

Report to
Cabinet

15th January 2008

Report of
Director of Community Services

Title
Coventry Heritage and Arts Trust Transfer

Ward
City-wide

1 Purpose of the Report

This report seeks approval for detailed work towards the transfer of a range of facility management and associated services into a new Heritage and Arts Trust:

2 Recommendations

Cabinet is recommended to:

2.1 authorise the transfer to a new Heritage and Arts Trust for the following facilities and associated services from 1 April 2008:

- (i) The Herbert
- (ii) The Priory Visitor Centre
- (iii) The Lunt Roman Fort
- (iv) Local Archives Service (in the form of a local history centre)

2.2 negotiate exclusively with the new Heritage and Arts Trust¹.

2.3 approve the delegated responsibilities for the detailed work on the suite of transfer documents and authorise the Head of Culture, Leisure and Libraries and Cabinet Member Advisory Panel, with the Acting Director of Community Services, with input from other appropriate officers and advisors to finalise the details of the suite of transfer documents prior to transfer.

2.4 approve the premises for the above facilities to be leased for 30 years² at a peppercorn rent to the new Trust being a "disposal at less than best consideration" in accordance with the Local Government Act 1972 General Disposal Consent 2003³.

¹ The project was advertised in relevant industry press. The City Council did not receive any other expressions of interest for this project within the timescales set out in the advert.

² It is noted that Appendix 1 referred to a potential 25 year lease, consultation has moved this to 30 years

³ Appendix 1 notes that if the undervalue is over £2m in total the General Disposal Consent will not apply, a Specific Disposal Consent will be required from DCLG

- 2.5 agree that the Herbert collection be loaned to the new Trust for their care and management in line with the Acquisitions and Disposals policy of the City Council.
- 2.6 agree the detailed negotiation of the TUPE transfer be delegated to the Head of Culture, Leisure and Libraries and appropriate legal and HR officers.
- 2.7 agree to nominate Councillors Blundell and Skipper to the Board in line with the Memorandum and Articles of Association.
- 2.8 refer these proposals for endorsement to the full meeting of Council on 15 January 2008.

3 Background

- 3.1 The Cabinet report of 3 October 2006 considered the future management options for The Herbert, and the recommendation of Trust Management was agreed.
- 3.2 An internal project team, and Cabinet Member Advisory Panel, recommended in the above report, have been working to progress this work.
- 3.3 LG Solicitors are appointed to provide legal support to the project again in line with the recommendations of the report above.
- 3.4 This report outlines the suite of transfer documents, listed below, and implications of these:
 - Scope of Services for Transfer
 - Form of Trust, name of Trust
 - Memorandum and Articles of Association for the new Trust
 - Transfer Agreement
 - Funding and Management Agreement
 - Equipment Agreement
 - Loan Agreement
 - Leases
 - Pension arrangements
 - Support Services Agreement
- 3.5 The project team is working towards achieving a position of all the transfer documents being finalised in December 2007, with actual transfer of staff and services in April 2008.
- 3.6 The Scope of transfer, recommended by the Cabinet Member Advisory Panel includes management of the following facilities and associated services:
 - The Herbert
 - The Priory Visitor Centre (some sections of which are currently managed by Culture and Leisure)
 - The Lunt Roman Fort
 - Local Archives Service
- 3.7 The proposed name for the new Trust is The Coventry Heritage and Arts Trust.
- 3.8 The proposed form of Trust is a Company Limited by Guarantee, with the intention to seek charitable registration with the Charity Commission.

4 Transfer Documents

- 4.1 Appendix One outlines the function of each key transfer document, and the implications for the City Council.

