

Subject:	Royal Pavilion and Museums Service – Transfer Financial Update
Date of Meeting:	30 July 2020
Report of:	Executive Director of Economy, Environment & Culture
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Ward(s) affected:	All

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that information required to update the financial model could not be confirmed and was unavailable in sufficient time to comply with the normal timetable for publication.

1 PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report updates Members on the transfer of the Royal Pavilion and Museums service (RPM) to the Royal Pavilion and Museums Trust (RPMT). The transfer was to take place on 1st April, and contracts were ready for signature, but following the lockdown caused by the Covid-19 pandemic, the date was postponed until 1st October 2020.
- 1.2 The report sets out the financial and contractual issues arising out of the postponement. It outlines the steps the council proposes to take to support the financial position of RPMT, should the Trustees agree to the transfer. The council will provide ongoing support to RPMT, for example with external funding bids, as well as through central services such as finance management and HR, which enables the Trust to mature over time. After the museums service transfers, the council and the Trust will continue to collaborate closely to serve the best interests of the city. The council recognises the importance of the assets under the care of the Trust.
- 1.3 The report does not reconsider the principle of the transfer itself – the current situation serves to emphasise that the transfer to Trust at this time remains the best chance of securing the financial future of the service and its sustainability in the long-term.
- 1.4 The museums are now gradually re-opening following closure in March. This is covered by a separate Recovery Plan which is also attached for information as Appendix 2. The Recovery Plan is a live document and is being updated in line with changes in Government guidance.

2 RECOMMENDATIONS:

That the Committee:

- 2.1 Notes that the RPM will transfer to RPMT on 1st October, subject to agreement between the council and the Trustees on the recovery package outlined in this report.
- 2.2 Grants delegated authority to the Executive Director Economy, Environment & Culture and Executive Lead Strategy Governance, & Law to offer RPMT a recovery package and agree the terms of legal agreement necessary to implement the measures outlined.
- 2.3 Grants delegated authority to the Executive Director, Environment & Culture and the Chief Finance Officer to determine the repayment terms of the proposed cashflow facility, if drawn down, up to a maximum period of 10 years.
- 2.4 Directs that the delegation at 2.3 above shall be subject to the requirement to consult Group Leaders prior to agreeing any measures which are not outlined in this report.
- 2.5 Notes that if RPMT and council officers are unable to reach agreement on a recovery package to enable transfer on 1st October, a further report will be brought to this committee.
- 2.6 Notes that the financial model of RPMT will be reviewed annually at the beginning of each year. The financial position will be kept under continuous review by the council and the Trust during the Covid-19 recovery period.

3 CONTEXT/ BACKGROUND INFORMATION

3.1 Transfer of the Royal Pavilion and Museums to Trust

- 3.1.1 In December 2019 Policy & Resources Committee (P&R) agreed to transfer the Royal Pavilion and Museums to Trust from 1st April 2020 for a period of twenty-five years. In consultation with Members and Trustees, in March 2020 the P&R Committee agreed to postpone the transfer to 1st October 2020 following the impact of Covid-19 on the service.
- 3.1.2 The Joint Project Board (officers, Trustees and trade union representatives) has continued to meet regularly, as has RPMT. The council has applied for government funding, through the furlough scheme (successfully) and through the DCMS scheme for assets in the National Portfolio (unsuccessfully).
- 3.1.3 The appointment of a Finance Director for RPMT was postponed. Trustees have interviewed and identified a preferred candidate for the post of RPMT chief executive officer. This appointment is subject to the transfer of the museums service.

3.2 Impact of closure on the financial position of the Trust

- 3.2.1 Visitor numbers will not recover to normal levels by 1st October. For RPMT, this could lead to a financial loss of between £0.700m and £1.0m during the first six

months following transfer. The estimate of loss is based on the following assumptions:

- The phased reopening of museums and a very gradual return of visitors to 50% of normal levels by March 2021;
- The council's service fee, Arts Council and NPO grant values are maintained;
- Corresponding reductions in expenditure include casual staff/non-contracted overtime; stock replenishment; maintenance and utilities; limited event/publicity costs; an impact on irrecoverable VAT and business rates waivers.
- There are no changes to contracted staffing levels throughout.
- No additional sources of central government funding are assumed.

