

Subject:	RPM Trust - update		
Date of Meeting:	26 September 2019		
Report of:	Executive Director, Economy, Environment & Culture		
Contact Officer:	Name:	Janita Bagshawe	Tel: 01273 292840
	Email:	janita.bagshawe@brighton-hove.gov.uk	
Ward(s) affected:	(All Wards);		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 In October 2018 the Policy Resources and Growth Committee agreed that the Royal Pavilion and Museums service should transfer to a standalone trust with the sole purpose of delivering the council's museums services.
- 1.2 This report updates this Committee on the work of the Joint Project Board following the report to TDC Committee in June 2019, which agreed in principle that the service should be transferred to the existing fundraising charity the Royal Pavilion and Museums Foundation. The Foundation has recently been renamed the Royal Pavilion and Museums Trust (the RPM Trust).
- 1.3 This report includes an outline of the governance proposals and the council's role following the transfer. A more detailed report will be provided to the Policy and Resources Committee (P&R) and P&R will be asked to support a number of recommendations (described below).

2. RECOMMENDATIONS:

- 2.1 That the Committee notes progress to date and the governance proposals outlined at paragraph 3.13 of this report.

3. CONTEXT/ BACKGROUND INFORMATION

Project Board and Work streams

- 3.1 The Joint Project Board is working effectively to progress the transition. The Board includes officers, trade unions and RPM Trust trustees. The project is divided into five workstreams – Finance; People; Property; Legal, and ICT. These workstreams aim to address the four key tests set out by PR&G last October:
 - 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.

- The independent charity would need to have the leadership capacity, skills and appropriate structure to manage a museum service.
- Stakeholders and funders (especially Arts Council England) need to have confidence in the arrangements.

- Any proposed trustees would need to be confident that the terms on which the service contract would be offered provide a viable model.

Finance - The 5 year Business Plan; Building maintenance budget; transition fund

3.2 The Finance work stream has been continuing to develop the five year financial model for the charitable trust. A summary of the latest version is attached as Appendix A. Work stream activity and updates to the financial model since the previous update to this Committee include:

- Presentation of the financial model to the Corporate Modernisation Delivery Board for review;
- Sharing of the financial model with RPM Trustees for presentation to the Royal Pavilion and Museums Trust Board meeting;
- Testing of income and other assumptions compared to actual activity to ensure that forecasts are robust and reflect the most up to date information;
- Updating of anticipated one-off and ongoing set-up costs;
- Updating of pension assumptions following receipt of an updated Pension Information Memorandum;
- Updating for the financial impact of reallocating capital receipts of £0.500m towards the cost of required building maintenance (subject to P&R Committee approval in October);
- Review of VAT assumptions based on the updates above, and the instruction of external VAT consultants to test assumptions on behalf of the council and RPM Trust;
- Updated sensitivity analysis carried out to determine how changes in assumptions could impact on the affordability of the financial business plan;
- Analysis of likely ongoing reserve levels of the proposed trust to provide acceptable assurance of ongoing financial stability. Note that the RPM Trusts existing unrestricted reserves are also included in the financial model.

Staffing and HR

3.3 The actuaries have now reported on the pension position for the Trust, for a scheme which is open to new employees as well as a closed scheme for existing members only. The advice was received late, and both open and closed models are still under consideration by the Joint Project Board.

3.4 An HR secondment to the Trust has been arranged to enable the Trust to operate independently from the council and to boost overall HR capacity.

- 3.5 The Trust are considering how they can best reassure staff of their commitment to retaining NJC pay and conditions and the avoidance of a two tier workforce. A commitment to union recognition will also be made.
- 3.6 A draft communication and engagement plan has been shared with the unions.

Property

- 3.7 Detailed and costed condition surveys have been completed for each of the Buildings, and inventories for each property prepared. Heads of Terms for the three proposed leases have been drafted and work has started on the detail. A building maintenance strategy has been agreed, with the aim of maximising the financial benefit to the Trust. The council will retain its right to carry out repairs, but the obligation to maintain, repair and meet statutory compliance duties will sit with the Trust. The Trust will become the responsible body for the safe management and operation of the buildings and building maintenance works. A five-year annual programme of planned maintenance works will be agreed between the Trust and the council.