- 4.2 It is useful to expand some of the key documents a little. One of the key documents outlined in Appendix One in relation to the transfer is the Memorandum and Articles of Association for the new organisation and this has been based on a model document for charitable companies. However, it has been adapted to ensure that it is "fit for purpose" for this particular project and working with your project team and Member Panel incorporates the City Council's objectives in terms of objects, flexibility, accountability and Board composition. Importantly, it has also been updated to ensure it incorporates the most recent changes introduced in relation to the companies Act 2006 and Charities Act 2006 thus reflecting modern charity and company law as well as best practise. The structure, as outlined within the document, is for a Board of between 11 and 15, including two nominated representatives from the Local Authority and one nominated representative from the staff.
- 4.3 The other key document is the funding and management agreement, as noted in Appendix One and it is valuable to expand upon the purpose of this document also. This will set out the terms on which funding will be made available to the new charity, the terms and conditions of that funding, the City Council's requirements in terms of services to be provided, the monitoring and review provisions and also the consequences of poor or non performance. It will also set out in what circumstances the funding agreement can be terminated and the consequences of termination including the exit routes and hand over arrangements.
- 4.4 Trustee recruitment to form a Shadow Board ready for transfer was undertaken in November 2007, following best practise guidance from a variety of sources. This included an open day to explain the opportunities, and an application process. Eight Shadow Board members have been appointed, pending references.

5 Proposal and Other Options to be Considered

- 5.1 The proposals are listed in the recommendations at paragraph 2 above.
- 5.2 There is an option not to follow this route, and the suite of transfer documents could be brought back to Cabinet in full detail.

6 Other specific implications

	Implications (See below)	No Implications
Best Value	✓	
Children and Young People		
Climate Change & Sustainable Development		✓
Comparable Benchmark Data		✓
Corporate Parenting		✓
Coventry Community Plan	✓	
Crime and Disorder		✓
Equal Opportunities		✓
Finance	✓	
Health and Safety		✓
Human Resources	✓	
Human Rights Act		✓

	Implications (See below)	No Implications
Impact on Partner Organisations		✓
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management		✓
Property Implications	✓	
Race Equality Scheme		✓
Risk Management	✓	
Trade Union Consultation	✓	
Voluntary Sector – The Coventry Compact	✓	

6.1 Best Value

The establishment of the Trust will open new funding streams for the services. The review of management options meets Best Value requirements.

6.2 Coventry Community Plan

The services input into one of the participation targets within the Culture theme in the Community Plan.

6.3 Finance

The new Heritage and Arts Trust will be responsible for delivering a range of facility management and associated services currently directly provide by the City Council. A business plan has been constructed to demonstrate how the Trust may deliver its obligations from the clearly identified funding available, (which will be within the current net revenue position). The plan has been compiled on the basis that there will be no additional net revenue commitment to the City Council, other than identified as part of the PPR budget setting process.

6.4 Human Resources

Employees who are mainly engaged in work related to the operation of the range of services for transfer will transfer to the Trust in accordance with the Transfer of Undertakings (Protection of Employment) Regulations. The necessary consultation with Trade Unions and employees is ongoing.

6.5 Legal Implications

LG Solicitors have been appointed to provide additional legal advice and support to the City Council's legal team in relation to this particular project. LG have a proven track record in advising in relation to projects of this nature.

The proposal to transfer the management of the City Council's heritage and arts portfolio is entirely consistent with the City Council's corporate and strategic objectives and its enabling role.

The City Council has both general and express powers to support an initiative of this nature. The premise of the initiative is to continuously improve the services which will have a direct impact on the quality of lives for the residents of Coventry and thus the economic, social and environmental well-being of the area. In this regard therefore, the City Council

may rely on its general wellbeing powers as set out in Section 2 of the Local Government Act 2000.

In addition, the City Council has express powers contained in inter alia, Section 12 of the Public Libraries and Museums Act 1964 (museums), Section 145 of the Local Government Act 1972 (arts and crafts) and Section 144 of the Local Government Act 1972 (conference centres and tourism).

This power base gives the City Council powers to:

- enter into the new partnership arrangements with the new Trust
- provide financial support to the new Trust
- nominate City Council nominees to the new Trust
- enter into leasehold arrangements.

The partnership arrangements between the City Council and the new Trust are formalised through a series of contractual arrangements, details of which are set out at Appendix 1.

Most significantly, these protect the City Council's existing assets and, most importantly, the collections, and make it expressly clear that legal title to the collections remains with the City Council at all times (as detailed in the Collections Loan Agreement and Equipment Loan Agreement).