3.2.2 Key losses this year to date are in group bookings from overseas visitors, from weddings and from events. Estimated visitor numbers are prudent and assume that current restrictions will extend across 2020/21, so any further easing will have a positive impact on the forecast. Equally, RPMT will seek to control costs. Therefore the assumptions in 3.2.1 above that costs would remain essentially the same after transfer are cautious and provide a significant financial buffer. The reliance on overseas group bookings creates uncertainty over income for 2021/22 and 2022/23.

3.3 Recovery package from the Council

3.3.1 Trustees are not challenging the Financial Model previously agreed. They are seeking the following to support the Trust's finances in light of the pandemic's impact following transfer:

- For 2020/21, a service fee of £1.3m from 1st October;
- An additional service fee of £3.7 million over 2021/22 and 2022/23 to cover any shortfalls which may lead the Trust into a deficit position;
- Shop stock (valued at £0.240m) transferred at nil value;
- The additional costs of the pay award for 2020/21;
- Cultural reserve balances of £0.500m previously agreed for transfer;
- An option to hand the assets back to the council if Covid-19 makes the operation of the Trust unsustainable.

3.3.2 Previously the council had agreed a service fee of £1.181m for the first year after the transfer, expected to be from 1st April 2020. The council's current net budget for the museums service is £1.300m and the Trust are requesting this grant value in full for the remaining six months of operation for the 2020/21 year. This is to cover the shortfall resulting from reduced visitor numbers and the loss of group bookings. This request also recognises seasonal variation because in a normal year the service would have built up at least 65% of its revenues from visitors by 1st October. Without recognising this variation, the Trust will not be able to balance the finances of the operation in the winter months.

3.3.3 Had the transfer proceeded as planned in April, after this year the service fee of £1.181m would have gradually reduced over the first five-year period of the contract to £0.691m by 2024/25. Each year the service fee is subject to negotiation with the council, providing an opportunity in future years to consider any further impacts of Covid-19 on earned income or on fundraising.

3.3.4 The council's net budget (excluding premises) for the service as it currently stands is £1.300m, and because the service is now transferring part way through an unprecedented year, it is reasonable to start from this figure in place of the original fee of £1.181m.

3.3.5 Assuming amounts for inflationary uplifts (e.g. 2% inflation for 2020/21) in each year, this new starting point would produce the following service fee over the next 5 years and six months. 2020/21 is referred to as Year 0 below:

Year 0:	£1.300m	(i.e. 2020/21 – full annual contribution for only 6 months operation)
Year 1:	£1.270m	(i.e. 2021/22)
Year 2:	£1.208m	
Year 3:	£1.154m	
Year 4:	£0.823m	
Year 5:	£0.780m	

3.3.6 Over the full period, the total cash increase provided to RPMT for revised inflation assumptions would be £0.445m over the period.

3.3.7 The shop stock will transfer to (and form part of the assets of) a subsidiary trading arm. RPMT have asked the council to transfer those assets for nil value.

3.3.8 Trustees are under a duty to ensure they act in the best interests of the Trust, and the council must ensure that the service is financially viable on transfer. Officers have therefore identified a range of options to support the Trustees in addressing the funding gap in 2020/21 and to support the following two years of operation. These options are:

