

Subject:	RPM Trust		
Date of Meeting:	10 October 2019		
Report of:	Executive Director, Economy, Environment & Culture		
Contact Officer:	Name:	Janita Bagshawe	Tel: 01273 291646
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Ward(s) affected:	(All Wards);		

FOR GENERAL RELEASE

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1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 Council budgets are under severe pressure and with the requirement for ongoing savings, it is more important than ever to ensure our culture and heritage are supported with enough resources for future generations to enjoy.
- 1.2 The purpose of moving the Royal Pavilion & Museums service to the trust is to enable our museums services to be sustainable, resilient and able to deliver the current high standards for residents and visitors over the long term. We have a unique and highly-regarded museums service delivered by a dedicated professional team of people who are key to its future success.
- 1.3 Following an independent, detailed evaluation of the options, the Policy Resources and Growth Committee agreed in October 2018 to transfer the Royal Pavilion and Museums services to a standalone trust, on a 25 year contract. It was subsequently agreed at the Tourism, Development and Culture Committee (TDC) in June 2019 that the preferred route was to develop the trust out of the existing Royal Pavilion and Museums Foundation - a long-established and successful fundraising charity supporting the service. The Foundation has since changed its name to the Royal Pavilion and Museums Trust (RPM Trust).
- 1.4 The strong track record of the RPM Trust will provide a sound basis for building on the successes of our museums service and our internationally-recognised collections and buildings such as the Royal Pavilion. The Trust will be able to access new charitable income streams and operate outside of the constraints of annual local government budget setting.
- 1.5 This report covers the governance changes required for the Trust; updates on the work in relation to the agreements that need to be put in place between the council and the RPM Trust and notes that the key legal agreements will be brought back to this Committee in December.
- 1.6 Condition surveys of all the buildings included in the proposals have been completed. The survey of the Brighton Museum and Art Gallery highlighted

urgently needed work to the roof. This report therefore seeks reallocation of an existing RPM capital fund to support this work.

2. RECOMMENDATIONS:

- 2.1 That the Committee formally agrees the in principle decision of the Tourism, Development & Culture Committee in June 2019 that the Royal Pavilion & Museums service transfers to the Royal Pavilion & Museums Trust.
- 2.2 That the Committee notes the positive progress to date and that the final legal agreements between the council and the Trust will be brought to the December Policy & Resources Committee for approval.
- 2.3 That the Committee notes the governance arrangements, that Member nominations will be proposed via the December Policy and Resources Committee
- 2.4 That the Committee notes the financial model, including the anticipated council contributions and consequent short term draw on council reserves.
- 2.5 That the Committee notes the commitment to retain staff membership in the local government pension scheme (LGPS) at the time of transfer, and that discussions are continuing over the pensions proposals for other transferred and new staff.
- 2.6 That the committee notes the proposed commitments to staff made by the Trust;
- 2.7 That the Committee agrees that the Thompson Bequest, Royal Pavilion Renewal Fund, Brighton & Hove Natural History Society Reserve, Museums Objects Reserves and James Green Foundation Reserve are transferred to the RPM Trust on transfer of the management of the RPM as detailed in paragraph 3.9.1.
- 2.8 That the Committee notes that the intention is for the service to transfer by 1 April 2020.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The agreement by the TDC Committee to work with the RPM Trust was based on a range of criteria, including time, lifetime cost, risk, and fitness for purpose, compared to setting up a new Trust. It was clearly preferable given the higher set-up costs of a new trust; the potential duplication of having two charitable bodies; and the risk of losing the intangible benefits of the Foundations goodwill, expertise and national recognition.
- 3.2 The RPM Trust holds unrestricted and designated reserves of £0.706m as at 31 March 2019 as reported in the draft financial statements. These reserves, alongside an additional £0.213m of restricted reserves, could be available to invest in, or otherwise support, the new Trust.

3.3 RPM Trust Governance

3.3.1 At the Council's request the Trust has agreed to make the following changes:

- a) The Council will become a member of the charitable company. The terms of the Council's membership will mean it has a veto over changes to the charity's Articles and its name.
- b) Amending its Articles of Association will also allow the Council to be represented on the Board, while ensuring that the Charity remains independent.
- c) Ensuring appropriate skills and diversity on the trustee body, and building the management capacity of the Board.
- d) Establishing a subsidiary trading company, capable of transferring any trading profit over to the charity.

