.18 and appears to get 58% in favour, the difference of the 7% in the responses in the questions mean that in the latter case, its justified to go ahead. Yet this needs looking into more closely - the question was heavily weighted to get the answer the council wanted by implying that this was the only way to keep the libraries open. In such circumstances of course people will vote for what they think is the only option to keep the library open. The consultation of course fails to mention the millions stashed in reserves, assets and the surplus.

For Unite para 3.7.4 is the key "The results from the consultation questionnaires showed that people were more supportive of a service run directly by the Council (supported by 83% of respondents)"

In the current climate where the Tory government is attacking trade unions ability to take strike action through the implementation of restrictions linked to turn outs and majorities in ballots, maybe the Tories need to look closer to home. Based on the criteria they want to

apply to the trade unions, the library consultation results do not give Bromley Council a mandate.

Onay Kasab  
Regional Officer  
Unite The Trade Union

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**From:** Brand, Colin [Colin.Brand@bromley.gov.uk]  
**Sent:** Friday, July 31, 2015 8:37 AM  
**To:** Kasab, Onay  
**Subject:** RE: Update Following Joint Soft Market Testing

Dear Onay

Thank you for your comments in response to my letter of the 24<sup>th</sup> July 2015, however, it does appear from your comments that you may have misunderstood the process that we are engaged in. Following the debate at the Renewal and Recreation Committee on the 18<sup>th</sup> March 2015, members agreed the implementation of the 'Library Strategy'. This is the work that we are now engaged in and this further piece of consultation is designed to inform in more detail the next round of decision making later this year. I previously notified you that we anticipated consulting with the public and with staff following the outcome of the soft market testing questionnaire in my letter to all staff dated 18<sup>th</sup> May 2015 which was copied to the trade unions.

With regard to your assertion that the majority of people responded "no" to a question "In light of £60m of cuts were people prepared to accept any of the Councils proposals", having re-looked at the original survey, we did not actually ask this question so I am unable to comment further.

We have now undertaken a soft market testing exercise which clarified that the market would be able to continue to deliver the range of services currently provided to library users whilst reducing the Council's operating costs. We are also aware that during the previous round of consultation on the wider library strategy, there was some confusion about what was meant by a commissioned library service. This round of consultation seeks to ensure that respondents are in a position to make an informed decision about the options, and gives them the option to make any alternative suggestions they have.

The outcome of this consultation will be presented alongside the outcome of the soft market testing exercise and community right to challenge notice to the committee in the autumn so that members make an informed decision about whether or not to go to the market. No decisions have yet been taken on what option if any to pursue.

In response to your question about business case, I assume you refer to the process for identifying community management. This tender process has already commenced as was agreed at the Renewal & Recreation Policy Development & Scrutiny Committee on 18<sup>th</sup> March 2015, and as I notified staff in a letter dated 12<sup>th</sup> May 2015 which was copied to the Trade Unions. The process for identifying community management arrangements are as follows:



- Community organisations were asked to submit a registration of interest form which provided a very basic outline of their business case for community libraries.
- These forms were scored and the three highest scoring organisations for each library will be invited to submit a business plan.
- The Council will be scrutinising these community management proposals to ensure that what is suggested is sustainable and meet some core requirements so that residents continue to benefit from a quality library service. These core requirements were set out in a specification which was published in the Information Pack which was available for download from the Council's website while the opportunity was advertised.
- Following negotiation, community organisations will make their final business plan submission. Should the Council accept that their bid offers value for money and decide to award the contract, the community organisation will enter into a contract with the Council to deliver community management arrangements.
- It is expected that the Council will make a decision about whether or not to award contracts for community management in the New Year.

As outlined in my letter market testing or tendering services is commercially and politically sensitive and therefore there are various elements of the process that it is not possible to share with you in its fullest detail. For that reason we are unable to provide you with details of who has expressed an interest in our community management arrangements

You may not be surprised to hear that I do not agree with your comments with regard to the timing of the consultation. We are not as you imply running the consultation just in August. As you will be aware from my recent letter, the consultation period runs from the 27<sup>th</sup> July through to the 16<sup>th</sup> September 2015 thus affording anyone who would want the opportunity to complete the survey to do so, through either a hard copy or on line. The face to face surveys will be conducted over the full period of consultation period in order to ensure a cross section of responses. Staff, trade unions and departmental representatives have been invited to submit their comments in the same timeframe. This period for consultation follows the Cabinet Office Guidance on consultation principles.

Kind regards

Colin

Colin Brand  
Assistant Director  
Leisure and Culture  
London Borough of Bromley  
0208 313 4107  
[colin.brand@bromley.gov.uk](mailto:colin.brand@bromley.gov.uk)

**From:** Kasab, Onay [<mailto:Onay.Kasab@unitetheunion.org>]  
**Sent:** 27 July 2015 14:24  
**To:** Brand, Colin  
**Subject:** Update Following Joint Soft Market Testing

Dear Colin,

I am responding to your letter dated 24<sup>th</sup> July in relation to the Library Service.

I do of course have to start by making clear to you how angry staff will be to hear that despite the results of your very own consultation, the Council is pushing ahead with its plans. The further consultation seems like little more than a tired effort to keep asking the same question until you finally get the answer you want. During the consultation meeting that I attended, you made clear that if there was not great public support demonstrated through the consultation, the Council would need to reconsider. What happened to this commitment? In your letter you state:

“The purpose of the consultation is to establish whether a commissioned library service which continues to deliver the existing range of library services is preferable to a library service which is directly delivered by the Council, but must make service reductions to achieve savings”

You had your answer last time when the previous survey asked if in the light of £60 million of cuts, were people prepared to accept any of the Councils proposals? The majority said “no”. So what’s changed?

You have stated in your letter that there is a market interest. Will you let us know from who? On Community Management you say you have a good number of expressions of interest. Again, will you let us know at this stage from who?

Will you also confirm the contractual position – by making a business case, will the interested parties be deemed to have made a bid and then be contractually bound to stay the course?

The Councils proposals are not supported by staff and have limited public support as proven by the consultation exercise you carried out previously. To now restart an exercise, by giving notice on 24<sup>th</sup> July that you are to start on 27<sup>th</sup> July and run the exercise when many people are away in August takes cynicism to new heights.

This is not public consultation – it is a farce. The Council clearly care more for property speculation than they do for services or for what the community want. Unite will shine a torch on the activities of the Council to make sure that our services are not sold off in the dark.

Onay Kasab  
Regional Officer  
Unite The Trade Union

# Agenda Item 5

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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