

Subject:	Royal Pavilion & Museums Service Future Options		
Date of Meeting:	11 October 2018		
Report of:	Executive Director, Economy Environment & Culture		
Contact Officer:	Name:	Val Birchall	Tel: 01273 292571
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Wards affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 Following an extended period of modernisation and a decision by the Policy, Resources and Growth (PRG) Committee at its June 2018 meeting to revoke the previous decision (taken in January 2018) to transfer the service into a combined trust with Brighton Dome & Festival, options for the future governance of the Royal Pavilion & Museums Service (RPM) have been further reviewed over the past six months.
- 1.2 This report sets out proposals for ensuring a sustainable and resilient organisation capable of delivering the best possible service outcomes for the Royal Pavilion, museums and heritage over the longer term and seeks agreement to a roadmap for implementation.
- 1.3 The report recommends that moving the Royal Pavilion & Museums to a single-purpose Trust has the best likelihood to make the Royal Pavilion & Museums sustainable in the mid to long term, but that some service improvement and development work will need to be undertaken prior to moving to Trust. The report proposes that the move to Trust should happen prior to the next Arts Council England funding period (from 2022), with the Royal Pavilion & Museums applying for the next period of Arts Council Funding as an independent entity.

2. RECOMMENDATIONS:

- 2.1 That Policy, Resources & Growth Committee:-
 - 2.1.1 notes the contents of the Options Phase One Report prepared by the independent expert attached as Appendix One to this report;
 - 2.1.2 approves the steps required to improve and modernise the service and the associated timescale as set out in Appendix Two (Service Improvement Plan);
 - 2.1.3 agrees that, following a period of service improvement, the Royal Pavilion and Museums service should be transferred to a charitable trust whose

sole purpose is to deliver the council's museums and heritage services;

2.1.4. agrees the timetable set out at 4.20 below and notes that this timetable will allow the single purpose charitable trust to apply for funding in the next Arts Council England funding application round (covering 2022+);

2.1.5. delegates authority to the Executive Director, Economy Environment & Culture to enter into negotiations with the Royal Pavilion & Museums Foundation to resolve matters outlined in 4.23 below;

2.1.6 delegates authority to the Executive Director, Economy Environment & Culture, to determine when the due diligence carried out during the initiation phase has been successfully concluded and the issues set out in 4.11 have been satisfactorily resolved such that the council should move to the Implementation Phase;

2.1.7. delegates authority to the Executive Director, Economy Environment & Culture in liaison with the Executive Lead Officer for Strategy, Governance and Law to take all necessary steps to implement the recommendation at 2.1.3, reserving those decisions relating to the governance of the charity for a future decision at the Tourism, Development & Culture Committee and the Policy, Resources & Growth Committee referred to in 2.1.8 below;

2.1.8. notes that during the Implementation Phase, a further report will be presented to the Tourism, Development & Culture Committee and the Policy Resources & Growth Committee to update on progress, seek approval to establish the charitable entity and seek delegated authority to conclude the legal arrangements between the council and such related parties.

3. BACKGROUND INFORMATION

3.1 In January 2018 the Council's Tourism, Development & Culture and Policy, Resources & Growth Committees approved the necessary steps to move the management of the Royal Pavilion & Museums service (RPM) to a contract arrangement with a charitable body under a twenty-five year agreement. However, owing to concerns of staff and the possibility of industrial action, the implementation of the decision was delayed in order to allow for further staff engagement and an external review of all the options.

3.2 On 14th June 2018 councillors at Policy Resources & Growth Committee considered a report which updated them on the process and timetable for the review of options. The committee agreed, by way of an amendment from opposition councillors, to revoke the decision that was made in January 2018 and proposed that, should the Royal Pavilion Museums be transferred to a single purpose Trust, staff would be consulted upon that proposal. Officers were instructed to bring a report back to members for decision in October 2018.

3.3 Following discussion and input from staff, Trade Unions and stakeholders, the scope of the options evaluation was agreed and an independent expert consultant appointed. The consultant has now completed both phases of his brief and his report is attached as Appendix One. The evaluation has been

accompanied by a programme of staff engagement. At the same time, work has continued to address vulnerabilities in the service, under a “Ready for Change” work-stream which has identified further significant changes required to ensure the service is fit-for-purpose.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 The evaluation of options for governance took place in two stages. The first stage was a comparison, like-for-like, between all the various options:

