

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	Corporate Director - Place
Date of Decision:	31 July 2018
SUBJECT:	BIRMINGHAM MUSEUMS TRUST CONTRACT, LEASES AND FINANCIAL ARRANGMENTS 2018+
Key Decision:	Yes
If not in the Forward Plan:	Chief Executive approved <input type="checkbox"/>
(please "X" box)	O&S Chair approved <input type="checkbox"/>
Relevant Cabinet Member(s)	Cllr Jayne Francis - Education, Skills and Culture
	Cllr Brett O'Reilly - Finance and Resources
Relevant O&S Chair:	Cllr Mariam Khan - Leisure, Culture and Physical Activity
Wards affected:	All

1. Purpose of report:

- 1.1 To seek approval to enter into Single Contractor Negotiations with Birmingham Museums Trust (BMT) to renew and vary the contract for Museums and Heritage services including managing nine museum sites and the Council's museum collection for the period 1 September 2018 - 31 August 2043, at an initial cost (to 31 August 2022) of £2.831m per annum, then subject to review.
- 1.2 To seek authority for new leases with BMT for the period to 31 August 2043, together with ancillary agreement for further lease with BMT, as set out in section 4.3.
- 1.3 To seek authority to enter into a new direct lease for Thinktank at Millennium Point.
- 1.4 To establish a base for 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.
- 1.5 To update Cabinet on the work of BMT over the period 2015-18 and associated matters.
- 1.6 An accompanying Private report contains confidential information on the lease arrangements and some financial matters.

2. Decision(s) recommended:

That Cabinet:-

- 2.1 Approves 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, at an initial cost of £2.831m per annum, subject to the criteria outlined in section 5.11.

- 2.2 Delegates to the Cabinet Member for Finance and Resources jointly with the Corporate Director of Place, authority to agree the terms of a 25 year contract for Museums and Heritage Services with Birmingham Museums Trust (BMT) in accordance with section 4.3 below at an initial cost of £2.831m per annum from 1 September 2018 to 31 August 2023. Subject to the satisfactory outcome of the market sounding exercise demonstrating there are no alternative organisations with the capability to run the Birmingham Museums and Heritage services.
- 2.3 Delegates to the Director of Sports, Parks, Open Spaces, Wellbeing and Culture the authority to negotiate each four yearly funding cycle with BMT, including inflation, to be applied during the contract term.
- 2.4 Authorises the Assistant Director of Property (Interim) to negotiate and agree terms of new lease arrangements for the Council's nine museums sites with BMT as set out in section 4.3.
- 2.5 Authorises the Corporate Director of Place and the Strategic Director Finance and Governance to agree the terms of a loan agreement for the museum collection for a period of 25 years, subject to a contract for Museum and Heritage services being in place and the ability for the Council to terminate the loan agreement simultaneously with any permanent termination of the leases or the contract for services.
- 2.6 Authorises the amendments to BMT's governance arrangements as set out in Section 5.7
- 2.7 Authorises the City Solicitor to negotiate, execute, complete and seal all necessary documents to give effect to the above recommendations
- 2.9 Notes the achievements of BMT in the contract period to date, the proposed programme of activities and the management issues summarised in Appendix one

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3. Consultation

3.1 Internal

The Leader and Cabinet Member for Education, Skills and Culture and Cabinet Member for Finance and Resources have been consulted. Senior officers in Legal Services, City Finance, Procurement, Insurance and Property Services have been appropriately involved in the preparation of this report. The Council's Heritage Champion has also been sent a copy of this report. All are in favour of this report proceeding for executive decision

3.2 External

The City Council's current nominated directors on the BMT Board have been sent a copy of this report at the draft stage. Senior officers of BMT have been involved with the refresh of the original 2015 Memorandum of Understanding. Senior representatives of Arts Council England (ACE) have been consulted. Public consultation on proposed savings proposals were previously undertaken as part of the Council wide budget setting process in 2017/18.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The proposal in this report contributes to the Council's Outcome and Priorities 2018-2022. Specifically supporting the strategic priorities including:
Birmingham is an aspirational city to grow up in; Birmingham is an entrepreneurial city to learn, work and invest in and Birmingham is a fulfilling city to age well in.

Birmingham's Cultural Strategy 2016-19 (*Imagination, Creativity and Enterprise*) demonstrates the City's ambitions as a cultural capital and describes the need for supporting sustainable business models. The Heritage Strategy 2014-19 (*Protecting the Past - Informing the Present*) focuses on the common goal of enhancing heritage assets and activities within the city.

