

Body:	Cabinet
Date:	10th July 2013
Subject:	Towner; transfer to Charitable Trust
Report Of:	Tracey McNulty – Senior Head of Tourism & Leisure
Ward(s)	Meads
Purpose	To advise on the implications of progression to Charitable Trust for Towner.
Decision Type:	Key Decision
Recommendation:	<p>In considering the contents of the report, Cabinet is asked to:</p> <ul style="list-style-type: none"> • Authorise the Senior Head of Tourism & Leisure, in consultation with HR, Finance and Legal Services, to establish the protocols and structures to enable the staff and gallery to transfer to the management and governance of an independent charitable trust; • Agree the date of transfer effective from 1st April 2014.
Contact:	Paul Quanstrom, Corporate Projects Support Officer, Telephone 01323 415375 or internally on extension 5375. Email: paul.quanstrom@eastbourne.gov.uk

1.0 Background/Introduction

- 1.1 The review of the funding and governance model for the long term sustainability of Towner commenced in 2011.
- 1.2 The current governance model for Towner varies from the usual public service model supported by Arts Council England (ACE) and the perceived 'best practice' for Museums and Galleries as being under Charitable status. The reports, research and findings of the Museums, Libraries & Archives Council March 2010, Winkworth Sherwood Consultancy, Sport, Leisure & Culture Consultancy October 2011 were also considered. The Trust model was seen to enable the pursuit of an artistic, innovative vision which could appeal to diverse sources of income support, to include philanthropists, EU funding streams, Trusts and Foundations etc.
- 1.3 With funding made available by the Arts Council, Susan J Royce and Dawn Langley, were appointed to undertake an independent 360 review of Towner, to assess its management and sustainability. The results confirmed the need to develop a strategic business plan and put in place governance and senior management to enable the gallery to operate as an independent entity .

In considering the optimum governance to deliver a new commercial business plan, the review considered 3 options:

- Status quo – Towner operating as a department of Eastbourne Borough Council
- Independent trust - a charitable company limited by guarantee or a charitable incorporated organisation.
- Independent Trust - part of Devonshire Park/Eastbourne Arts Trust.

It concluded that the appropriate solution both for Towner and Eastbourne Borough Council was that the gallery become an independent charity with strengthened links to its funders and other cultural organisations within the locality. The model was believed to offer the best foundation for success in achieving local priorities, delivering social impact and increasing sustainability long term. The links into operational and governance partnerships with the Devonshire Park Project to be considered at a future stage.

1.4 The Cabinet report of December 2011 highlighted the findings of the review and recommended that Towner proceed to Trust. Further research has since demonstrated that this approach remains the most viable and sustainable. Other options considered:

- Philanthropic Model - a donor-based, underpinned operation, unlikely, in the current economic climate. Towner does not yet have a sufficiently high profile or pipeline of appropriate donors and Trustees.
- Transfer to a commercial operator – A complex option which would destroy the current funding streams in support of community gallery / activities model. Gallery space is also limited and commercial income streams not as yet established.

1.5 To further validate the approach, artistic organisations operating as Trusts were interviewed in January/February 2013. Each institution contacted, indicated a business growth in market led decision making, higher performance management and support for the Trust Model. These views are further underpinned by the proposed Strategic Plan for Devonshire Park. The business case for investment supports improvement to the quality of the Tourism & Visitor offer with proactive strategies to increase visitor numbers and income streams through establishing commercially sustainable, fit for purpose business plans and independent governance models.

1.6 ACE Funding Strategy is aligned to current Government Policy which continues to support the sustainable organisation model. The Trust approach is therefore seen as the most appropriate future governance model for Towner.

2.0 Implications of The Transfer To Trust

2.1 Corporate Structure and governance

It is proposed that Towner will be established as a Charitable Trust (the Trust) with a separate trading company limited by guarantee. This is a recognised corporate charitable model, owned by its stakeholders, controlled

by trustees and will be a legal entity with full financial and contractual capabilities offering limited liability protection.

To maximise the opportunities within the current tax and VAT regulations, the Trust will establish a separate trading company for its income generation activities. All profits derived from the commercial trading subsidiary will be 'gifted' for the purposes of tax efficiency, to the Charity to support the activities of the Organisation.

The Trust will be managed by an independent Board of Trustees, some of whom will be Directors of the Trading Company.

External advisors will be required to set up the Trust and Trading company and provide independent advice to both parties on the legal, finance, VAT and pension implications.

The creation of a shadow Board would enable EBC to enter into negotiations prior to the establishment of the Charity, in order for the various agreements around funding, lease, back office and licenses to be finalised.

2.2 **Board Structure**

Applying peer group structures as a guideline , the main Trust Board of 7-9 members will be structured as follows:

- Chair
- EBC nominees (trustees)
- Trustees

The Trustees are expected to including representatives with skills and specialist knowledge in the Arts, Commercial, Finance and Fundraising sectors. Recruitment for the key position of Chair is in progress and will be undertaken through an open and transparent advertising and appointment process. A fundraising and audit Committee, key areas for the future success of Towner, will be set up as sub committees reporting to the Board.

