



Report subject	<b>Externalisation of the Russell-Cotes Art Gallery &amp; Museum</b>
Meeting date	14 December 2022
Status	Public Report
Executive summary	<p>The Russell-Cotes Art Gallery and Museum (RCAGM) with its Grade 2* listed house and internationally significant collections was gifted to the people of Bournemouth in 1908 and was held in trust by Bournemouth Borough Council and its successors, as sole Trustee, ever since. (Charity Reg No 306288).</p> <p>When making decisions on the Russell-Cotes, the Council, as Trustee, is required to act in the best interests of the charity (rather than the Local Authority).</p> <p>The Bournemouth Borough Council Act, 1985 superseded previous indentures, and required Cabinet to act as the Museum's Management Committee. Cabinet has delegated its responsibilities to the Russell-Cotes Management Committee, which acts as a subcommittee. It consists of Councillors and non-voting independent members. It has determined, after detailed investigation that full independence is the best way to safeguard the long-term future of the Museum.</p> <p>The governance, relatively unchanged for 100 years, is a mix of Local Authority and charity practice which cannot provide appropriate oversight, financial transparency or strategic leadership and does not meet the required standards for a modern charity. Due to the current charitable arrangements there is no opportunity to combine the Russell-Cotes with other local museums.</p> <p>The Museum building and collections are at risk without substantial investment and the financial burden on the Council will be considerable. The best way to mitigate this risk is to enable the museum to fundraise, but grant-giving bodies have been very clear that whilst the current governance arrangements continue substantial funding is unlikely. Indeed, the Arts Council rejected a recent application for NPO funding, citing inadequate governance.</p> <p>Whilst there are risks for both the Council and the future charity in pursuing the route of independence, the risks of not doing so are</p>

	<p>far greater. The Charity Commission has examined the issues and invited the Council to submit a request for change.</p> <p>A detailed negotiation of the funding and Service Level Agreement arrangements will be held between BCP Council and the new Trustee during the transition period as the governance issues are resolved.</p>
<p><b>Recommendations</b></p>	<p><b>It is RECOMMENDED that Cabinet agrees and approves the progress of externalisation and submits the following recommendations:</b></p> <p><b>The Council agrees</b></p> <ul style="list-style-type: none"> <li>• that the future of the Russell-Cotes Art Gallery &amp; Museum, for which it is sole trustee, would be best served by externalisation in the form of the transfer of Sole Trusteeship to a new corporate entity (CLG or CIO) to operate and manage the charity.</li> <li>• as Sole Trustee of the Russell-Cotes Art Gallery &amp; Museum to make a formal application to the Charity Commission for a change of governance under Section 73 of Charities Act 2011 to replace the Council as sole trustee with a new corporate entity (CLG or CIO) acting as sole trustee and for the modernisation of governance articles.</li> <li>• to establish a Corporate Entity (CLG or CIO) and appoint a Shadow Board of 5 nominees to oversee the transition to independence, provide continuity and stability and to maintain an on-going supportive relationship with the new CLG/CIO.</li> <li>• to negotiate, during the transition phase, future years grant support for the new Trustee, along with the transfer of assets, lease arrangements etc with an expected vesting day of 1 April 2024 at the earliest.</li> <li>• To delegate authority to the Director of Finance, Director of Law &amp; Governance and the Chief Operations Officer to determine the best financial model in consultation with the Portfolio Holder.</li> </ul>
<p>Reason for recommendations</p>	<p>To safeguard the Russell-Cotes Art Gallery and Museum in the longer term.</p>

	To modernise the governance arrangements for the charity and enable it deliver its charitable objectives, fundraise effectively and thrive in the future.
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Portfolio Holder(s):	Cllr Beverley Dunlop, Portfolio Holder for Tourism, Culture and Vibrant Places
Corporate Director	Jess Gibbons, Chief Operations Officer
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Wards	Bournemouth Town Centre Ward
Classification	For Decision

## Background

### Governance Arrangements

1. In 1908, Merton and Annie Russell-Cotes made a lease and deed of gift of East Cliff Hall and a collection of paintings and property to the Mayor, Alderman and Burgesses of the County Borough of Bournemouth (the Corporation) to be held in trust 'for the purpose of forming an Art Gallery and Museum for the use, benefit, and enjoyment of the inhabitants of and visitors to Bournemouth.' Subsequent Deeds of Gift were made and the freehold of East Cliff Hall transferred in 1918.
2. The house, collections and contents are owned (vested in trust) by the charity as are the collections/ contents subsequently acquired by RCAGM. The Deed of Gift provided that after the deaths of the Russell-Cotes (enacted following Merton's death in 1921), the RCAGM was to be managed by a Management Committee. Under the original 1908 deed, the prescribed constitution of the Management Committee was four elected members of Bournemouth Borough Council and between five to seven non-councillor members.
3. The Russell-Cotes Art Gallery Charitable Trust was formed on 30th July 1962 to take over responsibility for the house & contents with Bournemouth Borough Council as the sole trustee of the charity.
4. The Bournemouth Borough Council Act of 1985 superseded previous indentures and states "the Corporation shall manage, regulate control and deal with the trust, premises and property by means of a committee (hereafter called the 'Management Committee') appointed by them in accordance with section 102 of the Local Government Act 1972." Section 3:6.2 of the Council's constitution allocates this 'local choice function' to its Cabinet. Therefore, Cabinet became the RCAGM's

Management Committee and this governance arrangement was enshrined in the Bournemouth Borough Council Act and the Council's constitution.

