

**South Ayrshire Council**

**Report by Depute Chief Executive and Director – People  
to South Ayrshire Council (Special)  
of 18 February 2020**

---

**Subject: The Scottish International Airshow**

---

**1. Purpose**

- 1.1 The purpose of this report is to provide the Council with a further update in relation to compliance with the Minute of Agreement ('MOA') which sets out the operational arrangements agreed by the Council and the Scottish International Airshow (TSIA) for the staging of both the 2018 and 2020 Airshows.

**2. Recommendation**

**2.1 It is recommended that the Council:**

**2.1.1 considers the responses provided by TSIA and their proposals to settle the dispute; and**

**2.1.2 decides which of the following options it wishes to exercise:**

- (i) to request the Head of Regulatory Services to agree a settlement with the Organisers providing for the mutual agreement by both parties to terminate the MOA and confirmation that the figure of £80,000 paid to TSIA in error represents full and final payment of any liabilities due by the Council to TSIA in terms of the MOA or the 2020 Event; or**
- (ii) to reconsider the decision of Council of 18 December 2019 and agree a variation of the MOA to approve the payment of £80,000 made to TSIA as an advance payment and pay the remaining sums due in respect of the 2020 Event in accordance with the payment arrangements set out in the MOA for the 2018 Event and note delivery of the 2020 Event otherwise in accordance with the existing terms of the MOA; or**
- (iii) to agree to terminate the MOA and instruct officers to serve a termination notice on TSIA in accordance with the MOA; or**
- (iv) to agree to terminate the MOA and instruct officers to serve a termination notice on TSIA in accordance with the MOA**

**and to take the necessary legal steps to recover the sum of £80,000.**

### **3. Background**

3.1 A letter was issued to the organisers of TSIA on 28 November 2019 requiring them to provide evidence demonstrating their full compliance with the MOA to address the issues raised by the Partnerships Panel of 20 November 2019 (and considered by the Leadership Panel of 26 November 2019). The response from TSIA and the issues arising from that response were considered at Council on 18 December 2019, and the draft Council minutes note the decision as:

3.1.1 to refuse to vary the MOA and to request officers to write to TSIA confirming this and asking TSIA to confirm within seven days that they would be staging the 2020 Event in accordance with the terms of the MOA and requiring immediate repayment of the sum of £80,000; and

3.1.2 that, should TSIA fail to respond within seven days demonstrating full compliance with the requirements of this letter, to give authority to the Leadership Panel to terminate the MOA at its meeting on 21 January 2020 and request officers to serve a termination notice on TSIA in accordance with the MOA and to take the necessary legal steps to recover the sum of £80,000.

3.2 Further letters were sent to the organisers of TSIA on 23 December 2019 and 17 January 2020, and a report providing an update on this and subsequent email correspondence exchanged between TSIA and the Council in relation to breaches of the terms of the MOA for the staging of both the 2018 and 2020 Airshows was submitted to the Leadership Panel of 21 January 2020, when Members decided:

3.2.1 to note the failure by TSIA to remedy these breaches but that a request by TSIA on 8 January 2020 to refer the dispute to arbitration in accordance with the MOA required the matter to be considered by officers and understand what TSIA are disputing and for the Head of Regulatory Services to provide a recommendation on the next appropriate steps to allow an early decision to be taken.

3.3 TSIA forwarded the letters attached in Appendix 1 to the Council in response to the notice by the Council advising of their intention to terminate the MOA. These letters make a number of points including TSIA's intention to liquidate TSIA if the Council proceeds with action to recover the sum of £80,000 or where TSIA exercise their right to refer the dispute to termination. A meeting between officers of the Council and the organisers of TSIA took place on 4 February 2020, following which the organisers of TSIA submitted a letter (Appendix 2) detailing the amount of cash remaining from the advance payment provided by the Council, the amounts paid out, and to whom, and the existing creditors they have contracted to pay. They have submitted two proposals to end the dispute quickly and without litigation in court or going to arbitration:

3.3.1 **Option 1 – Termination of the MOA** – the practical effect would be cancellation of TSIA 2020 and no payment being returned to the Council; or

3.3.2 **Option 2 – Continue with TSIA 2020 as planned with an Amended MOA** – the Council agrees to vary the MOA and return to the 2018

payment arrangements, contained in the MOA signed in January 2018 and covering TSIA's in 2018 and 2020. This would mean that the £80,000 is agreed to be paid in advance and TSIA 2020 would be delivered as planned.

#### **4. Proposals**

4.1 Council is asked to consider the options outlined by the Organiser in Paragraph 3.3 and the other options available to the Council in terms of the MOA below and to take account of the following information :-

4.1.1 Option 1 – A mutual agreement to terminate the MOA - TSIA have confirmed if funding is terminated they would choose to cancel the 2020 Event. The Head of Regulatory Services would enter into negotiations to set out in a settlement agreement that the figure of £80,000 was paid in full and final settlement of any sums due by the Council to TSIA in terms of the MOA and the 2020 Event and that both parties mutually agree the termination of the MOA with immediate effect.