- The council pays the whole of the service fee up-front to provide initial liquidity, as requested. This includes the increase of £119,000 in the service fee as outlined above (from £1.181m to £1.300m) and provides an additional six months of service fee support to RPMT. This totals £0.709m extra for 2020/21;
- To increase the approved cash flow facility (agreed by P&R Committee in December 2019) from £0.500m to up to £4.0m for three years of operation (i.e. between October 2020 and March 2024) which, if drawn down, will be repayable over a period to be determined by the Executive Director, Environment & Culture and the Chief Finance Officer up to a maximum period of 10 years;
- Commitment to further consider the service fee for 2021/22 and 2022/23 if RPMT is unable to secure additional external funding.
- Transfer of council-held cultural reserve balances previously approved by Committee to give an initial increase in working capital (approx. £0.500m) Note: the reserve balances are earmarked for specific purposes and would need to be replenished on terms determined by the Trust;
- Waiving rent payable to the council for 4-5 Pavilion Buildings for a quarter of a year (£0.022m per annum);
- Provide for the cost of the pay award for 2020/21 if the pay award is agreed after the transfer date (estimated to be in the region of £0.050m);
- Consider options for transferring the Royal Pavilion shop stock, valued at £0.240m, to support the Trust's cash flow;

- 3.3.9 At their Trust Board meeting on 17th July, Trustees indicated that they are unlikely to accept the transfer of the service from 1st October 2020 without additional service fees for the financial years 2021/22 and 2022/23. Based on the projected losses in 2020/21 for the service, the Trustees are concerned they could be facing further losses in the following two financial years, until visitor numbers recover fully. This is particularly true because of the loss of international group bookings, which makes up so much of the annual income base at the Pavilion. Although this could be potentially be offset to some extent by a ‘staycation’ factor, their worry is that RPMT would not be a viable “going concern” at the time of transfer. RPMT is currently revising its balance sheet and Profit & Loss Account.
- 3.3.10 Whether or not the original budgeted sums are sufficient to offset the negative cash flow position, they do not provide more than short term support because, for example, the cultural reserve balances are earmarked for specific purposes so would need to be replenished albeit this could potentially be over an extended time period.
- 3.3.11 Further financial measures would therefore need to be offered to ensure the Trust maintains liquidity beyond 31st March 2021. The additional cash sums above go some way to meeting that need but offering all the liquidity in the form of additional service fees or grants is not preferred over a cashflow facility because it immediately diminishes the chance of the Trust successfully bidding for and securing additional resources from other funders. For example, in common with other local authorities, the council has been unable to attract government funding, through the arts council, for its RPM losses, despite the international status of its assets. This is in contrast to Brighton Dome and Festival, for example, who recently received almost £0.5m in emergency funding. The arts council will shortly be inviting applications for recently announced further government funding. They recently acknowledged that RPMT will need the backing of public money:
- “Arts Council England fully supports the move of the Royal Pavilion and Museums Brighton & Hove to an Independent Trust. We believe this will be for the long-term wellbeing of the service and allow it to maximise its opportunities while continuing to deliver value and benefit to the people of Brighton & Hove. However, Arts Council recognises the particular circumstances brought about by the current COVID pandemic that will require in the short-term a greater reliance on public resources”.
- 3.3.12 Additional service fees from the council also undermine the Trust’s entrepreneurial approach to the service and is a blunt instrument at a time when the Trust’s financial position may be in flux. However, if RPMT are unsuccessful in securing extra funds from the Arts Council, the council will further consider re-visiting the service fee arrangement for 2021/22 and 2022/23.
- 3.3.13 The council has previously agreed to offer RPMT some of the options outlined in 3.3.8 above. However, it should be noted that the council is expected to be able to mitigate in excess of £0.500m of this additional cost through additional government grant funding in relation to compensation for the loss of Sales, Fees & Charges income as announced on 2 July 2020.

3.3.14 The proposal to offer a longer term (£4.0m) cash flow facility is consistent with the approach that the council takes to managing its own finances and the maximum extended (10 year) repayment period is intended to allow the Trust time and flexibility to smooth out the impact of any unforeseen events on its operation.