5. Bournemouth Borough Council's Cabinet's remit covered the full gamut of Council business and had little capacity for regular, detailed consideration of the work of the RCAGM. During the development of the RCAGM Business Transformation Strategy in 2000s, a management board acting as a 'shadow' management committee met regularly to steer the strategy process and make key decisions, but this fell into abeyance for several years.
6. For a period, decisions were signed off solely by the Portfolio Holder for Tourism, giving rise to concerns around appropriate scrutiny and conflict of interest.
7. Consequently, museum accreditation review by Arts Council England (ACE) highlighted a significant weakness in governance arrangements and this coincided with the Charity Commission's concerns over the late filing of accounts. The Charity Commission opened a statutory inquiry under section 46 of the Charities Act 2011 in 2013 when the Council failed to submit accounts for FY 2010/11 and FY 2011/12.

### **Current Arrangements**

8. The governance arrangements were therefore reviewed and agreed by Cabinet on 27th January 2016 and subsequently by full Council on 1st March 2016.
9. The Agreement was to create a Management Committee of the following composition:
  - The Portfolio Holder
  - Two further Council members
  - 4 external (Non-Council Members)
  - Sir George Meyrick (or the person for the time being in enjoyment of the title), in compliance with the Bournemouth Borough Council Act.
10. Crucially, its external members do not have voting rights (as the Committee is a sub-committee of Cabinet). Instead, a Shadow Vote is taken, to record the views of the non-Councillors before a formal vote is taken.
11. The Management Committee was created according to plan and has been functioning since the latter part of 2016. Its modus operandi is a variation on a local authority themed committee meeting and secretariat is provided from within the Council's administration. It meets twice yearly, in public, to review the museum's strategic, operational and financial position, so its range and impact is very different to that of an independent museum board. Its Reports are recorded by Cabinet.
12. In April 2019, major local government reorganisation was undertaken across the Dorset area and Bournemouth Borough Council became part of the significantly larger Bournemouth, Christchurch and Poole Council. Now BCP Council acts as Sole Trustee for the registered charity (number 306288) and submits accounts to the Charity Commission annually.

### **Governance Review**

13. As required by Arts Council England in their 2015 Accreditation Review (see below) and by best practice, the Management Committee has been considering whether its

governance arrangements (largely established 100 years earlier) meet the standards required of a modern charity.

#### **Areas for improvement (2011 Standard)**

- **1.2 Governance:** by next return:
  - provide finalised terms of reference for the management committee with appropriate approval
  - provide approved conflicts of interest policy to support the management committee's work
  - outline the steps taken to review the revised governance arrangements after 12 months to ensure the revised structure is operating effectively, making amendments as required
  - confirm process taken and planned to induct new members of the governing body (the management committee) into their roles.

14. In 2018, in order to examine the governance issue more fully, the RCAGM commissioned a governance options appraisal and future business plan to be drawn up with funding from the Heritage Lottery Fund (HLF) Resilience Fund. Focus Consultants were appointed to undertake this and the reports are available in the background papers (Appendices 10 and 11)

#### **Options Analysis**

15. Focus Consultants carried out a detailed Options Review (Appendix 10), evaluating the following options:

- The Russell-Cotes becomes an independent trust to give it the best chance to deliver genuine charitable and financial separation and to allow the flexibility and freedom to fundraise and operate in a more dynamic way.
- Maintain Current structure under BCP Council. This option will not deal with the existing weaknesses in the governance and financial separation. There are several other Cultural and Heritage assets that BCP Council has responsibility for including the Poole Museum and Scaplen's Court, Highcliffe Castle and the Red House Museum. Each of these are managed and run in the most appropriate way for them and given each one is unique in its setting and collection it is unlikely a 'one size fits all' approach would work going forward. The Russell-Cotes is the only asset which is a charity.
- Integration with an existing trust. This option potentially delivers the advantages of option 1 but risks RCAGM being diluted and having a loss of control with the wider audience.
- Contract with a private sector partner. There are limited operators working in this sector. This option will have a negative impact on the ability to fundraise and potentially take the museum in an alternative strategic direction.