Legal work and governance

- 3.8 The Council has sought amendments to the Trust's Articles of Association in accordance with the Memorandum of Understanding which was previously approved by the Tourism, Development and Culture Committee. The trustees have confirmed that they will amend the Articles to allow the Council to nominate trustees to the Trust's board. The Articles will be amended on the service transfer date and the nominated members will take up their formal positions on that date. In the meantime, strong informal links will be established between those members who are nominated and the Board and stakeholders.
- 3.9 The Trust has also agreed in principle that the Council can become a member of the company and that decisions to change the company's Articles of Association and the name of the company cannot be made without the Council's consent. It is proposed that when the Council needs to attend a general meeting of the company and vote on resolutions that the decision will go to P&R who will delegate authority to an officer to attend the meeting and vote in accordance with its wishes.
- 3.10 The council is in the process of responding to the RPM Trust's due diligence process, supplying the detailed information the Trust needs to ensure transparency in the transfer process and to avoid problems in the future. The due diligence request itself runs to 36 pages, with 22 headings and a three part schedule. The council is supplying detailed inventories; condition surveys of the buildings; fire safety information; trading activities; all contracts; VAT; employment records (including policies and procedures); insurance; intellectual property and information governance. The Trust will have completed a comprehensive and most thorough appraisal of the service in preparing itself for the transfer.
- 3.11 The council will enter into a service contract and a transfer agreement with the RPM Trust. The council's requirements in relation to the collection will form a schedule to the service contract.

- 3.12 The council was appointed as the sole corporate trustee of the Booth Museum and Stanford Museum and Public Park (Preston Manor). The council will remain corporate trustee after the proposed transfer but will grant leases of the buildings and use of the collections to the Trust. The council must continue to ensure it acts exclusively in the best interests of Booth Museum and Preston Manor and avoids any conflict of interest. The governing documents will need minor amendment to reflect the new governance arrangements. The Policy, Resources & Growth Committee has previously authorised officers to consult the Charities Commission on the required changes.
- 3.13 At P&R in October the Committee will be formally asked to-
- approve the governance proposals and nominate members to sit on the RPM Trust board;
 - approve draft legal agreements (if they are 'nearly there' officers may seek a delegation to finalise the agreements);
 - confirm that the council believes that disposing of the sites for an undervalue is in the best interests of the area and give authority to enter into the leases; and
 - approve the RPM Trust's Business Plan.
- 3.14 The report will also:
- summarise how the contract will be managed following the transition;
 - give an update on how employees terms of employment will be protected following the transition; and
 - give an update on the RPM Trust's proposals to recognise the unions.

ICT systems & Information Governance

- 3.15 Following the transfer of the service the RPM Trust will run its own ICT systems and Information Governance independent of the council (although access to HR and financial systems may be temporarily maintained for a smooth transition).
- 3.16 The Council is instructing a consultant to design and build the new model for the Trust. The consultant will recommend options for a new model of IT for the Trust. These options should include detailed costs, and potential suppliers who could implement the recommendations, which will cover infrastructure, applications management services, ICT security and ICT support services. The decision was taken that the council should procure this consultant because the council is able to use the G-Cloud framework.
- 3.17 The RPM Trust will enter into and fund all the other contracts necessary to deliver the new ICT system including Hosting, internet connectivity, telephony, antivirus, security, Office 365, software licencing, business continuity, backup and support. Whilst the consultant is working for the council they will advise the RPM Trust on what and how it should procure these contracts.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Reasons for preferring the option to contract with the former RPM Foundation were set out in the June 2019 TDC Committee report.

5 COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The ambition for the future governance of the RPM Trust is that it models co-operative working both with staff, such as through a staff forum or reference group, as well as with the unions, and with communities via a newly established Community Advisory Panel. The RPM already has an Access Advisory Group, its BME Heritage Network, LGBTQIA+ Network and Youth Engagement panel (Museum Collective) all working closely with the service in terms of co-production of programmes and also in their advisory capacity. The Community Advisory Panel would comprise some members of the existing groups and additional community representation. This role of the Community Advisory panel will be to advise on programming and developments and key future decisions to ensure that the interests and views of citizens are taken into account.