3.3.2 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 the Policy and Resources Committee who will delegate authority to an officer to attend the meeting and vote in accordance with its wishes.

3.4 Trustees

3.4.1 The Trust Board will consist of 16 trustees including three Members. The three political groups will be asked to nominate a member to sit on the board. If those members sit on the Tourism, Equality, Communities and Culture Committee (TECC) they may be unable to participate in committee decisions relating to the service (such as approving the annual service plan).

An induction process is being developed by the RPM Trust. The role description for Trustees is available in SharePoint.

3.4.2 The Members who are nominated to the Board will take up their positions on the date the service transfers to the Trust, when the Articles will be changed, and in the meantime, strong informal links will be established with the Board and stakeholders.

3.4.3 Following the independent audit of skills and knowledge of existing trustees, as part of the governance review, recruitment for new trustees and a new chair commenced in September. The opportunity has been promoted widely through a range of networks and contacts to ensure that the board would be diverse in membership. Council staff are involved in the interview/recruitment process. Interviews will be held in mid-November. The interview panel for the chair will include Nick Hibberd and the regional director of Arts Council England. The interview panel for the trustees will include Cllr Robins.

3.5 Four tests

3.5.1 The October 2018 Policy, Resources & Growth committee report set out the following four tests that the service would need to resolve before officers could be satisfied that the project could proceed to implementation:

3.5.2.1 *'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 Finance Working group has carefully and rigorously modelled the first five years of Trust operation (a summary is set out as Appendix 1). Trustees are having the model independently validated. Transferring the service to a charitable company has quantifiable short-term costs but gives potentially substantial financial advantages in the medium and longer term.

3.5.2.2 *'That the independent charity would need to have the leadership capacity, skills and appropriate structure to manage a museum service'.*

The RPM Trust's review of the proposed governance arrangements, and the steps being taken to implement them demonstrate how this test is to be satisfied. Actioning those proposals, including the necessary changes to the Articles of Association of the RPM Trust, is subject to the Committee's approval of this report. A sole-purpose charitable trust whose primary function is to deliver the RPM service gives the greatest focus on stewardship of the very significant heritage assets in Royal Pavilion & Museum's portfolio.

3.5.2.3 *'That stakeholders and funders (especially Arts Council England) need to have confidence in the arrangements'.*

Art's Council England (ACE) meets monthly with officers, and are supportive of governance options that fulfil the National Portfolio Organisation requirements, and when asked about using the existing charity i.e. the RPM Trust, ACE has said that with the appropriate governance changes to the organisation so that it mirrors other charitable trusts, and provided it can meet BHCC and ACE requirements, the existing charity could be developed so that it can deliver the service. The Charity Commission will also need to approve the proposed governance arrangements.

3.5.2.4 *'That any proposed trustees would need to be confident that the terms on which the service contract would be offered provide a viable model'.*

3.5.3 The RPM Trust's trustees are engaged with the work of the Joint Project Board which gives them the opportunity to raise concerns about the transition. They are also carrying out their own due diligence exercise so that they are confident that they understand all the costs and risks of the service and to ensure that they can enter into the arrangements with confidence that they will be able to deliver the service with the funding available.

3.6 **Due Diligence**

3.6.1 Trustees are running a due diligence exercise to be confident that they understand the costs and risks of the service and to ensure they can enter into the contract with confidence, and act in the best interests of the Trust. The process also helps both sides to focus on what formal legal documents are required to carry out the transfer.

3.6.2 This information ensures that Trustees are fulfilling their duties under charity law in proceeding with the proposed transfer in the best interests of the Trust. It also aims to enable BHCC and the RPM Trust to understand the risks and to have confidence in the arrangements. It also provides the finer detail of the

assets and liabilities to be transferred and enables the Trust's solicitors to determine what formal legal documents are required to carry out the transfer. The information (collated by officers) covers: budgets; property; contracts and service activities; procurement and state aid; fundraising; HR/Employees; insurance; intellectual property; website/social media; data protection; litigation and disputes; environment; health and safety; equalities; regulations and compliance.