16. At their meeting on 29 March 2019, the Russell-Cotes Art Gallery & Museum Management Committee considered the full reports into Governance Options and Business Planning and 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, particularly the capital investment needed for the museum's survival and future
  - Provide resilient, sustainable and appropriate organisational support.
17. The Committee recognised the complexities of achieving full trust status required further examination and testing before a commitment could be made and that the final decision should lie with BCP Council.
  18. It has since conducted extensive consultation, commissioned specialist reports to further interrogate the case for independence, partly funded by ACE Cultural Recovery Fund.

### **Current challenges**

19. The Museum has reached a tipping point where the Council is unable to invest to the required level to support such a fragile building with its attendant staffing and resource costs but the museum is not constituted in a way to be able to fill the gap by driving income generation or charitable donations from external supporters. Accreditation is also at risk.
20. The Museum recently applied unsuccessfully for arts Council England National Portfolio Organisation funding and was unsuccessful. One of the reasons cited was the inadequacy of the current governance arrangements.

### **Budget Pressure**

21. The Museum has faced continuous reductions in its subsidy since at least 2012. Subsidies have reduced from £1,100,000 per annum in 2010 to £280,000 in 2019. Such pressures are likely to continue.
22. The Museum is already one of the market leaders amongst museums locally in income generation, so without investment, there is no capacity to drive further income streams or reduce costs.

### **Urgent Capital Investment Needed**

23. The Russell-Cotes is a Grade2\* listed building with fragile decorative features internally and externally, placed on an exposed position on the cliff-top of Bournemouth and it needs urgent capital investment to ensure its survival and a sustained maintenance programme to safeguard its future. The has not received any significant capital investment since the HLF grant of 1999-2000.
24. Without maintenance and repair, the museum is at risk of irrecoverable loss of historic features, such as the Conservatory, and of being unable to open to the public.
25. Council Building Maintenance budgets are currently sufficient to cover compliance and responsive maintenance only and not to carry out sustained maintenance and improvements.
26. According to a specialist condition survey in 2020 the museum needs £3,378,630 (excl inflation, VAT and consultant fees) investment in the museum fabric, services and fire protection just in order to stand still. These costs were identified by Philip Hughes, specialist historic building surveyor in an independent survey. See Appendix 6 – Asset Transfer and Building Liabilities

### Condition Survey 2020 by Philip Hughes Associates - full costs

Category	Urgent	within 18 months	within 5 years	foreseeable future	further investigations	suggested improvements	total
Category	A	B	C	D	F	I	
General	£0	£25,000	£0	£0	£64,750	£0	£89,750
Main building	£73,310	£302,400	£359,150	£113,670	£91,180	£218,100	£1,157,810
Eastern Galleries	£1,350	£17,400	£68,520	£98,700	£4,100	£29,400	£219,470
Western Galleries/Mod	£4,200	£25,270	£44,900	£74,550	£11,170	£110,010	£270,100
Services fire protection	£125,000	£693,000	£387,000	£51,700	£159,000	£183,000	£1,598,700
Terrace and steps	£0	£0	£7,400	£33,400	£2,000	£0	£42,800
							£0
<b>Total</b>	<b>£203,860</b>	<b>£1,063,070</b>	<b>£866,970</b>	<b>£372,020</b>	<b>£332,200</b>	<b>£540,510</b>	<b>£3,378,630</b>
professional fees @18%							£608,153.40
<b>total</b>							<b>£3,986,783</b>

27. The Council's own condition survey carried out in-house by Council surveyors in 2019 suggested £2,247,500 was required with an additional £470,300 for the Study Centre.

Council led survey					
museum	1 urgent	2 within 2 years	3 within 5 years	4 - beyond 5 years	
building	£46,000	£382,500	£330,500	£39,500	£798,500
electrical	£27,000	£249,000	£32,000	£0	£308,000
mechanical	£240,000	£337,000	£546,000	£18,000	£1,141,000
<b>Total</b>	<b>£313,000</b>	<b>£968,500</b>	<b>£908,500</b>	<b>£57,500</b>	<b>£2,247,500</b>
study centre					
building	£67,800	£204,500	£133,000	£0	£405,300
electrical	£0	£22,500	£17,000	£0	£39,500
mechanical	£25,500	£0	£0	£0	£25,500
<b>total</b>	<b>£93,300</b>	<b>£227,000</b>	<b>£150,000</b>	<b>£0</b>	<b>£470,300</b>

28. The costs identified are merely to maintain the status quo and do not provide the entrance, orientation, catering, toilet or storage facilities expected of a 21st century visitor attraction, let alone Bournemouth's flagship cultural offer.

### Unsatisfactory Governance Limits Operations and Activities

29. The Management Committee identified the following major challenges which have inhibited the museum from operating effectively and delivering its charitable objectives.