- In-house scenario – including for part or all of the service
- Charitable operation – including a stand-alone RPM service or combined with other services or assets (within and outside BHCC), including the possibility of a charitable operation for part or all of the service (and a variety of not-for-profit models of governance)
- Commercial operation – including the possibility of a joint venture with a commercial or not-for-profit partner, and of a commercial operation of part of the service
- Partnership with another anchor institution – including for part or all of the service
- Combinations of the above

4.2 The criteria used for the evaluation were (unweighted):

- Long term sustainability – including ability to generate funds to compensate for planned savings, from earned and contributed sources, and the ability to reduce inefficiencies
- Flexibility and future proofing – including risk of changes to NNDR, taxation and customer behaviour
- Council priorities in relation to the visitor economy, cultural participation, learning and protection of assets
- Confidence of key stakeholders
- Support of staff and volunteers
- Appropriate professional standards of care for buildings and collections
- Customer needs and customer expectations
- The council’s statutory obligations, including health and safety, equalities and procurement compliance

4.3 The stage one report (attached at Appendix One) concluded that while a combined trust with the Brighton Dome & Brighton Festival, Music & Arts, had many benefits, it would be difficult to achieve agreement to implementation, since the Policy, Resources & Growth Committee had, on 14 June 2018, revoked its decision to enter into such an arrangement.

4.4 At the conclusion of the first stage of work therefore, the consultant recommended that only the in-house, and the single purpose trust were modelled for further comparison.

4.5 The expert’s report is attached at Appendix One. It concludes that there are benefits to moving to a Trust with a single focus on the needs of the Royal Pavilion and Museums that can be realised in the mid to long term. These are summarised below.

- 4.6 The main financial benefits arise from the charity tax arrangements and the improved capacity to retain the financial return on any investment over a long term period.
- 4.7 Benefits which may accrue but are difficult to quantify are the greater likelihood of being able to attract private investment (from private individuals in particular) and the opportunities to be more responsive to markets and commercially focussed.
- 4.8 Opportunities for income growth include driving more earned income through improved ticket pricing strategies, and investing in initiatives (for example, marketing) which drive greater volume. These opportunities exist for both the Trust model and the in-house model and the Council should therefore look to make these improvements in any case, in order to help build a more financially secure service.
- 4.9 The conclusion is that the trust model should be more financially sustainable than an in-house service in the mid to long term, once the model has become established and the return on investment in setup costs realised. Therefore the Council should take the decision to move the service into a charitable trust which has the sole purpose of managing the Royal Pavilion & Museums.
- 4.10 In recommending this direction, the report identifies significant risks which need to be mitigated before this step is taken.
- 4.11 These are that:
- the income generation projections need to be fully modelled and a financial strategy developed to manage the uncertainty around future income to ensure the future model is capable of achieving a surplus position
 - that the service needs the leadership capacity, skills and appropriate structure to manage an independent charity
 - that stakeholders and funders (especially Arts Council England) need to have confidence in the arrangements
 - that any proposed trustees would need to be confident that the terms on which the service contract would be offered provide a viable model
- 4.12 The independent expert's report makes it clear that, whilst the trust model could be more financially stable in the medium term, it is important that the correct steps are taken to ensure that the trust is set up to give it the best chance of success. An initiation phase is needed to develop responses to the issues that the independent consultant has identified. The subsequent implementation phase would only proceed if these considerations are resolved satisfactorily.
- 4.13 A recent internal audit of the service, together with work that has been done during the project to date, has identified a series of immediate service improvements which are necessary to make the service fit for purpose. These range from tidying up employment contracts, to ICT infrastructure, Collections policies, asset registers, improvement of financial and procurement systems and procedures. Therefore the first stage of the move to trust is a Service

Improvement Programme which will ensure the service is in the best possible organisational health. The proposed programme is outlined at Appendix Two.

- 4.14 The move to trust will need to be done over the period as set out in para 4.20, to provide the necessary reassurances for staff, stakeholders and the Council and to ensure that the service has the best possible chance of a sustainable and successful future. A lot of work has been done over the past few years, and if it proves possible, the timetable could be accelerated. The intention is to establish a single purpose and resilient trust in time for the next round of funding applications to the Arts Council, which are expected to be invited in 2021-22.