In addition, the Funding and Management Agreement sets out the terms and conditions of the funding made available to the Trust by the City Council and the City Council's expectations in terms of service delivery (defined by reference to key outputs).

Further details of the terms of the contractual arrangements between the parties are set out at Appendix 1.

6.6 Property Implications

As outlined in the report a new lease agreement will be put in place with the new Trust with a peppercorn rent.

6.7 Risk Management

There are a number of risks identified to the project, including the financial risk that a newer larger building and services may require additional revenue funding, the business plan model currently under development will work within the existing net budget. The other financial risk is that the external funding currently delivering 30% of The Herbert's net budget may not be allocated in the future which could result in some potential loss of service.

6.8 Trade Union Consultation

Formal consultation is underway in relation to the TUPE transfer of staff.

6.9 Voluntary Sector – The Coventry Compact

Delivers point three – creating stable and well planned services.

7 Monitoring

The Trust's performance and the contract/grant support agreement will be subject to a rigorous monitoring and review regime whereby both officers and members will be able to monitor the financial and operational performance of the Trust and to work together to ensure the services provided meet the needs and expectations of the visitors and users of the facilities.

This will be carried out on a monthly, quarterly and annual basis by the Culture, Leisure and Libraries Division, with annual reports presented to Scrutiny Board 4.

8 Timescale and expected outcomes

It is anticipated that the Trust will be ready for transfer on 1 April 2008.

	Yes	No
Key Decision	√	
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		√
Council Consideration (if yes, date of Council meeting)	15 January 2008	

List of background papers

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Papers open to Public Inspection

Description of paper

Cabinet Report 3 October 2006

Location

www.coventry.gov.uk

SCHEDULE OF DOCUMENTS

No.	Document	Parties	Key Provisions
1.	Memorandum & Articles	(1) Directors (2) Members	Governing document setting objects, powers of the new organisation and also the board composition, appointment, retirement and voting rights of trustees.
2.	Transfer Agreement	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	<p>This agreement will identify the components of the service to be transferred directly from the City Council to Coventry Heritage and Arts Trust and then, in relation to each aspect of the service, the agreement will set out the terms of the transfer arrangements.</p> <p>The agreement will also set out which aspects of the service which will not transfer to the new Trust e.g. debts and liabilities.</p> <p>The agreement will also set out mutual indemnities – protecting each party from liabilities arising from an act or omission of the other party.</p>
3.	Funding and Management Agreement	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	<p>This agreement will set out the terms and conditions of the funding arrangements between the parties. It will identify the key performance outputs required by the City Council (by reference to an output specification to be scheduled to the agreement) and the funding to be provided by the City Council to assist the Trust to deliver the required outputs.</p> <p>The agreement will also set out in detail the monitoring and review arrangements, an escalation procedure for managing poor performance, termination and importantly exit and handover arrangements.</p>
4.	Equipment Agreement	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	It is proposed that the loose equipment associated with the facilities which is owned outright by the City Council is 'loaned' to Coventry Heritage and Arts Trust for the duration of the service period. This means that the City Council will not transfer the legal title to the equipment to the Trust. This means that the City Council can recover these assets in the event of the Trust's insolvency. This agreement will set out the terms and conditions on which the equipment will be loaned to Coventry Heritage and Arts Trust including requiring the Trust to insure, maintain, repair and, if necessary, replace the equipment. The equipment will be identified by reference to an

No.	Document	Parties	Key Provisions
			equipment inventory which will be regularly updated and which the City Council will be entitled to audit as required.
5.	Loan Agreement	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	The Collections Loan Agreement will be based on the same principles as the Equipment Agreement. It will refer to an agreed collections protocol and deal with new acquisitions and disposals
6.	Leases	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	The parties will enter into leases in relation to the museum facilities. The lease will set out the lease term, the user clause, repair and maintenance and any early termination provisions e.g. a break clause for redevelopment.
7.	Admission Agreement	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	It will be necessary to apply to join the superannuation scheme to protect transferring employees terms and conditions.
8.	Support Services Agreement	(1) Coventry City Council (2) Coventry Heritage and Arts Trust	This will set out which support services will be provided by the City Council, the costs of such and the services levels expected.