3.7 Project Structure

3.7.1 RPM Trustees, council officers and the unions meet monthly as a Joint Project Board, chaired by the Director of Economy, Environment and Culture. The Board is working well, and is advised by five working groups: Finance; Property; HR; ICT; Legal. Below is a brief summary of their work:

3.8 Finance Working Group

3.8.1 The Finance working group aims to develop a financial model that is sustainable in the long term, that maximises the benefits of Trust status, and which gives the council and Trustees confidence in the financial viability of the contract. A summary of the Model is attached (Appendix 1). This has been presented to Directors through their Corporate Modernisation Delivery Board, and to RPM's existing Trustees, who are in the process of seeking independent validation for the model's viability. The model takes into account:

- Testing of income and other assumptions compared to actual activity to ensure that forecasts are robust and reflect the most up to date information;
- Anticipated one-off and ongoing set-up costs, including the use of and future level of reserves;
- Pension assumptions based on information provided by East Sussex Pension Fund. The model currently assumes that the RPM Trust will become a pensions admitted body on a closed scheme basis, ensuring that any employees who transfer to the RPM Trust remain LGPS active members
- The financial impact of reallocating capital receipts of £0.500m, supplemented by council borrowing of up to £0.500m, towards the cost of required building maintenance at Brighton Museum and Art Gallery (subject to P&R Committee approval in December);
- 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 the 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;

3.9 Staffing and HR

- 3.9.1 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 Project Board will be considering the options at its meeting on 1 October, and Trustees will also have an opportunity to discuss the options when they meet on 18 October.
- 3.9.2 When staff transfer pursuant to a TUPE transfer, their terms and conditions are protected by the TUPE regulations. This means that their terms and conditions cannot be changed unless there is an economic, technical or organisation reason (an ETO reason) for the change. The Trust has indicated that they will agree to a term in the service contract that says that they will not worsen terms and conditions even if there is an ETO reason which would allow them to otherwise change terms and conditions. The parties are currently considering the drafting of this clause.
- 3.9.3 The Trust is also considering whether this protection will apply to new staff so that a two tier workforce is avoided.
- 3.9.4 All opportunities are taken up to engage with staff on the transition. The communication and engagement plan is being revised with staff reps, to include the timetable for the more formal consultations that will be required.
- 3.9.5 The Council and the Trust are working closely together to ensure the transfer of the service proceeds as smoothly as possible. As part of the TUPE process, we will consult with staff.
- 3.9.6 Both parties will ensure that such consultations, collectively or individually, are as independent as possible. This will include a separate HR function for the Trust, independently managed by Trustees. Closer to the point of transfer there may also be benefit in having a joint meeting where managers and HR from both the Council and the Trust are present to discuss issues and answer questions from staff.
- 3.9.7 Current RPM managers will continue to engage with staff only in their capacity as managers employed by the Council.

3.10 Property

- 3.10.1 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.
- 3.10.2 A building maintenance strategy has been developed to set out where the various maintenance budgets sit now and then under the Trust. This has been agreed and aims to maximise 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 and annual programme of planned maintenance works will be agreed between the Trust and the council.

3.11 Legal work

3.11.1 The relationship between the Council and the Trust will be set out in a service contract. A contractual relationship (rather than a grant) has financial benefits for the Trust and also means that the Council can monitor the services provided and ensure that its assets are cared for and used to public benefit. The Council and the Trust have started to negotiate this document. The key terms are:

- the term of the contract will be 25 years with the possibility of a further 5 year extension
- both parties will be able to terminate the contract after 10 years and 20 years on 1 years notice
- the Council will set the 'Fee' which it will pay for the service every 5 years
- the Council will approve an annual service plan prepared by the Trust.

3.11.2 The terms on which the collection will be loaned to the trust are set out in a schedule to the service contract. There will also be a transfer agreement which will set out the terms on which the assets and staff will transfer.

3.11.3 The parties will need to put a back office services agreement in place to record the arrangements for the Council to provide services to the Trust for a period after the service transfers.