Readiness for Change

- 4.15 During the lifetime of the project, as officers have explored the service in more detail in order to clarify, document and research information to support decision-making, a series of vulnerabilities have been identified.
- 4.16 In addition, two related exercises (an internal audit, and a review of income generation) have highlighted further risks and areas for improvement in processes. The consultant's report supports the need for further work to be done to update processes and strengthen capability and capacity in the service, and points up the need for a service restructure to resolve historic ad-hoc arrangements and build capacity and resilience.
- 4.17 Issues range from the need to fill vacant posts to basic cash handling, and affect most of the functions in the service including Collections, Finance, IT, maintenance, Health & Safety, security, safeguarding, fundraising and communications.
- 4.18 The work demonstrates that the service is currently not fit for transfer to a trust model and a service improvement programme is needed to prepare it for change. This work has been scoped and an outline is attached as Appendix Two to this report.
- 4.19 In summary, the consultant recommends that moving to a single-purpose trust provides the best likelihood to make the Royal Pavilion & Museums sustainable in the mid to long term, but that work will be needed to be undertaken prior to going to trust. In addition, other internal reviews (an internal audit and external review of income generation) have identified the need for some immediate service improvements. It is therefore recommended that there will be three phases to moving to an independent trust. Each phase will need to be completed before the next can begin:
- A Service Improvement phase, to address the existing issues - such as gaps in the staff structure and ICT improvements and improvements to financial systems and processes.
 - An Initiation (preparing) phase to test the financial assumptions and negotiate agreements
 - An Implementation phase when the charity is established, agreements are signed, key roles appointed, staff and business are transferred

4.20 As a result the following indicative timetable is proposed for the implementation of the three phased programme to move to Trust:

<u>Phase 1</u> Service Improvement	Oct 18-Sept 19	To address immediate issues
<u>Phase 2</u> Initiation	Oct 19-Sept 20 (sooner if Phase 1 can be completed more quickly)	To test modelling, and develop & negotiate agreements
<u>Phase 3</u> Implementation	Oct 20-Mar 21 (sooner, if agreements can be reached more quickly)	To establish the charity, make key appointments, implement staff and business transfer

The Royal Pavilion & Museums Foundation (RPMF)

4.21 The review of options has also allowed for consideration of the role of the Royal Pavilion & Museums Foundation (RPMF). The RPMF, is an independent fundraising charity, originally established as the Friends of the RPM and subsequently updated, to support with fundraising for the Royal Pavilion & Museums. With changes to its constitution, it could fulfil the role of a development trust to support the Council's in-house service. This would be a more effective model than an in-house service alone, because the Trust would be able to access funding for which the Council is ineligible, and may be able to take advantage of other opportunities to reduce tax.

4.22 Alternatively, again with changes to its constitution, the RPMF could fulfil the role of the new operational trust, which would remove the requirement to create a new charitable company from scratch and might enable the implementation phase to be accelerated.

4.23 A recent internal audit has identified that arrangements between the RPMF and the Council need to be strengthened, in order to meet appropriate standards and requirements. The areas of concern relate to governance and processes. These include the employment of staff by the Council on behalf of the RPMF, the potential for conflicts of interest of staff and trustees and the absence of clear agreements between the Council and the Foundation, processes for grant funding from the RPMF to the Council and approval to grant applications being made by Council officers where funding would be awarded to the RPMF rather than directly to BHCC.

4.24 Although it has been successful in raising funds for the Royal Pavilion & Museums, as recently evidenced by the successful restoration of the Royal Pavilion Saloon, the RPMF is not therefore currently established appropriately to fulfil either of the purposes outlined above. The RPM trustees are already in place and may not agree to changes which would be necessary. However, it would be sensible to pursue a dialogue with the foundation during the initiation period, to establish its appetite for change.

Initiation and Implementation

4.25 During the Initiation and Implementation Phases, officers will develop proposals for the governance of the charitable entity. If it is a new entity, it is likely to be a company limited by guarantee which has charitable objects (usually referred to as a charitable trust). The trust's Memorandum & Articles of Association, including the charitable objects, the name and the proposed member(s) of the charity, will need approval from the Charities Commission, which will take time. Once this is completed, a further report to Tourism, Development & Culture and Policy, Resources & Growth Committees will seek delegated authority to proceed to establish the company, identify and recruit appropriate directors, and make an application to the Secretary of State in relation to the council's duty to obtain best consideration under S123 of the Local Government Act 1972. This report will also seek approval for all leases, contracts and other legal documents necessary to conclude the transfer matter.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 A programme of staff engagement has been established to ensure the options evaluation is informed by staff at all levels in the service, as well as customers and volunteers. There have been facilitated sessions where aspects of the vision, the purpose of the service, its values, key relationships, resources, challenges and risks, opportunities and external operating environment have been discussed.
- 5.2 The staff engagement programme has been led by the staff from the Council's Leadership Network, who have been trained in Organisational Development together with support from the service managers of the Royal Pavilion & Museums. It has included information sharing sessions (to meet the consultant), "Hopes and Fears" activities, Stakeholder Analysis Workshop, whole staff SWOT analysis workshop with the consultant, as well as opportunities to contribute thoughts via a dedicated email inbox, business-as-usual team communications, opportunities to speak face to face with the consultant, and drop-in sessions. Sessions have included some trade union representatives.
- 5.3 Following some initial "consultation fatigue" (which is understandable given the prolonged period of time that staff have been in an environment where the future operating model has been under consideration), the sessions seem to have been appreciated by staff; they have been well attended and staff have contributed actively and challenged each other (and the managers and consultant) positively and constructively.
- 5.4 The programme of staff and trade union engagement will continue throughout the three stage process and, in the event of any TUPE process, engagement will take place as required.
- 5.5 The independent consultant was particularly keen to acknowledge the positive input from staff into his report, and thanked them for their considered and professional contributions. Trade Unions were also engaged in the process, through consultation on the consultancy brief and appointment of the consultant, and attendance at some of the staff sessions, as well as through regular update