3.0 **Resources**

3.1 **Financial considerations and Business Plan**

The current Towner Business Plan was produced as part of the application for funding from Arts Council and included financial assumptions around the transfer to Trust. Several of these have since been proven to be incorrect, regarding the NNDR charges and in light of specialist VAT advice; details below. As a result greater emphasis is now being placed on cost reduction and income generation activities including for example, room hire, catering, events, functions, art sales and exhibitions etc.

In the short to medium term, EBC funding for Towner is budgeted at £676k for 14/15. Whilst it is anticipated that EBC will enter into a fixed term funding agreement with the Trust to provide certainty of funding and therefore the optimum environment for successful transition to independence, the intention is for this subsidy to reduce over time, to a sustainable figure reflecting the challenges faced by the Council and the increased commercial viability of the Gallery.

NNDR

As a charity the Towner Trust will receive 80% charitable rate relief on Business Rates which will reduce the rates payable to £34,850 pa. The relief amounts to £139,400, the cost of which is shared by Central Government, East Sussex County Council, East Sussex Fire Authority and EBC in varying amounts; EBC is responsible for 40% of the relief (£55,760) which has been accounted for in future EBC funding projections.

VAT

The operation of the Trust will be subject to different VAT rules to those enjoyed by local authorities and it will not be able to reclaim VAT on expenditure incurred in the course of non-trading activities. VAT can however be reclaimed in respect of taxable business activities, such as sales of books and souvenirs.

In light of the complexities of the VAT position, advice has been obtained from the Council's advisors, (LAVAT), who have looked at the relationship and advised EBC on the best scenario. An estimate of the likely cost of the unrecoverable VAT has been initially calculated to be around £117,000, which has as a result needed to be built back into the budget. It is intended to obtain separate VAT advice for the Trust to ensure it implements the optimum arrangements to ameliorate the potential future VAT liability.

In the past an 'option to tax' was exercised in relation to the Towner building. This means that if any rent were charged to the Trust, it would incur VAT which would be unrecoverable. To overcome this, LAVAT have recommended that EBC charge the trust a peppercorn rent.

3.2 Lease Arrangements

Estates have provided an indicative commercial market rent of £200k per annum for the Towner premises, if it were to be considered for commercial use, rather than charitable/artistic aims. As above, it is proposed that a peppercorn rent is applied for a minimum 20 year lease (with break clauses) to negate VAT implications. The terms of the lease will need to be negotiated with the shadow board and subsequently charity to ensure EBC achieves best value for the public purse in transferring the Gallery to independent governance.

3.3 Collection

The current Towner Collection, gifted by Alderman Towner, will remain the property of EBC, but be loaned on a long term lease/licence – in line with the building (20 years) to Towner Trust. The Collection has recently been re-valued by Sotheby's and Gorrings for transfer and insurance purposes, at a value of £23 million.

The Trust will own future acquisitions. Insurance arrangements will be two fold; EBC will insure the current collection whilst the Trust will insure for display, loan and transit activities. Final details to be resolved with the shadow board/ trustees acting on behalf of the Charity.

3.4 EBC Services

At this stage, it is concluded that the services of HR, Accountancy, Payroll

and IT will be more flexible and cost effective if obtained independently by the Trust from commercial organisations. Budgetary implications have been included in the review of the business plan. The administrative requirements of a smaller commercial organisation are expected to be less onerous and flexible, all appropriate for outsourcing. A full time finance manager will be employed in house for the day to day financial management and the arrangement will be reviewed with the Devonshire Park project to take advantage of economies of scale and joint commissioning if the adjacent venues also transfer to independence.

4.0 Staffing

4.1 Staff Structure

The greater emphasis on cost reduction and income generation requires the roles of finance and fundraising to be prioritised.

Unison will be consulted as part of the TUPE consultation process subject to cabinet approval.

4.2 LGPS and TUPE implications

The Fair Deal policy applies where a public service is outsourced and to be delivered by an independent provider including non-profit making organisations such as charitable bodies. It requires that the new employer provides a broadly comparable pension scheme for the transferred staff and bulk transfer arrangements for those staff who wish to transfer their public service pension benefits into that scheme. In order to meet these requirements, the contractor/provider can:

- Provide evidence that they have a broadly comparable pension scheme, or
- Ask for admission into the LGPS (“admission body status”).

In summary, those staff transferring from Eastbourne BC to a contractor or other service provider benefit from two elements of protection under the Fair deal guidance. The two principles are:

1. The protection of future benefits after the date of transfer; and
2. The protection of pension benefits accrued up to the date of transfer.

In order to meet the requirements of the first principle, the new service provider must provide transferring EBC staff with access to either a Local Government Pension Scheme or access to a GAD (Government Actuary’s Department) Scheme pension. Whilst the authority can specify a preference for which type of scheme is offered, it is ultimately for the new organisation to decide.