6. CONCLUSION

- 6.1 This report is an update, showing the steady and positive progress towards implementing the 'in principle' decision of the June TDC Committee to transfer the service to the RPM Trust. A fuller report will be made to the forthcoming P&R Committee on 10 October.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 A detailed five-year financial model has been developed to identify the likely financial implications of the proposed transfer of the RPM service to a charitable trust. Consistent with previous modelling reported to this Committee, the most up to date financial model suggests that there are favourable financial implications in the medium to long term from a transfer to trust compared to the service remaining under control of the council. A summary of the financial model has been provided at Appendix A. The financial model will continue to be developed and considered alongside representatives from the RPM Trust.
- 7.2 The financial modelling suggests that the net financial benefit of moving to a charitable trust would maximise future budget savings, however one-off funding to support initial setup and transition would be required in the short term. It should be noted that the short term additional funding is partly due to an increased annual financial contribution to the planned maintenance of the RPM estate. This additional funding would be required under both in-house and transfer to trust scenario to meet maintenance requirements identified in the condition surveys carried out.
- 7.3 There are various one-off costs associated to the due diligence, set up and implementation of the transfer of the RPM service. These costs are currently estimated to be in the region of £0.450m. To date, funding of £0.328m has been

secured towards these costs from Modernisation Funding (£0.299m), external grants (£0.025m) and revenue budgets (£0.004m). It is anticipated that the RPMF will fund an element of the shortfall, but it is possible that further funding may be required.

Finance Officer Consulted: Steven Bedford

Date: 04/09/19

Legal Implications:

- 7.4 The RPM Trust is company which is limited by guarantee. The Trust is in the process of becoming registered with the Charity Commission. Its members are currently its directors (known as its trustees). Once the Articles are amended the Council will also be a member of the company. The company will have a board of 16 trustees, of which 3 will be members of the Council. The Council cannot have greater representation than this without the company becoming 'a local authority influenced company' for the purpose of S68 of the Local Government and Housing Act 1989 which would have implications for the Council's accounting framework.
- 7.5 As set out above, the recommendation to P&R will be that the members who are nominated to the RPM Trust board are not members of TECC in order to avoid members who sit on TECC finding themselves in a position where they are unable to participate in decisions which this Committee makes relating to the RPM. If members of TECC were on the board they would have a prejudicial interest in any decision effecting the RPM Trust.
- 7.6 Members who are nominated to sit on the board will need to be aware that they will not be able to take part in decisions the RPM Trust board takes which relate to the RPM Trust's contract with the Council in order to comply with Charity Commission guidance.

The legal implications relating to the procurement and state aid risks were set out in the report to PRG committee in October 2018. Leading Counsel has advised and concluded that the risk that there is legal challenge to the Counsel directly awarding a contract (i.e. without undertaking a procurement) is low. He also confirmed that entering into a contract with a charitable trust will not amount to state aid.

- 7.7 The council is under an obligation when leasing its buildings to achieve the best consideration reasonably obtainable (s123 Local Government Act 1972). However the Secretary of State has issued a general consent: Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 which allows the Council to dispose of land for less than best consideration provided that the undervalue does not exceed £2m and the authority considers that the disposal will help it to secure promotion or improvement of the economic, social or environmental well-being of its area. Officers anticipate that the disposals of the buildings will be disposed of for an undervalue but it will not exceed £2m in each case. The report to P&R in October will set out in full the reasons why the disposals meet the test set out in the general consent.

Lawyer Consulted: Alice Rowland

Date: 17/09/2019

Equalities Implications:

- 7.8 An Equalities Impact Assessment is attached. This document will be regularly updated and a further iteration of it will be reported to P&R.

Sustainability Implications:

- 7.9 None – no impact on ongoing sustainability measures.

Any Other Significant Implications:

- 7.10 N/A

Crime & Disorder Implications:

- 7.11 None.

Risk and Opportunity Management Implications:

- 7.9 The Risk log includes the following:

- The risk that the financial model is not sustainable. See section 7 above. Work is ongoing to ensure Trustees and the council can have confidence in the plan, and the RPM Trust will commission an independent validation of the model.
- The risk that staff reject the proposals – this is mitigated by the commitments and undertakings made by the RPM Trust as outlined above, and the ongoing comms and engagement plan.
- Risk that Members do not give the proposals the support needed. This risk has been mitigated by ongoing communication with senior Members and through regular updates to Committee.
- Risk that the timetable is not met. The consequences of this risk are that the project incurs some additional cost as a result of delays. The critical path for the project is driven by the ICT work, and the timetable implications can be mitigated by working with the consultancy and the suppliers to ensure delivery on time. ICT will be project managed by the consultancy/supplier.

Public Health Implications:

- 7.10 None.

