

RUSSELL-COTES ART GALLERY & MUSEUM



Report subject	Russell-Cotes Art Gallery & Museum Governance Update
Meeting date	22 January 2020
Status	Public Report
Executive summary	<p>The Russell-Cotes Art Gallery & Museum Management Committee considered the long-term future of the museum on 29th March 2019 to address current governance arrangements and on-going budget reductions.</p> <p>Current governance does not allow for the separation of roles and responsibilities required by Charitable Status or for the range of external input identified to help to museum thrive. Meanwhile, the lack of financial transparency hampers external fundraising.</p> <p>The Committee agreed the museum would be best served by moving to full charitable trust status. It recognised that the complexities of achieving this required further review before a commitment could be made and a business case developed for final decision by BCP Council Cabinet.</p> <p>In July 2019, Capital & Transformation Board agreed to provide officer support for further investigations into externalisation, as requested by the Management Committee.</p> <p>This report outlines progress to date in preparation for a full Business Case to be agreed and presented to Cabinet later in the year.</p>
Recommendations	<p>It is RECOMMENDED that the Management Committee:</p> <ul style="list-style-type: none"> a) notes the progress on the development of the business case to date. b) Agrees to meet to review and approve the business case when it is finalised, for submission to Cabinet.
Reason for recommendations	Externalisation remains the preferred option but there is still work to be done to fully form the business case. The

Management Committee is asked to approve the report before submission to Cabinet for approval.

Portfolio Holder(s):	Councillor Mark Howell, Portfolio Holder for Culture and Regeneration
Corporate Director	Bill Cotton, Corporate Director Regeneration & Economy
Contributors	Chris Saunders, Director, Culture and Destination Sarah Newman, Museum Manager
Wards	N/a
Classification	For Decision

1. Background

- a. At their meeting on 29 March 2019, the Russell-Cotes Art Gallery & Museum Management Committee considered full reports into Governance Options and Business Planning, compiled by Focus Consultants and funded by HLF, outlining options for the long-term future of the museum in the context of the current governance arrangements which are no longer fit for purpose and on-going budget reductions.

- b. The Committee agreed the museum would be best served by moving to full trust status, allowing the museum to:
 - Better fulfil its long-term strategic direction and potential to deliver the charitable objectives
 - Be in a better position to maximise the potential to generate income from fundraising and commercial activities to support the charity
 - Provide resilient, sustainable and appropriate organisational support.

- c. The Committee recognises the complexities of achieving full trust status requires further examination and testing before a commitment can be made and that the final decision should lie with BCP Council Cabinet.

- d. It recommended that BCP Council undertake additional research and analysis on the optimum legal frameworks, VAT, personnel issues, etc which can then be developed into a full business case.

- e. In July 2019, Capital/Transformation Board agreed to provide officer support for further investigations into externalization, as requested by the Management Committee. In November an internal Project Board was convened with representatives from Finance, HR, Legal, Project Management, Building Services providing expertise and resource for the process. These teams are looking at the implications for the Museum and the Council of moving to full trust status including VAT, audit, accounts, TUPE process and pensions liabilities, Building Services (statutory requirements and on-going maintenance costs), Insurance and ICT.
- f. Some external consultancy has also been commissioned and discussions with external providers and independent museums and charities has contributed to the development of an outline business plan for an independent trust and the case for independence.

2. Progress and Interim Findings

- a. A full Business Case is being prepared by museum staff with support from BCP council officers and external consultants to outline the benefits and impact of the Russell-Cotes moving to full independent trust status.
- b. Emerging key principals include:
 - i. The Russell-Cotes moves to full independence on 1st April 2021 but retains a close relationship with BCP Council in recognition of its unique and significant role as the flagship heritage attraction of Bournemouth and its unique historic connection with the Council since 1907.

Governance

- ii. The Russell-Cotes becomes a foundation charitable incorporated organisation (CIO), retaining its charitable objectives, enshrined in the 1908 Deed of Trust, of delivering an 'art gallery for the people of Bournemouth' with responsibility and ownership of the Russell-Cotes collection and building.
- iii. The CIO would be fully independent of BCP Council but the Council would have formal representation on the Board of Trustees.
- iv. The house and collection would be held by the new CIO, but in the case of financial failure would be returned in trust to BCP Council.