3.3.15 If the council supports the Trust via some, or all, of the options outlined above, it will ask that the Trust commits to the following:

- To operate an Open Book arrangement with the council, agreeing to monthly reviews for the period October 2020 to March 2021 and quarterly thereafter. In particular, the council will wish to understand any additional funding support secured and to understand the Trust's efforts to attract alternative business and/or control and minimise costs while operations remain at below full capacity;
- To agree with the council a set of conditions under which the option to draw down some or all of the £4.0m cash flow facility would be triggered;
- To agree to an annual review of the Trust's financial position for the duration of any loan period.

3.4 Cash flow facility

3.4.1 If all of these measures were applied as estimated above in para 3.3.8, the total benefit to RPMT would be an effective £1.021m additional cash injection over and above the normal six months (1st October to 31st March) of service fee, a cultural reserve balance transfer in the region of £0.500m and a cash flow facility of £4.0m available for drawdown for up to three years. Inflationary uplifts to the service fee will provide additional funding of £0.445m over the first five years. The repayment terms of the cash flow facility, if drawn down, would be agreed at the time of application and may be subject to a level of interest charge.

3.4.2 Given the uncertainty over expected income, and opportunities for savings or additional income to be secured by RPMT, the council and the Trust would meet monthly on an open book basis to look at the cashflow of the business and assess, on the evidence, the need to draw down against the cashflow facility. Procedures are already set out in the contract management arrangements, although for quarterly meetings.

3.4.3 The council has also offered greater flexibility to RPMT over the opening hours for each site, so that it can control its costs more effectively during the Covid-19 pandemic.

3.4.4 The council recognises that Trustees may seek protection for themselves given the uncertainties, and while it is unable to offer any personal indemnity to Trustees, it is willing (subject to future committee approval) to negotiate a further termination clause which would allow the Trust to terminate the contract and hand the service back to the council if it was in financial distress beyond all reasonable amendment.

3.4.5 As normal for trading operations, there are state aid considerations which are relevant to the package that it is proposed the council offers to the Trust. These are not expected to present any significant risks and the Legal Implications are dealt with below.

- 3.4.6 Despite the apparent cost, the transfer remains better value for money than the alternative, which has been rehearsed in a number of previous reports. If the service does not transfer it will be deprived of the long-term financial opportunities that Trustee management would bring, together with any funding opportunities available to independent cultural organisations in the coming months and years. All of the costs and cash flow implications identified in the proposed financial package will be applicable to the council if it retains the museums service. Restrictions on the council's ability to attract funding support or donations and consequently its reduced ability to develop and maximise alternative trading options are likely to increase losses if the service is not transferred.
- 3.4.7 If the financial package above is agreed, this includes a cashflow facility of up to £4.0m repayable over a time period to be agreed, up to a maximum of 10 years. The council holds a Working Balance of £9m and Earmarked Reserves of approximately £41m. These are all held for specified purposes or against identified commitments or risks. However, it should be noted that the council is currently reporting a potential in-year General Fund deficit of over £20m due to the impact of the pandemic. This deficit may also need to be managed through the short-term use of reserves and balances and repaid over time. The offer of the cashflow facility to the RPM, if drawn down, may therefore add to the demands on reserves and balances and may reduce the council's flexibility to manage other potential risks.

3.5 Next steps

- 3.5.1 Should the Committee accept these recommendations, the Trust's Board will be considering their position on the offer, with their own advisers, at a Board meeting on 12th August.
- 3.5.2 If the Trust accepts the offer, contracts will be redrafted accordingly, and the transfer will proceed as originally planned. The Annual Service Plan will be amended and approved by the Tourism, Equalities, Environment, Communities & Culture Committee prior to the transfer.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Consideration has been given to delaying the transfer of the service to 1st April 2021. This risks losing all of the momentum built up over months and years of careful preparation. It also incurs additional significant costs in supporting dual IT systems (as the service was caught mid-switchover), and significant additional legal costs in redrafting. Trustees would also be left without assets to manage for a further six months.
- 4.2 There are no grounds at this time for cancelling the transfer altogether – the contract is for 25 years and makes provision for uncertainty.
- 4.3 Further uncertainty over the future governance of RPM will also potentially adversely impact the business operation for the remainder of the year and beyond. The next six months are business critical for the operation which, like all services that are heavily reliant on earned income, must adapt its operation significantly to

remain competitive within a significantly changed market. This is not only in terms of visitor expectations, but across all key income generating areas such as weddings, corporate events, catering and retail.