### Lack of Strategic Support, Leadership and Oversight expected of a modern Board of Trustees

30. The current arrangement does not give access to the range of expertise, experience and diversity required of a charity in the sector. Councillors are appointed according to the election cycle and makes it difficult to put together a Board with the required range of expertise or ensure continuity.
31. Non-councillors are appointed to the board to bring additional expertise and experience but they are merely advisory and have no formal responsibility. The

shadow vote is designed to give some semblance of input but essentially the Councillors are the only members with decision-making powers. The arrangement is not attractive to external appointees.

32. The Russell-Cotes needs expertise across a broad range of issues given the complexity of running a historic house museum eg legal, business, collections and building management and also access to high level networks and fundraising opportunities.
33. All charities are reliant on fundraising to support the delivery of their charitable objectives and the Russell-Cotes has very significant financial pressures due to the costs of maintaining and conserving a Grade II\* listed building with significant art collection, as well as delivering a first-class visitor experience. The need to raise money from individuals, corporations and trusts is evident and the Management Committee as currently constituted is limited in its ability to support this requirement.

### **Lack of Accountability**

34. The charity is an unincorporated Trust, operating essentially as a department of BCP Council which means there is a lack of separation of roles and responsibilities making lines of accountability very blurred. This is a major deterrent to fundraising.
35. Whilst separate budgets are kept and accounts are submitted to the Charity Commission annually, the Charity has no separate bank account. This lack of financial transparency is not good practice and is a serious deterrent to donors who wish to make payments to the named charity not BCP Council, restricting the charity's ability to raise funds. It also makes auditing difficult and in 2021 the Audit Report from Grant Thornton recommended that the charity had its own accounts.
36. As an unincorporated Trust, the Russell-Cotes has no legal status and all contracts are agreed essentially by Council officers. The Committee meets to note the activities of the charity and to 'approve' the accounts, budgets, applications for grants, but control of finances etc are all managed elsewhere. This lack of accountability threatens the Museum's Accreditation status which requires clear lines of accountability to ensure the appropriate management of very significant heritage assets.

### **Inherent Conflict of interest**

37. The three Councillors are the only Committee members with voting rights, but their position is compromised because they are also, and primarily, BCP Councillors, with wider responsibilities. This conflict is particularly evident in dealing with funding issues.
38. Although this conflict is acknowledged and open, it can be difficult for Councillors to advocate for funding and support for the charity, to themselves as Councillors of BCP Council. There is potential for serious conflicts of interests. Whilst external appointees would vote on any proposal, their views would only be advisory.

### **Benefits of independence for the Russell-Cotes**

39. A fully Independent Trust will provide:
  - **Legal Clarity** – by incorporating the charity as a CLG/CIO, there will be legal clarity, transparency and separation for the museum which will be then able to



demonstrate good governance to external organisations, stakeholders and supporters. It will then clearly meet the required standards for Accreditation with the Arts Council.

- **Expertise** - A new Board of Directors with authority and responsibility brings a range of expertise, experience, commitment and energy to support and drive the Russell-Cotes to deliver its charitable objectives.
- **Commitment and Consistency** – BCP Council will give on-going financial (and organisational) commitment to support the Russell-Cotes to demonstrate that it values the museum for its importance to the arts, heritage and cultural life of Bournemouth, both for visitors and tourists.

This commitment is vital, to the sustainability of the Russell-Cotes. This is not a short-term cost saving exercise, but a way to ensure the long-term future of the Museum. The Russell-Cotes will only attract match funding from HLF, ACE, private funders etc if BCP Council continue to support and invest in it.

- **Trust (community, public and funder accountability)**– financial transparency will enable the museum to fundraise more ambitiously and successfully. Currently there is ambiguity with the relationship with the Council. Donations go into the BCP bank account, and it is not easy to demonstrate that funds received are truly additional.

Separation will allow for complete transparency which makes the museum much more appealing to individual donors, grant-giving trusts and provides direct and uncompromised control of RC budgets allowing trustees, bound by charitable codes of conduct to spend in the best interests of the museum and to leverage funding.

- **Realisation of Latent Potential** of the museum which has a fantastic collection, beautiful building, stunning location, a powerful narrative and offers an almost unique immersive experience. There is a huge potential audience in a large conurbation (500,000) which attracts 9 million tourists a year. Independence would put the Russell-Cotes in a better position to emerge from the shadows, operate entrepreneurially and to deliver on a much larger scale and stage.
- **Capital investment** By demonstrating competency, capacity and good governance over the short term, it is anticipated that a newly independent Russell-Cotes will be able to attract significant funding from National Heritage Lottery Fund and grant-giving funders to invest in programming, engagement, building, displays and ancillary services so that it can generate further income and develop sustainability.

The Russell-Cotes needs a major capital investment project to conserve its historic features and to remodel or rebuild the 1990s modern wing to provide the entrance way, orientation, catering and visitor facilities and to upgrade storage and service facilities which are commensurate with the quality of the offer. It is envisaged that such a project could cost £10 million.