Corporate / Citywide Implications:

- 7.11 As in the report.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A: Summary Financial Model
2. Appendix B: Equalities Impact Assessment

Background Documents

None

Financial Model – summary

Table 1 - Charitable and Trading Activities					
	Year 1	Year 2	Year 3	Year 4	Year 5
	£'000	£'000	£'000	£'000	£'000
Employee Related	5,223	5,317	5,385	5,463	5,540
Premises Relates	612	697	651	660	669
Administration, Supplies and Services	1,232	1,223	1,217	1,211	1,204
Transport Related	36	36	36	36	36
Payment to Other Bodies	220	217	213	209	205
Borrowing repayment towards maintenance shortfall	40	40	40	40	40
Irrecoverable VAT	276	276	276	276	276
Total Expenditure	7,638	7,805	7,818	7,894	7,969
BHCC Contract Contribution	1,181	1,119	1,065	734	691
External Grants	1,210	1,210	1,210	1,210	1,210
Donations / Fundraising**	249	343	289	290	290
Income from Charity Activities	4,114	4,328	4,472	4,610	4,723
Other Trading Income	898	924	948	974	1,001
Total Income	7,651	7,924	7,985	7,819	7,915
Contribution to / (from) Unrestricted Reserves	13	119	167	-75	-54
Unrestricted Reserve Level b/f*	706	719	838	1,005	929
Unrestricted Reserve Level c/f	719	838	1,005	929	875
Unrestricted Reserve / Expenditure	9%	11%	13%	12%	11%
Total Reserves (excluding endowments)*	1,417	1,430	1,549	1,716	1,640
Unrestricted Reserve / Expenditure	19%	18%	20%	22%	21%
Comments					
*Estimated reserve levels reflect RPM Foundation reserve balances (excluding endowments) as at 31.03.2019, plus the level of restricted funds to be transferred from BHCC. Likely to change on transfer					
**Included additional funding required to meet maintenance shortfall as identified in Table 2					

Table 2 - Planned Maintenance Requirement					
	Year 1	Year 2	Year 3	Year 4	Year 5
	£'000	£'000	£'000	£'000	£'000
Planned Maintenance Requirement	1,440	614	578	578	578
Professional Service Fee	144	61	58	58	58
Term and other maintenance	134	134	134	134	134
Total Planned Maintenance Requirement	1,718	810	770	770	770
BHCC Contribution	713	727	742	742	742
BHCC Capital Receipt*	500	0	0	0	0
Borrowing	500	0	0	0	0
Additional Fundraising Requirement**	5	83	28	28	28
Planned Maintenance Funding	1,718	810	770	770	770
Comments					
*Redirect capital allocation for PR gardens to Museums roof (£0.500m) requires P&R approval					
**Required fundraising and reserves to fund gap. Additional funding included in table 1. Note that some existing restricted reserves and future donations could potentially contribute to the maintenance requirement if part of a specific project which has collections and/or audience related outcomes.					

Equalities Impact Assessment



Short Equality Impact and Outcome Assessment (EIA) Template - 2018

Title of EIA	Royal Pavilion and Museums – transfer to Trust	ID No.	EEC06
Team/Department	RPM, EEC. (Janita Bagshawe, Head of RPM, ext 2840)		
Focus of EIA	<p>Governance - The service is being transferred out of direct council control, on a 25 year contract, to a charitable Trust. The council is considering an offer from the existing RPM Foundation to run the service. The RPM Foundation is conducting a governance review to ensure that the future Trustees of the service reflect the diversity of the city, and recognise the importance of diversity in any future governance structure. This includes the development of a Community Advisory Panel (CAP) made up form representatives of RPM’s community groups such as the Access Advisory Group, Youth Forum, BME Heritage Network and LGBTQ Network. It is important to note that the Foundation is not currently the existing Board, it is the Fundraising body for RPM, and RPM does not hold Equalities data for the Foundation.</p> <p>Staff will transfer on their current terms and conditions, and the new employer will give assurances that the equalities protections for staff will continue. All existing staff signed up to the Local Government Pension Scheme (LGPS) will continue to access this with no change.</p> <p>Service users/customers No changes proposed. The service will take the opportunity of the move to Trust status to review how it monitors and build on its approach to equalities and inclusion, for its staff and its customers.</p> <p>Systems - The new ICT system will be compatible with equalities standards for accessibility. It will continue to record data that will enable the Trust to demonstrate its compliance with its equalities duties.</p>		

Assessment of overall impacts and any further recommendations

For clarity all disproportionate impacts on specific groups are highlighted in the single section below.