Business Plan

- v. A Business Plan is developed to demonstrate that the CIO is operationally viable. This Business Plan fully articulates the impact and cost of moving to an independent status and taking on the

organisational functions currently delivered by BCP Council (including pay roll, pension costs, financial accounting, VAT, building maintenance liabilities, cash flow etc).

- vi. There would be a transition period, as services move from the Council to the independent organisation in a phased approach. Complex areas such as ICT are likely to remain with the Council for some time (on a contractual basis,) and it is possible that the new organisation may decide to procure some services from BCP Council in the long term.

Building Maintenance

- vii. The ongoing maintenance of the building is likely to be a major issue. Investigations are underway into the likely costs and liabilities around statutory costs, on-going maintenance budget and long-term investment needed in the fabric of the building.

Staff

- viii. Any change would provide appropriate protection for existing staff and their pensions and employment rights and new employment arrangements. It is recommended that revised terms and conditions are developed for new starters post transfer.

Pensions

- ix. An actuarial review of staff has been commissioned as a starting point to understand the additional pension costs of independence. Admitted body status to the Dorset County Pension Fund will be required to safeguard the pension arrangements for existing staff and it is likely that additional pension costs will be a negative part of the business case for the transfer. The level will only be known once the actuarial report has been received. It is recommended that revised pension arrangements are developed for new starters post transfer

VAT

- x. The Finance team are looking at the implications of separating Russell-Cotes from the Council for VAT purposes
- xi. Consideration is given to providing a reasonable reserve or endowment to enable the Russell-Cotes to have a necessary level of financial security.

BCP Council

- xii. BCP Council would be asked to commit to ongoing financial and organisational support in the form of a renewable 5 year grant.

- xiii. In addition, BCP Council will be asked to give consideration to providing one-off or long term financial and/or organisational support needed in the short or long-term to enable the Museum to address significant issues such as Pensions Liabilities, Building Maintenance backlog and financial reserves, depending on the outcomes of the detailed reports commissioned and in line with support given to other arms-length organisations.

3. Next Steps

- a. A business case will be formed for discussion, review and approval by the Management Committee for submission to Cabinet.
- b. Assuming permission is granted by BCP Council, the Russell-Cotes will seek funding externally to support the transition costs for project management, the fees for the development of the legal contracts, the cost of establishing new financial and organisational systems, governance support for the new Board and rebranding in preparation for the new arrangements to be in place for 1st April 2021.

4. Summary of financial implications

n/a – update report only

5. Summary of legal implications

n/a update report only

6. Summary of human resources implications

n/a update report only

7. Summary of environmental impact

n/a update report only

8. Summary of public health implications

n/a update report only

9. Summary of equality implications

n/a update report only

10. Summary of risk assessment

n/a update report only

11. Background papers

Appendix 1

Update on Progress on the Development of a Business Case for the Externalisation of the Russell-Cotes Art Gallery & Museum

**Appendix 1 –
Update on Progress on the Development of a Business Case
for the Externalisation of the Russell-Cotes Art Gallery & Museum**

Current Situation	Proposed solution	Areas still for consideration
Governance		
The Charitable Vehicle		
<p>The Management Committee is a sub-committee of Cabinet consisting of 3 Councillors, 4 external and Sir George Meyrick, meeting twice a year. To comply with the Local Government Act non-council members cannot lawfully exercise formal voting rights. The Committee is therefore hamstrung by the lack of separation of roles and responsibilities required by the charitable status and does not allow for the range of skills, creativity and input from non-Council members the museum needs to thrive and is normal in the sector. The lack of financial transparency is making fundraising very difficult.</p>	<p>The Management Committee agreed to explore the Russell-Cotes as a fully independent charity. All the RCAGM assets (collections and building) would be transferred to a new charity, which is independent of BCP Council. Collections and building (freehold) are transferred in trust and in case of financial failure are returned to BCP Council ‘in trust’.</p> <p>The charitable vehicle would be a Foundation CIO. The CIO is a separate legal entity and so it can enter contracts, hold property and employ staff in its own name. Consequently, any liabilities arising from the entry into such arrangement fall on the organisation itself rather than the trustees.</p> <p>Trustees of CIOs benefit from limited liability, as do directors of companies limited by guarantee, which is limited to the amount they have invested in the CIO or have guaranteed upon the winding up of the CIO.</p>	<ul style="list-style-type: none"> • Confirm CIO is the best option, given ineligibility for loans. • Ensure it meets accreditation requirements (See ACE website). • Consider the number of Trustees (small and committed or larger with a broader range of competencies). How to recruit. • Consider how many councillors are on the Committee whilst maintaining independence. Consideration will also need to be given to the existing historical arrangement whereby Sir George Meyrick has a standing place on the committee. • Vicky De Wit gathering exemplars of Transfer of Asset Documents