### **Benefits of Independence for the Council and Wider Community**

40. Currently the Russell-Cotes does not deliver to its full potential as a heritage asset and a visitor attraction for the area. By enabling the museum to externalise, it will deliver tangible benefits for the BCP area in providing a cultural offer which is both inclusive and accessible for local people and has the quality and reach of a genuinely world-class institution. The Russell-Cotes collection is regularly loaned to

national museums (Tate, Victoria and Albert Museum, National Gallery of Scotland) and around the world, including recently to museums in Singapore, Japan, Italy, the Netherlands and Ireland.

41. Delivering an excellent cultural offer delivers directly in support of the Council strategy of Dynamic Places, Connected Communities and Fulfilled Lives. The transition of RCAGM to a fully independent museum trust aligns with the BCP Council Plan 2019, which identifies Connected Communities as a key strand of local authority ambition. This theme articulates a need to “strengthen the cultural identity of our towns and places” and “engage with our communities.” The Fulfilled Lives theme cites the need to “promote lifelong learning for all”; the Russell Cotes with its strong sense of place and diverse and educational public programme, clearly links to the delivery of both these priorities. Full independence will strengthen its capacity to do so.
42. It also delivers against the ‘Big Vision’ which aims to make BCP ‘a world class city region – one of the best coastal places in the world to work, live, invest and play’ with a wealth of culture as a key component.
43. One of BCP’s early adopted strategic focuses was to work in partnership with others to commission a Cultural Enquiry. The Enquiry was a comprehensive and robust analysis of the role that culture plays in people’s lives and the opportunity for a long-term cultural vision at the heart of communities in the new area covering Bournemouth, Christchurch, Poole (BCP) unitary authority. The authority has gone on to commit to this strategic approach to culture and the enquiry identified a clear need for improved cultural infrastructure and planning. The proposed governance change at the Russell Cotes will facilitate and support this, representing as it does, one of the primary and most nationally significant assets within the BCP area.
44. The Council has also invested in the Cultural Compact – a multi partner approach to develop and lead the cultural offering across the three towns and to attract future investment. The Russell-Cotes will be able to become an active partner in driving this ambitious agenda.
45. Externalising the Russell-Cotes offers an opportunity to garner support from a range of stakeholders – financial and organisational - to ensure that this museum thrives. Without this approach, the entire liability for maintaining and enhancing the museum, its fragile building and collection and its offer, lies with BCP Council.

## **New Governance Arrangements**

### **Recommendation for a New Sole Corporate Entity to Replace BCP Council as Trustee**

46. The complexity of the existing arrangements, enacted in the BBC Act 1985 and the limited options for any change have necessitated a long and close examination of options for change which provide protection for the Charity and scope for development in its best interests. Specialist charity law firm, Bates Wells LLP ‘conducted a structure and legal options review’ (Appendix 7) outlining the different options available.
47. Option B of a new sole corporate trustee for the existing charity was considered by the Management Committee as the best option for the Russell-Cotes was outlined.
48. The options outlined were:

- ‘Full Incorporation’ was considered and rejected because of the additional complexity of administering the museum as two charities – one for the permanent endowment and the other for other assets. (Option A)
- New Sole Corporate Trustee of the Existing Charity The establishment of a new independent corporate entity as the sole corporate trustee of the Existing Charity, in place of the Council, taking on its assets as trustee (Option B).
- ‘Establishing a new entity with leased assets’ was also rejected as it would not provide the necessary independence and freedom for the new charity or guarantee the level of investment by BCP Council needed to safeguard the future of the museum. (Option C)

### **New Sole Corporate Trustee**

49. The new entity would be a separate, independent corporate entity which would act as sole Trustee as BCP Council does now. It would probably be a Company Limited by Guarantee and it may or may not have charitable status, as the Existing Charity already has this status and change to this part of our constitution may cause confusion. (NB BCP Council does not have charitable status). A CLG is a tried and tested form for not-for-profit entities with the company structure being a familiar structure to stakeholders. It is commonly used, widely understood and malleable in the sense that it is able to accommodate a wide range of governance dynamics and interests. It can access debt financing and social investment. An alternative model would be the Foundation CIO model. Further legal advice would be sought as to which would be the best model.
50. A CLG would be incorporated providing limited liability to its directors and members and a legal personality to the new organisation which will allow it to enter contracts and relationships in its own name. It would take on all of the Council’s existing duties and responsibilities including the operational management of the existing charity and all liabilities and responsibilities for managing the museum in the future
51. As a CLG it would report to the Companies House and to the Charity Commission if registered as a charity. It would have a legal status, hold a bank account, enter into contracts, employ staff and be compliant with accreditation requirements in the manner of other independent museums.
52. The Russell-Cotes charity would remain, with the same Charity Number, retaining ownership of the assets and maintaining the same charitable objectives. It would continue to submit annual accounts to the Charity Commission.