Overall impacts and notes:

Impact on Staff:

- The objective of the transfer is to secure a more sustainable future for the service and its staff in the longer term – based on the recommendations of Mike Woodward’s review in 2018. This review identifies feedback on the pros and cons of both moving to Trust and remaining with the status quo.
- Staff currently have access to council forums (women’s; Disabled; LGBT; BME) and have access to/represent recognised Unions. These issues are being addressed. Firstly, GMB and UNISON are represented at Board level at all stages of the move to Trust. Staff have been and will be involved at every stage using a co-operative approach, with staff/Trustees/managers working together. There will be staff representatives involved in recruiting new Trustees, and there will be an observer slot for staff on both the Board of Trustees and Leadership Team. There are and will continue to be regular staff briefings and an open door policy to the Head of Service and other managers. RPM has strong Union representation which will continue in the move the Trust. RPM already has a BME Heritage Network with strong links to the BME communities that can be easily expanded to involve more staff; RPM has an LGBTQ Network that already involves staff; RPM has an Access Advisory Group made up of disabled consultants that advise on access and equalities; RPM’s lead for Equalities and Health & Wellbeing will be exploring with staff what needs there may be regarding the setting up of forums and networks related to specific protected characteristics.
- It is anticipated that key employment policies will transfer – e.g. the use of casual contracts, volunteers, and equalities related policies and procedures. This piece of work is being led by the HR Work Stream.
- Pensions – All existing staff signed up to the Local Government Pension Scheme (LGPS) will continue to access this with no change, and a new scheme will be offered to new staff.

Impact on service users:

- RPM works to ensure that its services are responsive and accessible to a range of communities in the city through the implementation of its Community Engagement Strategy and Equalities Action Plan. No changes (e.g. to concessionary pricing) are proposed as part of this transfer to Trust and continuing compliance with the equalities duty will be incorporated into the contract, and monitored by council staff. Fees and charges proposals include a section on Equalities which considers the balance between income generation and access. A charity group rate is offered. Resident adults are offered half price admission at Preston Manor

and the Royal Pavilion and free admission at Brighton Museum. All resident children enjoy free admission at all sites. Brighton and Hove schools don't pay admission.. All students of the City's universities or higher education colleges are eligible for admission at Resident rate regardless of whether their residence is within the City. The Royal Pavilion has an Annual free day and Brighton Museum hosts monthly free community days. Those that access RPM via the community engagement programme do not incur entrance fees for the duration of their time working with us; e.g. the development of new galleries, specific projects such as Museum Mentors, youth engagement, early years, etc, therefore many of those priority groups are able to access RPM without incurring any cost. All volunteers have free entry to RPM sites, in line with Policy.

- To the extent that the transfer permits the Trust to raise additional funds, access to the buildings and the collection could be improved for all.

Governance:

- An independent review of the governance of the Trust is underway – the scope of this review includes equalities and diversity of the governance and the Trustee body. The review will cover Trustee recruitment and selection from an equalities perspective. Staff will be involved in the recruitment of new Trustees. Equality, Diversity & Inclusion will be led by the Trustees ensuring that agreed delivery plans and the Manifesto are embedded at all levels of the organisation. There will be a Trustee rep responsible specifically for Equality, Diversity and Inclusion, linking to the Arts Council's Creative Case for Diversity.
- A Community Advisory Panel (CAP) will be established to work alongside the Board of Trustees. The CAP will be made up form representatives of RPM's networks and groups established with local communities. This includes the BME Heritage Network, the LGBTQ Network, the Museum Collective (youth forum) and the Access Advisory Group (disabled consultants). This will ensure greater diversity in governance and decision making and a greater diversity in skills, knowledge and experience, particularly lived experience and 'grass roots' knowledge.
- In addition, the council retains responsibility for the management of the contract with the Trust, and through that, oversight of the Equalities Duty. Three councillors will serve on the governing Board.

ICT systems:

- New systems will largely be 'off-the shelf' products which already comply with international accessibility standards for the staff that will use them. There are no changes proposed to the information on staff and service users, so the Trust will continue to have the capability to monitor its compliance with its equalities duties.

Potential issues	Mitigating actions
-------------------------	---------------------------

- *Impact on staff*
- *Impact on service users*
- *Governance*

- *Staff reps invited to join the Board. Comms and Engagement Plan produced - ensures all staff can hold management to account and have their voice heard.*
- *No changes re proposed to the services, but equalities and inclusion will be written into the contract, and monitored.*
- *Governance – specific review, explicitly including a focus on diversity and inclusion, including the establishment of a Community Advisory Panel to ensure greater diversity, with reference to lived experience and grass roots knowledge.. 20% of Trustees will be elected members of the council.*

Actions planned

The Joint Project Board, chaired by the Exec Director of EEC, will review this short EIA summary as the contract is developed, and as the Governance arrangements are approved (including at Committee).