- 4.4 It is important to acknowledge the difficult position the service and its staff would face if the transfer did not proceed on 1st October. The purpose of the transfer is to secure a more sustainable future, and given the significant financial constraints facing the council, the RPM may be required to make budget savings if the service remains within the authority.

5 COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Joint Project Board meetings between council officers, Trustees and trade unions have continued following the postponement of transfer. Human Resources for RPMT and for the council have worked closely with staff over furlough arrangements and the re-opening services.
- 5.2 Public and staff expectations around safety have been central to the re-opening plans, alongside the formal risk assessment process.
- 5.3 Engagement with staff and trade unions under the TUPE regulations will continue to take place in the lead up to the transfer on 1 October.
- 5.4 A number of the activities in the Annual Service Plan 2020/21 continue to be designed and delivered in collaboration with community groups and local residents.
- 5.5 Online engagement is taking place with community groups during lockdown to produce online content. The service has reviewed and adapted its support for communities to reflect the needs, restrictions and opportunities of Covid-19. Work in 2019 with LGBTQA communities on the culminated in the Queer the Pier exhibition which opened 11 February 2020.
- 5.6 RPM continues to support and collaborate with the Heritage Network, Youth Collective, and the access advisory group Teacher Ambassadors.

6 CONCLUSION

- 6.1 Significant time and expense went into preparing for the transfer of the Royal Pavilion and Museums to Trust on 1st April 2020. The council is ready for the transfer on 1st October and previously agreed arrangements remain intact.
- 6.2 In these exceptional circumstances, RPMT is seeking additional financial support to cover the loss of income as a result of the Covid-19 restrictions on visitor numbers combined with the loss of group bookings.
- 6.3 Trust status continues to provide 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.

7 FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The financial implications are contained within the body of the report.

Finance Officer Consulted: Jill Fisher

Date: 22 July 2020

Legal Implications:

- 7.2 There are potential state aid implications of the recovery package outlined above. In particular, loans (cash flow facilities) which are not provided on commercial rates will be carefully considered to ensure they comply with state aid legislation.
- 7.3 The Services Contract will need to be amended to reflect the fact that not all the museums will be open on the 1 October. The drafting relating to minimum opening hours will need to be discussed and agreed. It may also be necessary to agree variations to the termination clauses to enable the Trust to 'hand back' the service, buildings and collection if they are in financial difficulty. There may need to be changes to the lease for 4-5 Pavilion Buildings.

Lawyer Consulted:

Alice Rowland

Date: 22/7/20

Equalities Implications:

- 7.4 An Equalities Impact Assessment has already been reported to Committee. This report does not contain material changes affecting that Assessment.

Sustainability Implications:

- 7.5 None arising from this report.

Brexit Implications:

- 7.6 None arising from this report.

Risk and Opportunity Management Implications:

- 7.7 If the museums service does not transfer to RPMT on 1st October, another opportunity will be lost for the service to benefit from government funding open only to independent organisations. The purpose of the transfer is to secure a more sustainable future for the Royal Pavilion, the Brighton Museum and Art Gallery, Hove Museum and Art Gallery, Preston Manor and the Booth Museum. With major constraints on council funding, this service is likely to face further budget savings.

SUPPORTING DOCUMENTATION

Appendices:

1. Financial Model
2. Recovery Plan for re-opening of sites

Background Documents

1. December 2019 Report to Policy & Resources Committee