3.12 ICT systems & Information Governance

3.12.1 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).

3.12.2 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.

3.12.3 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.

3.13 Support Services

3.13.1 The RPM Trust will buy HR and Financial services from BHCC in the short term and if the services provided meet the future needs of the service this could be long term.

3.13.2 The Trust is procuring its own ICT support. For other support services, the Trust may, as for any other third party, approach the council for help with for example, procurement, parks and gardens, facilities management and so on.

3.14 Transfer of Reserves

3.14.1 The Committee are asked to consider the transfer of funds held in the Thompson Bequest, Royal Pavilion Renewal Fund, Brighton & Hove Natural History Society Reserve, Museums Objects Acquisitions Reserve and James Green Foundation Reserve to the RPM Trust on transfer of the management of the RPM. The purpose and balances of these funds at the time of preparing this report are detailed in the table below.

Reserve / Fund	Balance	Purpose
Museum object Acquisition reserve	£0.064	Retained for specified purpose, which includes the agreed wider use to support the transfer of museum objects and records to the Keep.
Royal Pavilion Renewals Fund	£0.083m	Used to fund projects or improvements within the Pavilion or Garden (mainly made up from income received from the ice rink and in accordance with English Heritage's conditions)
Jack Thompson Bequest- Hove	£0.184m	Restricted to use by Hove Museum for acquisitions and/or the care of its collections under terms outlined by the Art Fund in accordance with the terms of the bequest
James Green Foundation	£0.156m	Retain for specified purpose - to fund the Burmese collection
Brighton & Hove Natural History Society Reserve	£0.011m	Held for the specific purpose to maintain the assets of the Brighton & Hove Natural History Society which are held at the Booth Museum

3.15 Reallocation of capital funds from RP to BMAG

3.15.1 The Royal Pavilion Estate Capital Programme set out to redevelop and improve the Royal Pavilion Estate as a world class cultural and heritage site through capital improvement works which would significantly enhance the quality of the Estate's visitor offer and the heritage in its care, delivering a legacy of sustainability and resilience to safeguard its future.

3.15.2 In November 2017 a report *Royal Pavilion Estate Capital Project Phase 2* was presented to Policy Resource and Growth Committee to update on progress of

phase one works and outline the phase 2 and 3 works. Committee agreed an allocation of £0.5m as match funds for each the two projects which comprise phase 2 works: the Royal Pavilion Garden and the Royal Pavilion. The phase 3 works as outlined in the report includes refurbishment and some updated interpretation of Brighton Museum & Art Gallery, new interpretation and activity within Brighton Dome and creation of new learning facilities.

3.15.3 When the original plans for the capital improvements for the entire Royal Pavilion Estate were drawn up in 2014 they included the replacement of the main roof at Brighton Museum & Art Gallery (BMAG). This had not been undertaken during the 2002 major capital redevelopment. The roof is now in urgent need of replacement and it is recommended that this project is brought forward and that the fund of £0.5m allocated to the RP is reallocated to BMAG. Formal approval will be sought from Policy & Resources Committee to reallocate the capital receipt, supplemented by additional funding, following the completion of an updated condition survey. The reallocation will result in reduced funding being required for the planned maintenance of the sites, as the reallocation will provide match funding in order to fundraise for associated works.

3.15.4 The improvements to the Royal Pavilion will continue, as with the recent restoration of the Saloon, to ensure that it remains an internationally significant heritage attraction.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 The option of setting up a new charitable trust or using the existing RPM Foundation was considered by TDC, and the recommendation was agreed that in principle the Foundation would be the charity into which the governance of RPM transferred.

5 COMMUNITY ENGAGEMENT & CONSULTATION

5.1 Arts Council England as a major funder and stakeholder has been kept updated during the process, and monthly meetings take place between RPM managers and the Arts Council. 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. As applications for the next round of national portfolio organisation grants will commence in July 2020 it is important that the move to Trust to ensure this sustainable future has taken place prior to the commencement of the grant application process.

5.2 The GMB and UNISON Trade Unions attend the Joint Project Board to ensure that issues that relate to staff are considered. Union ballots last October showed the majority of staff were in favour of the move to Trust.