meetings. The Trade Unions had the opportunity to meet with the consultant during the process.

The Royal Pavilion & Museums Foundation Chairman, Professor Julian Crampton CBE DL, also met the consultant.

- 5.6 Arts Council England has been kept updated during the process. Their concern has been to ensure the focus is on the high quality delivery to the public of the funded activity programme during any change process, to have a properly resourced and skilled team, to address the actions needed to continue to meet the accreditation standard, and to ensure the service, which is of national importance, has a sustainable future.
- 5.7 To support the service during Phase 1, a Museums Advisory Board will be established and meet quarterly, including independent senior level expertise in relation to collections, historic buildings and programming.
- 5.8 As a precursor to transfer, during Phase 2, open recruitment will be undertaken to identify appropriately skilled and experienced individuals from a diversity of backgrounds and perspectives, willing and capable of joining the board of the new entity when it is established. When appropriate, this will become the trustee body for the new entity and will undertake negotiations with the Council on proposed terms of transfer.

6. CONCLUSION

- 6.1 The Royal Pavilion, museums sites and city collections are unique. The Council has long term stewardship of these assets on behalf of city residents, in order to protect Brighton & Hove's heritage, increase understanding of local history and the city's place in world history, and to enable enjoyment, research and learning now and for the future.
- 6.2 The Royal Pavilion (in particular) and the museums and collections play an important role in the city's identity and brand, and they attract leisure and business visits from around the world, contributing to our vibrant visitor economy.
- 6.3 Although the sites, collections and expert staff of the service are an invaluable asset, the cost of maintaining, programming, promoting and operating the service cannot be met by the Council alone. The service relies on Council budgets, Arts Council England funding, fundraising from trusts and individuals, paid entrance fees, and trading (for example from retail and catering) to cover its costs, in an increasingly competitive market for the leisure pound.
- 6.4 As Council budgets decline, it has been necessary to look at ways to maintain a high quality service, and to protect and conserve and utilise the sites and collections for public benefit in the longer term, whilst meeting necessary savings targets. Following an evaluation of the options, the recommendations in this report set out the road map for moving the service into a charitable trust, focussed on delivery of its key objectives. Before the process begins, a Service Improvement programme will ensure the RPM is fit for purpose, and has the capacity to achieve a successful transfer.

- 6.5 The process of moving to trust involves successful mitigation of a series of risks which are set out in the report, in order to achieve a more cost effective financial model in the mid to long term, thus giving the best prospect for a sustainable future and securing the city's heritage for future generations.
- 6.6 Of significant importance is the need to create as much certainty as possible for the staff at the Royal Pavilion & Museums. The proposals in this report are designed to provide this clarity and ensure that an agreed road map is followed which will culminate in the transfer to trust in time of for the next Arts Council England funding round, and following a phased programme of service improvement and initiation.
- 6.7 The report recommends that moving the Royal Pavilion & Museums to a single-purpose trust has the best likelihood to make the Royal Pavilion & Museums sustainable in the mid to long term, but that some service improvement and development work will need to be undertaken prior to moving to trust. The report proposes that the move to trust should happen prior to the next Arts Council England funding period from 2022, with the Royal Pavilion & Museums applying for the next period of Arts Council Funding (applications are expected to be invited in 2021-22) as an independent entity.
- 6.8 A further report will be presented to the Tourism, Development & Culture Committee and the Policy Resources & Growth Committee to update on progress, seek approval to establish the charitable entity, agree governance arrangements, and seek delegated authority to conclude the legal arrangements between the council and such related parties.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Policy, Resources & Growth Committee previously approved that the £0.392m savings identified for the Royal Pavilion and Museums service in the 4 Year Integrated Service & Financial Plans would be deferred until the 2021/22 financial year to enable a viable set-up of a new charitable operation. Subject to further approvals as part of the budget setting process, it is anticipated that £0.170m of the £0.392m will be brought forward to the 2019/20 financial year following a successful business rate rating appeal at the Royal Pavilion and Brighton Museum. Previous reports to this Committee also identified a funding reinvestment requirement of approximately £0.223m per annum to provide a sustainable level of building maintenance for the RPM property portfolio.
- 7.2 The financial implications identified in the consultant's report have been reviewed to ensure they provide an indicative forecast of the two considered governance options. There are a number of uncertainties and assumptions which require further testing and modelling during the recommended initiation phase. The table below provides a summary of the financial findings of the consultant's report.