	<p>CIOs do not have to register with Companies House and only need to be registered with the Charity Commission. As a result, CIOs are not required to file information at Companies House but file information with the CC.</p> <p>Only downside is that they cannot take out a secured loan.</p>	
The Legal Support for Governance Change		
	<p>Changes will be required to the governance of the charity established under the 1985 Act and the procedure for this is set out in the Section 75 Charities Act 2011. An application will need to be made to the Charity Commission for a scheme to alter the provisions of the 1985 Act. Once the scheme is settled by the commission it would be taken into effect by an order of the Minister of the Cabinet Office. The order must be laid before Parliament and depending on the exact nature of the proposed changes is either subject to a 'negative resolution' procedure or if there are objections will require resolution from each House.</p>	<p>BCP Council Legal Services are looking at the support and advice needed to make the transfer – Charity Commission and the parliamentary procedural mechanism.</p>
	<p>Legal support will be required for all the new arrangements eg Service Level Agreement, etc</p>	<p>Consider requirements for transition phase</p>

Governance/audit costs and responsibilities		
Audit is managed by BCP Council and Grant Thornton audit the accounts and the committee is serviced by Democratic Services.	Audit would be taken in house (quotes received) Servicing the committee (agenda and minutes) would be Russell-Cotes staff and/or volunteers	Valuation cost for new CIO and 5 yearly revaluation costs to be considered Depreciation/Heritage assets
Business Plan		
The Russell-Cotes delivers the majority of services and organisational support through its own budget, but £200,000 of services are supplied by BCP Council including (ICT, HR, Legal etc).	An outline business plan and budget is being developed for the next 5 years with full costings. The benefits of moving to independence are thought to be around getting more appropriate and better value for services currently provided by the Council. We need to demonstrate that it is a financially viable and sustainable solution and the Council can have confidence that they are not placing the charity at risk by externalizing services.	We are establishing how the charity would procure the services currently provided by BCP Council e.g. HR, Legal, Building maintenance, financial support etc and what the costs are likely to be. BCP Finance Team have indicated that the recharges currently made and identified in the Charity Accounts are often based on historic data probably relating to building size or head count and have advised that it is better to understand the likely future costs rather than unravelling what is currently being charged. The RCAGM will identify any increases in income from existing or new streams or grants/fundraising created by and to support the move to independence.

Financial management and reporting, Banking		
<p>Currently all income and expenditure are banked and managed through Council systems although 2 members of Russell-Cotes staff work on invoicing, reconciliation. BCP provide management accounts.</p>	<p>An appropriate system for an SME using accountancy packages and updated tills and semi-automated VAT Returns (quotes received)</p> <p>A new member of staff would be the commercial manager, but the daily systems should be operated by existing staff (as currently). (in budget)</p> <p>Set up own Bank Account established (quotes received for charges)</p>	<p>Consideration to Cash Flow, Reserves Policy (3 – 6 months of operational costs)</p> <p>Need for reserves/endowment/long-term loan</p> <p>A CIO will restrict the ability to borrow money. Consideration will need to be given if this is something that can be facilitated through the Council.</p>
Insurance		
<p>Currently Fine Art insurance is identified as an individual cost, but other insurances (public liability, employers, etc) are covered within Council wide policies.</p>	<p>The CIO would take out independent insurance cover.</p>	<p>Quotes and investigations ongoing</p>
ICT		
<p>Currently ICT is dealt with centrally and covers telephony and photocopiers.</p>	<p>RCAGM is expecting hardware updates to replace most of its computers which are rather old, by April 2020.</p> <p>Whilst the lack of investment in our ICT systems over the last few years has had a very material effect on our capacity, and much of the Council's planned investment in digitilisation is probably of limited value</p>	<p>The BCP ICT department has contracts with other organisations and discussions have started on what a contract might look like and the costs.</p> <p>In addition, some understanding of the costs of externalization would be helpful to make the business case.</p>