- 5.3 To support the service during 2019-20 the Arts Council requested the establishment of a Museums Advisory Group. Two reports were presented and agreed at TDC (January and March 2019) outlining the role and composition of the Advisory Group. These were agreed at TDC, and included for example, independent senior level expertise in relation to collections, historic buildings and programming.
- 5.4 As key stakeholders, the confidence of staff in the proposals is of key importance. Regular Communication updates are being provided to the Royal Pavilion & Museums staff as the project progresses and formal consultation with staff and trade unions under the TUPE regulations will take place during the next phase of the project.

6. CONCLUSION

- 6.1 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. It is recognised that there are greater opportunities to raise income in the charitable sector and therefore secure the long term sustainability of the city's heritage and museum assets and develop more services and programmes to ensure they continue to contribute to the city's priorities.
- 6.2 Trust status provides opportunities to increase income such as through gift aid on admissions donations, as well as through greater fundraising opportunities to protect the fabric of the buildings and heritage assets. This will help to offset reductions in council financial contributions. The ambition is for the service to support the delivery of key city priorities through more exhibitions and changes to displays as well as the completion of the Royal Pavilion Estate improvements to attract visitors to the sites, and therefore to the city, to support the visitor economy.

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, the latest 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 3, which includes comments on some of the key assumptions made. The financial model will continue to be developed and considered alongside representatives from the RPM Trust during the due diligence and independent validation processes.
- 7.2 The financial modelling suggests that the net financial benefit of moving to a charitable trust would maximise future budget savings to the council, 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 scenarios to meet maintenance requirements identified in the completed condition surveys. The anticipated impact on council budgets over the first five years of operation are provided in the table below:

Impact on Council Budgets					
	Year 1	Year 2	Year 3	Year 4	Year 5
	£'000	£'000	£'000	£'000	£'000
Contribution to Charitable Activities	1,181	1,119	1,065	734	691
Contribution to Planned Maintenance	713	727	742	742	742
Contribution to one-off Maintenance	1,000	0	0	0	0
Total Council Contributions	2,894	1,846	1,807	1,476	1,433
Funded From:					
Direct Service Revenue Budget	1,161	1,184	1,208	1,232	1,257
Planned Maintenance Budgets	481	491	500	510	521
BHCC Capital Receipt	500	0	0	0	0
Borrowing	500	0	0	0	0
Contributions (to)/from Reserves	252	171	99	(266)	(256)
Total Funding	2,894	1,846	1,807	1,476	1,522
Remaining Budget Deficit / (Surplus)	0	0	0	0	(89)

- 7.3 The table above identifies that savings will be achievable from year five once initial funding from reserves have been repaid. It is likely the annual savings after the initial five year funding period will increase as the RPM Trust becomes more financially independent. In addition to the financial implications in the table above, the transfer to RPM Trust will enable savings to be made by the council's various support services due to the Trust buying into these services, or reduced activity should the RPM Trust procure these services from elsewhere.
- 7.4 The table above includes one-off council contributions to fund roof works at Brighton Museums & Art Gallery. It is anticipated that this would be funded from a combination of £0.5m reallocated capital receipts and £0.5m council borrowing. Formal approval to allocate these capital funds will be sought from this Committee in December following the completion of an updated condition survey. The financial implications of this proposed funded has been included in both the anticipated impact to the council above, and the financial model summarised at appendix 3.
- 7.5 As commented on in the main body of the report, the financial model currently assumes that the RPM Trust will become a LGPS admitted body on a closed scheme basis. High level calculations comparing an open and closed scheme have been carried out to determine the longer term financial implications of both types of schemes based on information provided by the scheme actuaries and assumptions relating to inflation, employee attrition and employee numbers. It is estimated that over the five year period, there would be an adverse financial impact of between £0.080m and £0.160m if the RPM Trust were to become an admitted body on an open scheme basis, i.e. open to new entrants in the future. The financial impact increases each year as more staff would be expected to leave the pension scheme, with an estimated adverse financial impact of between £0.790m and £1.670m over a ten year period. The decision on which

type of scheme to implement could therefore materially affect the viability of the financial model on which the transfer depends.