### **Board of Directors Replace Management Committee**

53. The new trustee would have its own board of directors, which would act as the Management Committee in place of the current Council Management Committee under the Existing Charity’s Governing Documents.
54. The potential membership and structure of the new entity would be as a as outlined in the Recommendations for the new Governance Structure report by Sam Hunt following consultation with Russell-Cotes Management Committee. (see Appendix 9).
55. The Board would consist of up to 9 Trustees, because of the wide range of skills and experience needed for the new entity
  - 2 members would be nominated by BCP Council, who may be Councillors, Council officers or individuals appointed for their expertise. This would

maintain the close ongoing relationship between the Council and Russell-Cotes although in their role as directors, these Council appointments are required by law to act in the best interests of the charity.

- Sir George Meyrick or the holder of the Baronetcy
- Up to six independent trustees, recruited on the basis of the skills and experience they would bring to the trust and to reflect the diversity of our community. Access to high-level networks that would be of value to the RCAGM is a further consideration.

56. This arrangement would maintain the historic and vital relationship of the Russell-Cotes to BCP Council and the Meyrick Baronetcy as outlined in the 1908 Deed of Gift and ensure continuity. However, the charity would also need to ensure that there are sufficient skills on the Board to operate effectively, drive the organisation, provide informed direction to its staff and access high level networks and relationships with potential stakeholders and partners. It also needs to recruit a Board with a diversity of members that reflects the communities and audiences it seeks to engage.
57. It is axiomatic that while Board members may present the views of a particular stakeholder group and contribute their practical experience, they must act in the best interests of the organisation when making decisions as members of the Board.
58. It is likely that directors would serve a 3 year term of office with the possibility of serving one additional term before a break of at least one year.

#### **Asset Transfer**

59. The museum's building and collections are already held in permanent endowment by the existing charity, so there is no requirement to make any transfer arrangements.
60. However, other assets such as staff, ICT equipment, office furniture etc would be transferred by the Council to the new CLG. See Appendix 6 Asset transfer

#### **Modernisation of the Governance Document**

61. The charity operates under a number of governance documents from 1908 Indentures etc to the Bournemouth Borough Council Act 1985 which sets out limits of the powers of the Trustee (eg loaning, selling the collection) and these would be updated.
62. Proposals are subject to any conditions laid out by the Charity Commission in the Scheme.

#### **Transition to new Governance Arrangements**

63. The Russell-Cotes Management Committee has been in discussion with the Charity Commission about the legal routes available for governance change. As the current arrangements are laid down in the Bournemouth Borough Council Act 1985, changes cannot be made under its normal jurisdiction, but will need a parliamentary scheme. In Summer 2022, the Committee submitted a request to the Charity Commission for permission to apply for a parliamentary scheme, in the best interests of the charity. In August 2022, the Charity Commission was satisfied of the need for a scheme and has invited BCP Council, as sole Trustee, to submit a formal application for a parliamentary scheme under Section 73 of the Charities Act, 2011

to replace the local authority trustee and management committee with a new corporate trustee. (See Appendix 9 – Letter from Charity Commission).

### **Implementation of Governance Changes**

64. BCP Council as sole Trustee, would formally write to the Charity Commission to ask for a parliamentary scheme under section 73 of the Charities Act 2011, supported by evidence that it is the agreed decision of the Trustee (ie a Minute of BCP Council)
65. BCP Council would set out exactly what the charity would like the parliamentary scheme to achieve (subject to further legal advice) and the Commission would consider the most effective way to achieve this (via the scheme or under normal jurisdiction).
66. BCP Council would set up the new corporate trustee (CLG or CIO) and board of Directors.
67. It is recommended that the Council would appoint up to six members from the current RCAGM Management Committee to the shadow board of the new Corporate Entity which would then be appropriately supported to agree the charitable objectives, meet any Charity Commission requirements and appoint up to 4 additional members with the required experience and skills (as identified by a skills audit). This would consist of:
  - 2 councillors
  - 1 or 2 external appointees
  - Sir George Meyrick
68. The Charity Commission would draft the scheme in consultation with the BCP Council as Trustee and with the new Corporate Entity as new Trustee. Under the Procedure for Parliamentary Schemes the following process would be pursued.
  - Application for a Parliamentary Scheme by the BCP Council as Trustee
  - Drafting Phase of the scheme by the Commission in consultation with all parties
  - The Publicity and Modification Phase when public notice is given and representations invited
  - Final Internal approval by the Commission
  - Submission to the Minister
  - Ministerial approval and settlement
  - Parliamentary phase when laid before Parliament and come into force unless either House passes an annulment.
69. The Shadow board would act as a working group with immediate effect, meeting regularly until vesting day when it would take over the responsibility for the Russell-Cotes. The current Management Committee would continue to meet until this point.
70. It is envisaged that this process will be lengthy but the new arrangements could be in place for 1 April 2024.