	<p>to an organisation such as ours, to unravel and separate out ICT at this stage is not a priority.</p> <p>The Russell-Cotes would look at setting up a contract with BCP Council for on-going support of its ICT systems</p>	<p>We would look at perhaps separating in 3 – 5 years if it was thought advisable.</p>
Building Maintenance		
<p>Transferring the assets of the house and collection places all the risk to the new charity for taking on liability for a historic Grade 2* listed building in a very exposed position and facing the challenges of more extreme weather patterns. Its interiors have not seen any significant investment and yet should be safeguarded and in a condition appropriate for a paying visitor attraction.</p> <p>The building has had very little investment for at least 20 years and is in poor condition with a ball-park figure of needing £5million investment.</p>	<p>We need to identify what kind of commitments, safeguards, reserves and resources are needed from BCP Council to ensure it meets its obligations to the Charity of which it is a trustee and give confidence to the new CIO that it can take on this liability.</p>	<p>With Building Services we are identifying:</p> <p>The statutory costs – alarms, PAT testing, etc</p> <p>The likely annual maintenance charges</p> <p>The BCP Council Condition Survey is being undertaken and will identify issues with the building for the next 5 years.</p> <p>We may wish to commission some specialist costings.</p> <p>The status of the Study Centre</p>
HR		
<p>The staff would be subject to TUPE regulations and as such would transfer with their existing</p>	<p>There is a legally defined process that would begin once any decision had been made.</p>	<p>HR Team are primed for action when needed</p>

terms and conditions across to the new charity.	Consultation and support would be vital.	
Pensions		
The Pensions liabilities would transfer to the new CIO The charity would most likely apply for admitted body status to the Dorset pension fund although the full costs and liabilities are still to be fully understood	An actuarial review has been commissioned to profile the workforce. Likely that as a new body the charge will be greater than the Council's current 17.7%, possibly 25%. There is no legacy, the liability will only be staff in employment when it goes independent.	There will be additional pension costs incurred by the new CIO. Once the results of the Actuarial Review have been received these can then be quantified. Usually a Bond is established – essentially an insurance policy - but it is more likely that the contract with BCP Council would identify how that cost is born and the support the Council could contribute. Potentially new staff would be recruited to a different Pension Scheme – eg NEST
VAT		
Currently, the RCAGM is part of BCP Council VAT umbrella. VAT is paid on all eligible income and expenditure. (however, not on exempt or zero-rated items such as donations) Some VAT advice has already been received from PFK	If RCAGM was an independent charity it would almost certainly change its operations and set up to optimize its VAT arrangements. Usually a charity is VAT exempt and has a VAT registered trading company (for shop, café etc) which covenants all profits back. (Accounts would be consolidated).	The VAT expert at BCP council, is examining the impact, however, it is possible that BCP Council gains VAT advantages from the current position. Specialist Charity VAT advice would be sought when the business plan is more advanced and the strategic direction of the museum clearer to establish the optimum arrangements.
Management Contract/Service Level Agreement with BCP Council		
Historically, BCP Council as Sole Trustee has made a commitment to provide services each year to enable the Russell-Cotes to achieve breakeven.	This contract would define the service to be provided by the CIO in delivering the operations of a museum and art gallery for Bournemouth.	All the above potential liabilities and risks need to be understood – especially pensions, VAT and the building risks – before a final decision is made on the level

<p>If it moves to full Trust status, BCP Council would instead provide a grant through a management contract.</p>	<p>We would be looking at a minimum 5 year contract to provide medium term confidence to the CIO and to potential other funders (ACE, NHLF etc) of the commitment of the Council to support the RCAGM going forward.</p> <p>We are looking at the level of subsidy remaining broadly the same as currently ie c£430,000 of which £230,000 is identifiable in the Museum's budget and £200,000 is provided in services.</p> <p>There may be some potential for small savings at the end of the 5 year period, but not in the first years.</p>	<p>of subsidy needed to make the RCAGM viable.</p> <p>Vicky de Wit is working on the Management Contract</p>