4.1.2 Option 2 – the Council varies its decision of 18 December 2019 and agrees that the payment of £80,000 is approved as an provide advance payment to TSIA and the balance of payments is advanced for the 2020 Event in accordance with the payment arrangements for the 2018 Event. The background to and concerns for making this arrangement are set out in the previous report to Council. The Head of Regulatory Services would ask Council to consider the information contained in the letters provided by TSIA to the Council in Appendix 1 which provide their responses to the breaches and information on how the sum of £80,000 has been spent suggesting another breach of the MOA;

4.1.3 The Council exercises its right to terminate the MOA and the Organisers may choose to refer the matter to arbitration. The Head of Regulatory Services has taken advice from Counsel who agrees the Council's interpretation of the MOA- namely that the organisers are in breach, that this breach entitles the Council to terminate the MOA and that Council has followed the required process allowing it to serve a 7 day notice terminating the MOA. If the Council chooses to exercise this option, TSIA have intimated in their correspondence that they may refer the matter to arbitration and have advised that if they are unsuccessful they may put TSIA into liquidation. If they did so the Council would not only not recover the sums of £80,000 paid in error but also the costs involved in the arbitration process. These costs are estimated to be between £9,000 and £18,000.

4.1.4 The Council exercises its right to terminate the MOA and instructs the recovery of the sum of £80,000. The Council is entitled to do so as explained above but again TSIA have confirmed that they may initially defend this action and then liquidate TSIA. This would again leave the Council with no recovery of the sums of £80,000 but paying the additional court costs. These costs are estimated to be £7,000.

#### **5. Legal and Procurement Implications**

5.1 This report has been prompted by the lack of compliance with key clauses of the MOA. The organisers of TSIA 2020 have made a number of proposals to settle the dispute and these require to be considered by Council alongside the other rights that can be exercised by Council pursuant to the terms of the MOA and a decision taken on how to proceed.. .

5.2 There are no procurement implications arising from this report.

## **6. Financial Implications**

6.1 There is financial provision of £250,000 within budget to allow Council to make payments under the MOA for TSIA 2020. If the decision is ultimately to exercise the termination clause, this would release this funding but depending on the decision taken by Council there is either a risk that the £80,000 may not be recovered or it will not be recovered..

## **7. Human Resources Implications**

7.1 Not applicable.

## **8. Risk**

### ***8.1 Risk Implications of Adopting the Recommendations***

8.1.1 This report is an update on on-going correspondence about compliance with the MOA so there is no risk associated specifically with accepting the recommendations in this report.

### ***8.2 Risk Implications of Rejecting the Recommendations***

8.2.1 This report is an update on on-going correspondence about compliance with the MOA so there is no risk associated specifically with accepting the recommendations in this report.

## **9. Equalities**

9.1 The proposal in this report follow scrutiny of performance. The report does not involve proposals for policies, strategies, procedures, processes, financial decisions and activities (including service delivery), both new and at review, that affect the Council's communities and employees, therefore an equality impact assessment is not required.

## **10. Sustainable Development Implications**

10.1 ***Considering Strategic Environmental Assessment (SEA)*** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

## 11. Options Appraisal

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

## 12. Link to Council Plan

12.1 The matters referred to in this report contribute to the Council strategic objective of 'Maximising the potential of our local economy' and within that to the outcomes: 'Businesses and social enterprises are supported to set up, thrive and expand'; and 'Tourism, culture and heritage opportunities are developed and promoted'.

## 13. Results of Consultation

13.1 There has been no public consultation on the contents of this report.

13.2 Consultation has taken place with Councillor Brian McGinley, Portfolio Holder for Economy and Culture, and the contents of this report reflect any feedback provided.

## 14. Next Steps for Decision Tracking Purposes

14.1 If the recommendations above are approved by Members, the Depute Chief Executive and Director - People will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Leadership Panel in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the decision is fully implemented:

<i>Implementation</i>	<i>Due date</i>	<i>Managed by</i>
Implement the Council decision	28 February 2020	Head of Regulatory Services/ Service Lead – Community Services and Facilities

**Background Papers**    **Report to Partnerships Panel of 20 November 2019 - [The Scottish International Airshow 2018 Performance Report](#)**

**Report to Leadership Panel of 26 November 2019 - [The Scottish International Airshow](#)**

**Report to Council of 18 December 2019 – [The Scottish International Airshow](#)**

**Report to Leadership Panel of 21 January 2020– [The Scottish International Airshow](#)**

**Person to Contact**    **Catriona Caves, Head of Regulatory Services  
County Buildings, Wellington Square, Ayr, KA7 1DR  
Phone 01292 612556  
E-mail [catriona.caves@south-ayrshire.gov.uk](mailto:catriona.caves@south-ayrshire.gov.uk)**

**Date:** 17 February 2020