

# Birmingham City Council

## Report to Cabinet

8 February 2022



**Subject:** Museums Services Contract and Lease 2022-26

**Report of:** Rob James, Managing Director of City Operations

**Relevant Cabinet Member:** Councillor Jayne Francis, Cabinet Member for Education, Skills and Culture  
Councillor Tristan Chatfield, Cabinet Member for Finance and Resources

**Relevant O &S Chair(s):** Councillor Mariam Khan - Commonwealth Games, Culture and Physical Activity O&S Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 009673/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

### 1 Executive Summary

- 1.1 The purpose of this report is to agree the fee for the management contract with Birmingham Museums Trust (BMT) for museums and heritage services including nine council owned museum sites and the Council's museum collection for the period 1 April 2022 - 31 March 2026, at an initial investment of £2.930m per annum, then subject to review.

- 1.2 To develop the Trusts' long-term planning in relation to the management of the Council's museum collection, the programming of activities in city museums and supporting capital development proposals for certain heritage sites
- 1.3 To update Cabinet on the work of BMT over the previous contract period 2018-22 and associated matters and to outline plans for the period 2022-2026.

## **2 Recommendations**

That Cabinet;

- 2.1 Approves the annual contract fee for museums and heritage services including managing nine museums sites and the Council's museum collection for the period 1 April 2022 - 31 March 2026 at £2.930m for 2022/23 and each subsequent year plus annual inflation increase (if it is awarded).
- 2.2 Notes the Equality Duty (Appendix 2) and Equality Impact Assessment Screening (Appendix 3) relating to the proposals.
- 2.3 Authorises the City Solicitor to negotiate, execute, complete and seal all necessary documents to give effect to the above recommendations.
- 2.4 Notes the achievements of BMT in the contract period to date, the proposed programme of activities and the management issues summarised in Appendix 1.

## **3 Background**

- 3.1 BMT was established, as a company limited by guarantee with charitable status by Birmingham City Council in March 2012. The Council is the only Member of the charity which merged the in-house service with the independent Thinktank Trust (which had previously been responsible for the city's science museum at Millennium Point). BMT has a wholly owned trading company from which it undertakes non-charitable trading activity, such as the operation of the Edwardian Tea Room within BMAG.
- 3.2 On 31<sup>st</sup> July 2018 Cabinet approved the renewal of the services contract with BMT for the period 1 September – 31<sup>st</sup> August 2043 and, new 25 year lease arrangements for the council owned museum sites.
- 3.3 The arrangement to extend the service contract for 25 years in effect meant that BMT no longer operated as an agent of the Council and instead became a 'principal' service provider. Consequently, BMT manage all taxation and VAT implications as part of their business plan. This relates primarily to irrecoverable VAT. All income generated through fees and charges continue to be retained by BMT.
- 3.4 The 25-year leases to BMT of the museum sites were granted at peppercorn rents and subject to finalising the Thinktank Lease transfer to the council, there are no additional lease obligations. The City Council retain existing repairing obligations - predominantly the buildings' exteriors.

3.5 BMT service delivery during the contract period 2018-22 is outlined in Appendix 1. Like most cultural organisations across the UK, the last 18 months have been particularly challenging due to the pandemic. BMT has managed to contend with the financial impact of the Pandemic, mainly through a combination of continued revenue support from the Council and other key stakeholders particularly the Arts Council England's Cultural Recovery Fund.

The Trust also benefitted from Governments Supplier Relief and staff furlough scheme, business rates reduction and charitable relief. But the Trust had to make significant staff reductions and other economies to weather the storm.

3.6 Whilst BMT sites have since reopened for business, the ongoing impact of the pandemic on the recovery and continued viability of cultural organisations remains. Therefore, the continued financial support from Birmingham City Council outlined in this report will be vital in helping ensure our museums offer can recover and continue to attract funding from their partner organisations and other sources. Our museums offering in the city is of significant national and international standing. The emerging thinking to ensure the service offer is bold, modern and relevant to our city and its grand challenges will feature heavily in this four-year funding cycle.