- 7.6 High level modelling indicates that although the short term costs seem similar, over the length of the contract, the long term costs would be prohibitive. This decision affects the viability of the financial model on which the transfer depends.
- 7.7 The Committee are asked to consider the transfer of various funds to the RPM Trust on transfer of the management of the RPM as detailed in paragraph 3.9.1. The use of the amounts transferred by RPM Trust will be limited to the original purpose and terms of the various funds. The transfer will allow efficient and effective use of these funds managed by the RPM Trust.
- 7.8 The Head of Terms for the leases have been prepared in a way that protects the use of the council's heritage assets, and ensures these assets are maintained to an appropriate standard in the most cost effective way.
- 7.9 It should be noted that, in accordance with the proposed legal agreements, the council will act as funder of last resort should the RPM Trust become insolvent to ensure continuity of the service and to meet pension fund obligations. The terms of the various legal agreements and current due diligence and independent validation processes will ensure that financial risks are minimised, and termination clauses will be in place to mitigate against this risk.

Finance Officer Consulted: Steven Bedford

Date: 30/09/19

Legal Implications:

- 7.10 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 whom 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.
- 7.11 If members of TECC are nominated to the board they would have a prejudicial interest in any decision affecting the RPM Trust and would not therefore be able to participate in decisions TECC makes which relate to the Trust.
- 7.12 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.
- 7.13 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.

- 7.14 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. Updated valuations of the buildings will be reported to Policy and Resources in December. That report will also set out the reasons why the disposals meet the test set out in the general consent.
- 7.15 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 Charity Commission on the required changes.

Lawyer Consulted:

Alice Rowland

Date:30/09/2019

Equalities Implications:

- 7.16 An Equalities Impact Assessment has been completed, covering Governance; Staff; service users, and ICT systems. No changes are proposed to the service itself, but the project is an opportunity to review the RPM's equalities and inclusion policies and practices. The RPM Trust is committed to protecting the terms and conditions of staff. Staff are represented on the project Board. The ambition as outlined in paragraph x will be to set up a Community Panel to ensure that citizens are involved with key decisions.
- 7.17 Continuing compliance with the equalities duty will be incorporated into the contract, and monitored by council staff. The recent review and recruitment of Trustees as outlined in has ensured that there is a diversity of representation on the board. The contract with the Trust will ensure that the service delivers where applicable on the Council's priorities. In line with Arts Council goals, the service increasingly delivers programmes and services in collaboration with communities and citizens of protected characteristics.
- 7.19 No changes to concessionary pricing are proposed as part of this transfer to Trust, and 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.

7.20 Sustainability Implications:

The service will continue to work on improving its environmental sustainability which it reports on as part of its agreement with Arts Council.

SUPPORTING DOCUMENTATION

Appendix 1: Summary Service Business Plan

Documents in Members' Rooms

1. Recruitment information for Trustees and the Chair of the RPM Trust.
2. MoU between the Council and the Royal Pavilion and Museums Foundation

Summary of Financial Model

Charitable and Trading Activities

The table below shows a high level five-year financial business plan for the proposed charitable trust. The figures are based on various assumptions and may change as part of the current due diligence and independent validation process.

Charitable and Trading Activities					
	Year 1	Year 2	Year 3	Year 4	Year 5
	£'000	£'000	£'000	£'000	£'000
Employee Related	5,228	5,323	5,391	5,469	5,546
Premises Related	612	696	651	659	668
Administration, Supplies and Services	1,232	1,223	1,217	1,211	1,204
Transport Related	36	36	36	36	36
Payments to Other Bodies	220	217	213	209	205
Borrowing Repayment	40	40	40	40	40
Irrecoverable VAT	276	276	276	276	276
Total Expenditure	7,644	7,811	7,824	7,900	7,975
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	243	261	261	262	263
Income from Charitable Activities	4,114	4,328	4,473	4,611	4,722
Other Trading Income	897	924	948	974	1,001
Total Income	7,645	7,842	7,957	7,791	7,887
Contribution to / (from) Unrestricted Reserves	1	31	133	-109	-88
Unrestricted Reserve Level b/f	706	707	738	871	762
Unrestricted Reserve Level c/f	707	738	871	762	674
Unrestricted Reserve / Expenditure	9%	9%	11%	10%	8%
Total Reserves (excluding endowments)	1,418	1,449	1,582	1,473	1,385
Total Reserves / Expenditure	19%	18%	20%	19%	17%

Employee Related costs based on service council budgets and inflation assumptions. This also assumes that the RPM Trust will become a pensions admitted body on a closed scheme basis.