## **Business Model**

### **New 10-year Financial Model**

71. A draft Business Plan is being developed with external support to demonstrate that an independent Russell-Cotes is operationally viable with ongoing support from the Council.
72. The draft Plan is articulated over a 10-year period, in order to demonstrate fully the benefits of independence both in terms of achieving the required level of capital investment for the Russell-Cotes, greater financial sustainability and to demonstrate the potential savings to BCP Council.

### **BCP Financial Support over 10 years**

73. Under this model, the Council would make a funding agreement, renewable every 5 years. Ongoing financial support from the Council demonstrates Council commitment to funders, stakeholders and the community more widely.
74. Negotiations for the level of funding, which would be anticipated to reduce over 10 years, would be developed during the Transition phase.

### **Relationship with Council via Service Level Agreement**

75. The Council would manage its future relationship with the new entity delivering the management of the assets and the delivery of services via a Service level agreement. The SLA would broadly follow the same model used for other cultural organisations eg Red House Museum in Christchurch, Pavilion Dance Southwest and Bournemouth Symphony Orchestra.
76. The SLA which would identify mutually agreed KPIs such as
  - Maintenance of Accredited museum status
  - Visitor numbers
  - Programming
  - Target audiences

And establish regular reporting and communication with officers and councillors as required. See Appendix 4 – Management and Funding Agreement.

77. The agreement would be termed a grant in order to satisfy Legal and procurement requirements about State Aid and Procurement issues (see Legal notes below).

### **Legacy Investment in the Russell-Cotes**

78. Although one of the drivers for independence is the ability to fundraise more successfully especially for capital works, experience elsewhere demonstrates it will take time to develop and it is not feasible for the new entity to take on the liability for a building in such a poor condition without some reserves, or initial investment.
79. The Building Condition Survey of 2020 identified nearly £4million of maintenance work required in the next 5 years
80. The RCAGM has been successful in its application for funding from the Arts Council MEND fund, which will provide £518,000 of funding towards a £974,000 project to refurbish the conservatory and renew some of the Mechanical and Engineering

Services. Other funding has been provided by public donations, CIL and Prudential Borrowing.

81. During the transition phase, the Council and new Trustee would negotiate support to address the urgent maintenance work required. The new Trustee and the Council will need to be assured that the new Trustee has the necessary reserves and resources to take on such a liability.
82. This funding will give the new Trustee time to establish itself, and its fundraising capacity before assuming the liability for all the work identified as required in the foreseeable future (see appendix 6) and for which the Council will no longer be liable. It will also be able to use the funding to leverage further support from funders such as NHLF, Heritage England etc.
83. A potential approach to future investment in the Russell-Cotes is covered in the Financial Model.

### **Building Maintenance Implications**

84. The Russell-Cotes would resume responsibility for the building maintenance and management of the Museum from the central Building Maintenance team to ensure a more appropriate conservation-led approach, best practice and value for money.
85. Statutory requirements eg inspections such as electrics, alarms lift, PAT and water testing, would be managed in house and a budget has been allocated for this and for remedial repairs, based on historic data.
86. Additional budget for annual maintenance has been allocated in line with the recommendations of the Philip Hughes Associates Condition Survey.
87. The grant allocated by the Council to support the legacy building work will be of a sufficient scale that an additional Project Manager (Engineer or Surveyor) would be recruited to the team to manage the works and budgets in partnership with the Lead Consultant and Quantity Surveyor.
88. Greater investment in ongoing building maintenance is budgeted for the museum post capital project.

### **Study Centre**

89. Detailed arrangements for the Study Centre would be made during the transition phase but it is likely that the Study Centre could be leased to the new Trustee on a short-term, minimal repairing peppercorn lease. This building is well placed but not fit for purpose and in very poor condition so in the longer term the expectation would be that the museum would seek new, better suited premises possibly in conjunction with other museums in the area, notably Poole Museum or as part of the capital project of 2028/9. The Council would support the Russell-Cotes to find alternative accommodation.

### **Transition/Implementation funding**

90. A significant amount of preparatory work has been achieved. During 2023/24, work would need to be done to establish the new legal entity through the Charity Commission, recruit and induct the Shadow Board and develop policy frameworks, establish the Funding and Service Level Agreements, TUPE staff and make the

necessary pension arrangements, recruit any new staff, remodel ICT and establish the necessary banking, financial and accountancy systems.

91. It is anticipated that the museum and council would require £100,000 for the transition costs and the Council's legal costs. Funding is being sought externally to cover the majority of the costs, but £10,000 would be matched through the museum's existing revenue budgets.