It is, as yet, too early to be fully aware of the full financial terms, however we will need to request the relevant pension information from the Pensions Administrators, East Sussex CC, to inform and fully understand the implications for EBC and the Trust. The Council will be party to any admissions agreement and will need to make decisions on the proposed set

up i.e. whether it is fully funded or on a share of fund basis. It is anticipated that the cost of obtaining information from the actuaries will be in the region of £8k. This information may be needed now to inform decisions and reviewed just prior to the transfer. Delegated authority is requested for the LGPS arrangements.

Currently, there are 14 employees at the Towner in the LGPS which equates to just over half the core staff.

5.0 Other Implications

5.1 Links to the Devonshire Park development

A report on the future operational and governance options for services within Devonshire Park will be presented in July 2013. We have sought advice from our legal team appointed to oversee the implementation of the development and they have concluded that transferring Towner to independent Trust at this stage does not necessarily prejudice the outcomes or benefits of the governance options for the wider development. Their recommendations are that we can proceed to Trust for Towner on the understanding any future funding and support requires full cooperation of the Trustees in implementing any future recommendations e.g. one larger Trust with subsidiary companies in order to drive out benefits for the artistic programme and visitor experience.

5.2 Communications

A marketing strategy has recently been developed to maximise the profile and visitor numbers. Communication of the transfer to Trust to the wider public will form part of a joint Towner/EBC press and PR plan.

5.3 Risk

The risk matrix associated with Trust Transition has been developed and is monitored regularly in Covalent.

Key areas of concern are the retention of ACE funding and the ability of Towner to be appropriately structured (operationally and artistically) to flourish in the voluntary sector and gain philanthropic support.

5.4 Policies and Contracts/Suppliers

The current policies of EBC are mainly expected to be applied to the operation of the Trust with suitable adjustment. HR and Finance policies will be adapted to reflect the more flexible ways required of the new operation, but be legally robust.

A full list of contracts and suppliers has been compiled and expected to transfer to the new activity.

5.5 Equality Impact Analysis

This is currently 'work in progress' however it should be noted that Towner will continue to strive to be an equal opportunities employer and be an exemplar of diversity.

5.6 ACE position on Trust; NPO and G4A funding milestones.

ACE funding for transition to trust was established in 2010 and awarded for

specific implementation outcomes.

5.7 **Miscellaneous**

Towner is designated as a potential location to use in the event of a major incident; implications and ongoing requirements will be reviewed.

6.0 **Consultation**

6.1 The discussion between EBC and ACE regarding the sustainability, leadership and funding model commenced in 2010. Consultation has continued to take place with all relevant EBC internal departments, cabinet members, peer group institutions, the Friends of the Towner, Members, artists, staff and unions.

Staff briefings and feedback will be ongoing, as will their involvement in the staff structure amendments.

7.0 **Summary of Options**

In consideration of the recommendations, the three options are to:

7.1 Operate within the existing funding model, which conflicts with current ACE funded business practice and jeopardises future funding from this source.

7.2 Continue with the existing model until completion of the Devonshire Park Review and recommendations. However, timing is not clearly defined and a risk of previous ACE grants to facilitate the transfer to Trust being reclaimed.

7.3 Transfer to Trust 1 April 2014. EBC to maintain funding levels as outlined in the Business Plan, whilst additional funding streams are identified and captured.

8.0 **Conclusion**

8.1 The factors which influence the recommendations are:

- Continued Government cuts to the Arts and the need to seek philanthropic donors not attracted to Local Authority funded organisations.
- The need to enhance the creative, business executive functions and skills of the gallery to enable it to flourish in the voluntary sector.
- Artistic and financial imperatives to enhance reputations and profit for funding opportunities.
- EBC requirement to enhance the Community experience and assist in developing the wider Devonshire Park and Cultural Tourism Strategy.
- Demand for funded organisation to have a vision and objectives which are clear, measurable, robust and sustainable.
- Towner will provide a guide/blueprint for lessons learnt to inform the

Devonshire Park project. It is proposed to liaise closely with the consultants working on the DP to ensure potential synergies etc are optimised.

8.1 **Recommendations**

In noting the contents of the report, the recommendations to Cabinet are to:

- Authorise the Senior Head of Tourism & Leisure, in consultation with HR, Finance and Legal Services, to establish the protocols and structures to enable the staff and gallery to transfer to the management and governance of an independent charitable trust;
- Agree the date of transfer effective from 1st April 2014.

lead officer name: Paul Quanstrom
job title: Corporate Projects Support Officer

Background Papers:

The Background Papers used in compiling this report were as follows:

- Museums, Libraries & Archives Council - March 2010
- Winkworth Sherwood Consultancy, Sport, Leisure & Culture Consulting – October 2011
- Towner; a 360° Review October 2011. Authors: Susan J Royce & Dawn Langley
- Diane Lennan Trust Review; Summary of Findings – February 2013
- Trustee role and candidate requirements.
- Proposed Staff Structure
- Communication Plan
- Risk Matrix

To inspect or obtain copies of background papers please refer to the contact officer listed above.