Premises Related costs based on existing service budgets, financial benefit of Trust status due to business rate relief and assumptions of below inflation price increases due to anticipated procurement efficiencies.

Administration, Supplies and Services costs based on existing service budgets with assumptions made for increased investment in product and marketing, costs of support service and governance requirements, and impact of cost of goods sold corresponding to income assumptions.

Payments to Other Bodies relate to payments to other bodies funded by Arts Council England and ring-fenced for a specific purpose.

Borrowing Repayment relates to estimated £0.5m funding required towards the roof works at Brighton Museum & Art Gallery.

Irrecoverable VAT is based on a model developed and shared with external consultants taking into account the various assumptions in the financial model. The figure also includes anticipated contributions to planned maintenance the Trust would be expected to make identified below. The level of irrecoverable VAT payable is subject to agreement with HRMC on an apportionment methodology, so this figure can only be indicative at this stage.

The **BHCC Contract Contributions** reflects the level of contributions previous reported to Policy, Resources & Growth Committee based on previous modelling.

External Grants relate to existing grants from Arts Council England and are assumed to continue at existing levels over the five year period. Where there is corresponding restricted expenditure, this has been included in the expenditure headings.

Donations / Fundraising is based on current levels plus additional contributions likely under trust status.

Income from Charitable Activities includes charges and contributions allowed under charitable activities such as admissions, gift aid and sales of audio guides and guidebooks. Admission and gift aid forecasts are based on existing visitors numbers and type and likely changes investment in marketing and implementation of more responsive charging policies, with prudent estimates, particularly in year one to allow for period of transition.

Other Trading income includes retail income and venue hire. Estimates for increase in income due to modelled investment in product and marketing.

Assumptions made in the five year financial business plan are considered to be prudent and therefore low risk to the sustainability of a charitable trust. Sensitivity of assumptions has been carried out to determine how changes in assumptions could impact on the affordability of the financial business plan.

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	135	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

Reserves are shown as over the five year period to be used as mitigation against cash flow and unforeseen expenditure. The opening reserves balances are based on RPM Trust balances as at 31 March 2019, and planned contributions of funds from the council on transfer as detailed in this report, and may therefore change by the time of transfer.

Planned Maintenance

The table below identifies the estate planned maintenance requirement. This is in addition to the costs identified in the five year financial business model above.

Planned Maintenance Requirement is the required cost of maintenance based on condition surveys and / or quinquennial reviews of all buildings to be transferred to the charitable trust.

Professional Service Fee is the anticipated costs to instruct an external professional to plan, procure and instruct the required works. This is based on 10% of the value of works and based on the current council model.

Term and other Maintenance are other annual maintenance requirements not included in the figures above. It should be noted that responsive repairs and grounds Maintenance are included as recurring costs in the five-year charitable and trading activity cost in the business model above.

The **BHCC Contribution** to Planned Maintenance reflects the level of contributions agreed based on previous modelling.

There is an identified annual maintenance funding need of £4.838m over five years, with identified B&HCC contributions of £3.666m, resulting in a funding gap of £1.172m over the five year period. In reality, all annual planned maintenance programmes need to be robustly prioritised and an element of what sits as required maintenance in year one may transfer to year two, and so on. The Trust must aim to close the gap to a more sustainable level as it develops and will have the ability to fundraise for specific capital projects to support the core maintenance budget contribution. The cost in year 1 is particularly high as this includes urgent works required to the Brighton Museum & Art Gallery roof. This could potentially be treated as a separate capital requirement and other funding options have been considered to reduce the annual maintenance shortfall. It is anticipated to fund these urgent works from a combination of capital receipts and council borrowing as detailed in the main body of the report.

