

Body: Cabinet

Date: 14 May 2014

Subject: Towner

Report Of: Tracey McNulty, Senior Head of Tourism and Leisure

Ward(s) Meads

Purpose To seek authority to take all steps necessary to make the transition to Trust

Decision Type: Key decision

Recommendation: Cabinet is asked to -

1. confirm its decision to transfer the management and operation of the Towner Art Gallery to the Towner Trust
2. delegate all decisions in relation to pension arrangements and funding to the Chief Finance Officer
3. authorise the Chief Finance Officer to transfer funding in accordance with the Funding Agreement.
4. delegate powers to the Chief Executive to take decisions referred to in the legal agreements once the transition has taken place
5. delegate authority to the Senior Head of Tourism and Leisure to -
 - i) Approve the Trust's Business Plan in accordance with the Funding Agreement
 - ii) Approve the Collection Policy
 - iii) Negotiate, agree and approve the sealing of all the legal documents associated with the transfer to Trust
 - iv) Take all measures necessary to transfer the Towner to the Trust

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1.0 Background

1.1 Cabinet has previously considered a number of reports recommending that the Towner should be managed and operated by a charitable trust. The Trust

model is supported by the Arts Council and will enable the pursuit of an artistic, innovative vision which could appeal to diverse sources of income support. Alternative models have been considered but for the reasons set out in the July 2013 report to Cabinet have not been considered to be as effective as the Trust model.

- 1.2 The Trust has been very successful in appointing high profile trustees from a range of backgrounds with an impressive range of skills and expertise. EBC is very pleased that David Dimbleby has been appointed as Chair of Trustees. The Trust has now been registered as a Charity.

2.0 Legal Agreements

- 2.1 The Trust and EBC will enter into a number of legal agreements which are currently being negotiated. Details of the Collection Agreement, the Funding Agreement and the lease are set out briefly below. There will also be a staff transfer agreement which deals with transfer of the staff and pensions issues.

- 2.2 EBC's funding agreement with the Arts Council will be novated to the Trust.

3.0 Lease

- 3.1 The Trust will lease the building from EBC for a peppercorn rent. Local authority museum/ art gallery projects are usually structured on the basis of non business leases with a landlord/ tenant split. This is primarily to protect the Council's 5% de minimis VAT position and to maximise VAT recovery on future capital works. Such a split also recognises that these are the Council's assets and the Council has a significant vested interest in ensuring that they are maintained to an acceptable standard, as the Council currently does. It has therefore been agreed that we will split the responsibility for repair and maintenance between the Trust and EBC so that EBC has responsibility for the maintenance of the structure of the building and its external decoration.

- 3.2 EBC is currently responsible for all aspects of the building. Following the transition the Trust will be responsible for the internal repairs. Capital works such as the replacement of plant and machinery currently go through the Council's capital programme and will continue to do so after the transition. The only difference will be that, following the transition, the Council will be under a legal obligation to undertake the works.

- 3.3 The lease will require the Trust to comply with the obligations EBC has to the Lawn Tennis Association during the weeks of the international tennis tournament.

- 3.4 There will be a separate lease relating to the Art Store. This will on the same terms save that it will be terminable on notice as it is likely to be part of the redevelopment of Devonshire Park.

4.0 Collection Agreement

- 4.1 EBC will loan its art collection to the Trust who will be required to look after and conserve it on the same basis as present. There will be a stock take and

a condition survey of all the work prior to the transition to ensure that the Collection Database is accurate and complete. The Collection Agreement will require the Trust to comply with the Council's Collection Policy (previously called the Acquisitions and Disposals Policy). This policy is currently being updated and Cabinet is asked to delegate authority to the Senior Head of Tourism and Leisure to approve it. There will be a slight change of emphasis as the policy will no longer be premised on increasing the size of EBC's Collection. It is hoped and anticipated that the Trust will use other sources of funding to purchase their own works and start their own collection. EBC will have to consent, in writing, to the disposal of any item from our collection.

- 4.2 The Collection Agreement will also seek to ensure that the Trust has licence to use all the intellectual property relating to the Towner e.g. domain names and trade marks.

5.0 Funding Agreement

- 5.1 The Funding Agreement requires EBC to approve the Trust's business plan for the period up to 2018 prior to the transition. Funding will then be provided in 3 year periods which will fit with the funding periods of the Arts Council (ACE). Cabinet is asked to delegate authority to the Senior Head of Tourism and Leisure to approve the business plan in accordance with the Funding Agreement.

- 5.2 The Funding Agreement provides the mechanisms by which the level of Funding is agreed and places reporting requirements on the Trust. There will be regular meetings between the Trust and EBC and there will a Trust Review Board consisting of representatives from the Trust and EBC which will meet annually.

6.0 Support for the Towner

- 6.1 EBC will continue to support the Towner and funding will continue at the current level for the duration of the initial funding period. It will reflect the split in relation to repairs and maintenance (though it does not take account of the replacement costs for the plant / machinery). The funding has been calculated using the 14/15 budget figures and therefore does not affect the overall budget total. EBC will also provide IT services based on existing provision to the Trust in the short term for free. The Trust will be required to fund any new IT requirements that have cost implications. EBC is committed to working in partnership with the Trust and to ensuring, with the ACE, its long term success and sustainability.

7.0 Employment issues

- 7.1 Staff currently employed at the Towner will transfer on the same terms and conditions as they are on now. The numbers of staff affected by the transfer will need to be confirmed immediately prior to the transfer and the final number is likely to be about 30. Information has been shared and where appropriate consultation has taken place with both the trade union, Unison, and individual employees.

- 7.2 The Towner currently has a well developed volunteers policy and

programme. The pool of both volunteers and casuals has been built up and developed over a number of years and, although under TUPE these groups do not have the right to automatically transfer, the Executive Director has indicated that the Trust will invite them to continue working at the Towner.

8.0 Pensions

8.1 The Trust will enter into an Admission Agreement with the East Sussex Pension Fund in respect of transferring employees who are in the scheme. It is not anticipated that new staff employed by the Trust will be entered into this scheme.

8.2 The Council will remain liable in relation to the deficit in the fund up to the date of the transfer. Conversations with the Trust about the details of the pensions arrangements are ongoing.

9.0 Catering

9.1 The catering in the Towner is currently provided by Devonshire Park catering. The Trust will make alternative arrangements following the transition.

10.0 Secretary of State's Consent

10.1 The lease constitutes a disposal for an undervalue of more than £2million less than best consideration and the Council is therefore required to seek the Secretary of State's consent for the disposal. The application for consent must be accompanied by a valuation which complies with the technical appendix in Circular 06/03. Obtaining the valuation and the consent may take some weeks and will have impact on the timescale for the transition.

11.0 Conclusion

11.1 The Council and the Trust have worked together to reach agreement on a number of key issues. There are a number of legal agreements which will need to be finalised and the Council will need to seek the Secretary of State's consent before it can enter into the lease. However EBC is pleased that it will shortly be able to pass the operation of the Towner to the Trust which will ensure that the long term success of the Towner.

Alice Rowland
Lawyer to the Council and Monitoring Officer

Background Papers:

The Background Papers used in compiling this report were as follows:
None