3.7 Contract Monitoring - there are several management processes in place. In addition to council officers reviewing Board papers and attending Trust meetings as an observer, there are formal Quarterly Contract Monitoring Meetings attended by representatives from BMT's senior management team and council officers. The council also has regular officer meetings with BMT throughout the year including with the Cabinet Member for Education, Skills and Culture when required. Finally, BMT report to the city councils Group Company Governance Committee on a regular basis.

#### **4 Options considered and Recommended Proposal**

4.1 Failure to agree a contract fee may result in the termination of the contract. The impact would be that the council would have to take back responsibility for all buildings, collections and staffing.

4.2 For BMT to live within the agreed financial parameters by implementing further cuts in service including reduction in opening hours / closure of sites, staff and overhead savings - BMT have previously demonstrated that front of house provision is already at the minimum for security of collection and evacuation requirements. Whilst further savings could be generated in operational costs through closure of sites, the council would need to take back responsibility for them whilst contending with resulting risks to BMT such as loss of Accreditation status from ACE and/or loss of funding from other stakeholders.

4.3 Bring the service back in house - BMT is wholly owned by the Council and was established for the purpose of managing the museums service. BMT has been operating the Council's museums service since 2012 (with all staff having

transferred at the time of appointment) and has since secured 25-year leases on the council owned sites. Whilst the Council would re-inherit most employees if the contract is not renewed, there is not the current high-level expertise or capacity within the Council at strategic and operational level. The Council would also not be able to apply for the funding required to meet the shortfall from the Council which is available to charitable organisations.

## **5 Consultation**

5.1 Officers have attended regular contract monitoring meetings with senior BMT officers to discuss funding and Councillors nominated by the City Council to the Museums Trust Board have been sent a copy of this report for information.

The Head of Cultural Development and Tourism has met with Culture Central (the cultural sectors membership organisation).

Arts Council England has been consulted over several meetings during the past year.

## **6 Risk Management**

6.1 Appendix 5 sets out the potential risks and mitigations associated with the award of this contract. Whilst there is potential for high impact, there are no anticipated high-risk implications.

## **7 Compliance Issues:**

7.1 **The recommended decisions are consistent with the following priorities in the City Council's plan;**

7.1.1 Outcome 1 - Birmingham is an entrepreneurial city to learn, work and invest in.

- Priority 1: We will create opportunities for local people to develop skills and make the best of economic growth
- Priority 2: We will strive to maximise the investment in the city and engage local employers to create quality jobs and opportunities for citizens

7.1.2 Outcome 2 - Birmingham is an aspirational city to grow up in.

- Priority 3: We will inspire our children and young people to be ambitious and achieve their full potential.

7.1.3 Outcome 3 - Birmingham is a fulfilling city to age well in.

- Priority 1: We will work with our citizens to prevent social isolation, loneliness and develop active citizenship.

7.1.4 Outcome 4 - Birmingham is a great, clean and green city to live in.

- Priority 6: We will foster local influence and involvement to ensure that local people have a voice in how their area is run.
- Priority 7: We will work with partners to build a fair and inclusive city for all.

- Priority 8: We will enhance our status as a city of culture, sports and events.

7.1.5 The BMT programme also contributes towards the priorities set out in the Council's 'Be Bold Be Birmingham' Strategy. The Trust provides opportunities to work with communities and volunteers to develop engagement and support the delivery of services through partnership, including at Heritage Sites and in the delivery of community collecting. Through the contract proposals, local people as well as visitors will be engaged in cultural activities which contribute to their quality of life, with a range of learning outcomes, enhancing the city's offer as a place to live, work and visit. (See Appendix 1. Museums Service Delivery)

7.1.6 BMT is a signatory of the Birmingham Business Charter for Social Responsibility. Its Action Plan will be reviewed and updated as part of the process of agreeing the terms of the new contract.

7.1.7 Birmingham Museums Trust was engaged in the refresh of Birmingham's Heritage Strategy which is in draft form awaiting public consultation prior to formal adoption by the Council in 2022.

## 7.2 **Legal Implications**

7.2.1 Under Section 1 of the Localism Act 2011, the Council has the power to enter into the arrangements as set out in this report which are within the remit and limits of the general power of competence under Sections 2 and 4 of the Localism Act 2011.

7.2.2 The Council has a duty to efficiently manage its assets and has power to hold, appropriate and dispose of land under Sections 120-123 of the Local Government Act 1972.