	Year 1 £'000	Year 2 £'000	Year 3 £'000	Year 4 £'000	Year 5 £'000
Single Purpose Trust Net	(130)	259	544	769	844

Savings*					
In-House Scenario Net Savings	220	340	460	520	520

Note that both scenarios include saving from business rate appeal at the Royal Pavilion and Brighton Centre

**includes £0.300m of set-up costs in year 1*

- 7.3 The findings of the consultant's evaluation report, as well as previous financial modelling, suggests that while an in-house scenario could achieve savings in a shorter time-scale, the scope for savings from a single purpose trust increases as a trust becomes established, and therefore has greater financial benefits in the medium to longer term. The financial benefits of a charitable operation include net favourable tax benefits, increased commercial focus, greater flexibility of pricing strategies and longer term financial planning. The council will also benefit from savings in support services.
- 7.4 The table above suggests that the net financial benefit of moving to a charitable operation would be sufficient to meet total service savings and maintenance reinvestment requirements, but will require one-off funding to support initial set-up costs estimated at £0.300m. If the recommended implementation timetable is approved, the £0.300m will need to be prioritised from the Modernisation Fund. The property maintenance requirement will continue to be funded through bids to the council's Planned Maintenance Budget, subject to prioritisation, until the charitable operation is established.
- 7.5 The timing and value of potential savings will be reviewed during the recommended service improvement and initiation periods. It is anticipated that the service improvement process will identify efficiencies which may allow further savings to be bought forward before the recommended implementation of a single purpose trust.
- 7.6 The service improvement phase will require one-off resources to implement the required service changes. It is anticipated that this will be funded from Modernisation funding already earmarked for the RPM service, subject to further approvals being sought from the Modernisation Board.

Finance Officer Consulted: Steven Bedford

Date: 24/09/18

Legal Implications:

- 7.7. The council is required to comply with the public procurement regime in its arrangements with the charity which will run the RPM service. The council does not need to undertake a procurement if it provides a grant to the charity. However, if the council provides a grant this will have a significant VAT cost to the charity. The council has therefore previously sought Leading Counsel's advice on whether there was a risk of a procurement challenge if it awarded a contract rather than a grant. He concluded that there was a reasonable argument that the public procurement regime does not apply to the award of a contract because a charitable trust will not be an economic operator which is offering services on a market. His view was that the risk of a legal challenge was

low. He also advised that entering into a contract with the charity would not amount to state aid.

- 7.8. The legal implications relating to the setting up a new company and the transfer of services will be set out in detail in the report which will go to Tourism, Development & Culture Committee and then Policy, Resources & Growth during the Implementation Phase.
- 7.9. The council is under an obligation when leasing its buildings to achieve the best consideration reasonably obtainable (s123 Local Government Act 1972). It is expected that the council will have to obtain the Secretary of State's consent to lease the buildings at a peppercorn rent, owing to the likely valuation and length of the lease agreements.

Lawyer Consulted:

Alice Rowland

Date: 01/10/2018

Equalities Implications:

- 7.7 There are no immediate Equalities implications but this will be kept under review and if changes are proposed which might affect groups with protected characteristics, then an Impact Assessment will be carried out.

SUPPORTING DOCUMENTATION

Appendices:

1. Report of Mike Woodward & Associates, to include first and second stages
2. Service Improvement Plan

Documents in Members' Rooms

1. None

Background Documents

1. Previous reports:
 - i. Royal Pavilion & Museums Fees and Charges – 17/11/2016 (to Economic Development & Culture Cttee)
 - ii. Royal Pavilion & Museums: Accreditation, Collections Development and Trust Update – 22/06/207
 - iii. Royal Pavilion Estate Capital Project Phase 2 Update – 11/01/2018
 - iv. Update on Royal Pavilion and Museums Trust Arrangements – 11/01/2018 (PRG on 25/01/2018)