## **Public Consultation**

92. A review of national, regional and local stakeholders was carried out to understand the implications and impacts of this proposal. Consultees included major stakeholders such as Arts Council, National Heritage Fund and Department for Culture, Media and Sport. Local cultural stakeholders such as Southampton City Art Gallery, Bournemouth Symphony Orchestra were included and other stakeholders such as the Universities and Chambers of Commerce.
93. The respondees were unanimously agreed that such a decision should be made by the Charity in its best interests and they could see no reason why it would impact on their relationship with the museum.
94. In the spring 2022, the Russell-Cotes conducted a survey of views from its Friends, Annual Ticket holders and volunteers. 40 responses. A letter outlining the proposed changes and their impact, together with a link to a survey was sent to 110 volunteers and 100 Friends of the Museum. 40 responses were received.
- 88% of respondents agreed that BCP Council should establish a fully independent trust to lead and manage the Russell-Cotes.
  - 10% were undecided,
  - 2% disagreed with the proposal.
95. Moreover, 90% felt that the Museum had the potential to deliver more for Bournemouth's residents and visitors. Respondents thought that there were risks to the governance change but these were outweighed by the benefits, which were that a charity with a strong and expert board, would provide greater strategic leadership, be able to leverage more funding and act more swiftly and entrepreneurially. The main disadvantages identified were the loss of the Council as lender of last resort and the financial risk. However, others identified that staying with the Council also brought risks as Council budgets were placed under increasing pressure. Respondents stated that other Museums were able to function very well as independent charities, though they also evidenced others which were less successful.
96. The Charity Commission has asked for further comprehensive and full consultation to be undertaken by the Russell-Cotes (not the Local Authority) prior to the drafting of the scheme to identify any issues and opposition. The Russell-Cotes will undertake further consultation and updates with all key stakeholders eg Arts Council. It will undertake full consultation with the general public with on line and on site information and invitations to online and on site focus groups in order to satisfy the Commission.

## **Options Appraisal**



97. See Focus Consultants Report which examined available options including no change. (Appendix 10)

### **Resource implications**

#### **ICT**

98. IT and IS have confirmed that in principle most ICT equipment can be transferred to the new entity, subject to detailed arrangements that will be established in the Transition phase.

### **Summary of financial implications**

99. The 10 year business plan will be fully developed to ensure the Museum is financially sustainable.
100. Detailed negotiations of the financial support and due diligence of the business plan will take place during the transition phase. This will look at revenue support, capital investment and how it can be funded, cashflow arrangements, reserves policy, VAT and state aid issues.
101. Funding for reviews of financial arrangements, VAT and pensions has been costed into the Transition costs.

### **Summary of legal implications**

102. The legal team has been consulted throughout the process and is supportive of the project. It has sought quotes from suitably experienced law firms to handle the legal work on behalf of the Council and these have been included in the transition costs.

### **Summary of human resources implications**

103. The Russell-Cotes has ten full-time and four part-time permanent staff and nine zero hours staff, making a 17 FTE. It is envisaged that all will transfer to the new entity.
104. The staff would be subject to TUPE regulations and as such would transfer with their existing terms and conditions across to the new entity. There is a legally defined process that would begin once any decision had been made, supported by BCP Council HR teams.
105. A detailed review of the pension options for existing and new staff would be made during the Transition period.

### **Summary of sustainability impact**

106. None anticipated. This is a governance change which will ensure the survival of an important historic asset which provides benefits to the health, well-being, culture and economy of the area. Only positive impacts are expected. Assessment will be completed in time for the Council meeting in January 2023.

### **Summary of public health implications**

107. n/a

## Summary of equality implications

108. None anticipated as this is a governance change – EIA Panel to be conducted on 13 December 2022

## Summary of risk assessment

109. See Appendix 2 Risk Register

## Background papers

RCAGM Management Committee Agenda and Papers **29 March 2019**

RCAGM Management Committee Agenda and Papers **22 January 2020**

RCAGM Management Committee Agenda and Papers **8 January 2021 (Restricted)**

RCAGM Management Committee Agenda and Papers **22 October 2021**

RCAGM Management Committee Agenda and Papers **4 May 2022 (Restricted)**

RCAGM Management Committee Agenda and Papers **24 October 2022 (Restricted)**

## Appendices

Appendix 1	Equalities Impact Assessment (to be completed prior to Cabinet meeting 14 December 2022)
2	Risk Register (exempt)
3	Environmental Assessment (to come)
4	Management and Funding Agreement Heads of Terms
5	Stakeholder Review
6	State of Repair Statement on Museum Properties & Asset Transfer and Management (exempt)
7	A structure and legal options review' undertaken by Bates Wells LLP (exempt)
8	Charity Commission Invitation to Apply for Governance Change (exempt)
9	New Governance Proposals by Sam Hunt (exempt)
10	Focus Consultants – Governance Options
11	Focus Consultants – Outline Business Plan