7.2.3 The Public Libraries and Museums Act 1964 gives the power to make contributions towards expense incurred by any person in providing or maintaining a museum.

7.2.4 All leases between the council and BMT are excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 Part II and in addition will contain provisions terminating the leases co-terminus with the end or sooner determination of the applicable service agreement.

7.2.5 The requirements of the Data Protection Act 2018 and Human Rights Act 1998 have been taken into consideration in terms of the processing, management and sharing of data involved in these proposals. The city council has processes to protect any release of sensitive information and the funded organisations contract stipulates compliance with such legislation.

## 7.3 **Financial Implications**

7.3.1 At the meeting on 31 July 2018 Cabinet approved for a Service Agreement to be negotiated with BMT for 25 years from 2018 on a rolling four-year funding cycle basis aligned to Arts Council England's (ACE) funding cycle and the Council's

funding commitments. The agreement stipulated funding for future four-year cycles (from 2022) would be agreed one year in advance of that funding period and entirely within the Council's discretion. The contract would also contain break options if the funding for a cycle is not viable for BMT

7.3.2 For various reasons (including Covid interruption) the above timescale to agree the next four-year funding cycle from 2022 was not met by the Council. However, the council (as per its obligation in the Service Contract) did give BMT advance notice of the proposed contract fee from 2022+ (below) which was formally accepted by the Trust in October this year.

7.3.3 BMT have been advised that, subject to Cabinet approval, the proposed arrangements for the Museums Service Contract Fee from 2022/23 for another rolling four-year period will be to remain at standstill plus annual inflation increase (if it is awarded). The current fee in 2021-22 is £2.930m. The proposal is to set a contract fee for 2022/23 of £2.930m. This is funded from existing service budget.

7.3.4 In addition to the contract fee a supplementary annual fee of £0.352m was agreed with BMT to take account of their ongoing responsibility for the Thinktank obligations – in place until such time as the Thinktank lease transferred to the city council.

7.3.5 Birmingham Museums Trust is also funded by Arts Council England as a National Portfolio Organisation (NPO). ACE also award and audit the National Museums Accreditation Scheme. The city councils funding is a key consideration for ACE in regard to their continued investment in Birmingham's cultural infrastructure. In England, Local Authority spending on museums declined by 34% in real terms. Any further reduction in financial support (Service Fee) could also jeopardise the Trusts Museums Accreditation standard which is the benchmark used to ensure the safe keeping of collections.

#### 7.4 **Procurement Implications**

7.4.1 The Cabinet meeting of 31 July 2018 approved the commencement of Single Contractor Negotiation under Standing Order 5.2 with Birmingham Museums Trust to renew and vary the contract for museums and heritage services including managing nine museums sites and the Council's museum collection for the period 1 September 2018 - 31 August 2043 - subject to the satisfactory outcome of the market sounding exercise.

7.4.2 The approval to award the service contract with Birmingham Museums Trust 2018 - 2043 was given in August 2018.

#### 7.5 **Human Resources Implications (if required)**

7.5.1 There are no implications for the council.

#### 7.6 **Public Sector Equality Duty**

7.6.1 A copy of the Equality Act 2010 – Public Sector Duty statement is appended together with the initial equality assessment screening (Ref EA002902) and is attached to this report at Appendix 3. There is no adverse impact at this time. BMT has a comprehensive Equality Policy and the development of programmes and projects for each year of the contract are reviewed as part of the process of agreeing the Service Agreement which will enable officers to update the equality assessment, monitor and mitigate any potential impact appropriately.

## **8 Background Documents**

- 8.1 Cabinet Report – Birmingham Museums Contract, Leases and Financial Arrangements 2018+ (31 July 2018)
- 8.2 BMT Service Contract 2018-22
- 8.3 BMT Annual Reports, Business Plan, Performance Reports
- 8.4 Birmingham Heritage Strategy 2015-19

## **9 Appendices**

Appendix 1 BMT Operation and Service Delivery 2018-22 Review and 2022-2026 forward plans

Appendix 2 Equality Duty Statement

Appendix 3 Equality Assessment Screening (EIA)

Appendix 4 Risk Assessment

Appendix 5 ESA Assessment