The BMT programme 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.

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.

4.2 Financial Implications

4.2.1 The financial implications are set out in the private report.

4.3 Legal Implications

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

4.3.2 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.

4.3.3 Leases for Aston Hall, Blakesley Hall, Museum of the Jewellery Quarter, Soho House and Weoley Castle will be negotiated each for 25 years from 1 September 2018 to 31 August 2043, with the lease for Sarehole Mill being aligned with the above heritage sites following Charity Commission formalities being satisfied. The Museum of the Jewellery Quarter includes part of an adjoining City Council multi-let block and appropriate break options will be considered.

- 4.3.4 A lease for Birmingham Museum and Art Gallery (BMAG) will also be negotiated for a 25 year term from 1 September 2018 to 31 August 2043, containing suitable break options in favour of the Council exercisable after Year 1 to allow for Council House refurbishment works and probable future redevelopment works at BMAG. If required by BMT the Council will at the same time enter into an agreement with BMT to grant them a new lease of the requisite portion of the redeveloped/refurbished accommodation for their operational purposes once completed and upon similar terms to the lease to expire in 2043.
- 4.3.5 A lease for the Museum's Collection Centre at Dollman Street will be granted for 25 years from 1 September 2018 containing a rolling break option in favour of the Council exercisable after Year 1 to allow for the probable impact of HS2 and the proposed development of a brand new Museums Collections Centre at another location in Birmingham.
- 4.3.6 In regards to Thinktank at Millennium Point, the City Council will negotiate with the Landlord, Millennium Point Property Ltd (MPPL) to become the direct tenant and then underlet the accommodation to BMT.
- 4.3.7 All such leases will be 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.
- 4.3.8 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.

4.4 Public Sector Equality Duty

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 2. 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 will be reviewed as part of the process of agreeing the Service Level Agreement which will enable officers to update the equality assessment, monitor and mitigate any potential impact appropriately.

5. **Relevant background/chronology of key events:**

- 5.1 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, BMTRAD, from which it undertakes non-charitable trading activity, such as the operation of the Edwardian Tea Room within BMAG.
- 5.2 The Council originally entered into a three year contract for museums and heritage services with BMT for the period 2012-15 linked to lease agreements for seven museum sites, comprising Birmingham Museum & Art Gallery, five "Heritage Sites" (Aston Hall, Blakesley Hall, Museum of the Jewellery Quarter, Soho House and Weoley Castle) and the Museums Collection Centre. The site at Thinktank has continued to be leased directly to BMT from Millennium Point Property Ltd. The lease of a ninth site, Sarehole Mill, where the Council holds the property in trust, is still dependent on consent of the Charity Commission and is intended to be formalised into a lease in a similar form to those proposed for other heritage sites in due course.

- 5.3 In January 2015, Cabinet approved a one-off grant to BMT of up to £0.66m support the costs associated with its organisational restructure and to mitigate its forecast year end accumulated deficit. The renewals of contract and lease terms for 2015-16 were approved by Cabinet on 16 March 2015. Meanwhile, the City Council and BMT agreed to review arrangements between the two organisations. An independent review in 2015, led by Sandy Nairne (formerly Director of the National Portrait Gallery), recommended a long-term vision and agreement of division of responsibilities, set out in a Memorandum of Understanding (MoU) and longer term lease and contract agreements in order to provide greater certainty for BMT and to enable longer term planning and facilitate fundraising.
- 5.4 The terms of the original MoU were subsequently established and approved by Cabinet on 22 March 2016. They articulated the shared understanding between the council and BMT of the vision and future strategy for Birmingham Museums and the museum's collection. However, the ambition for securing longer term contract and lease arrangements are not commensurate with the current VAT agency arrangements in place and the Council's ongoing severe financial challenges. The latter resulted in necessary cost savings in all service areas including BMT's contract fee which was reduced by £0.6m in 2015/16. In addition, Arts Council England, which is BMT's other major public funder, implemented a reduction of £0.62m in its own grant to the Trust in 2015-16. The City Council then reduced BMT's contract fee again by a further £0.25m in 2016/17 - down to the current level of £3.183m.
- 5.5 Since 31 March 2016 a series of short-term extensions to the contract and lease arrangements have been granted whilst arrangements continued to be negotiated in a difficult financial landscape. The current management arrangements with the Trust are in place until 31 July 2018; any further renewal is pending the outcome of decisions recommended in this report.
- 5.6 Late in 2016, when BCC's budget proposals were being considered, BMT made the Council aware of undeclared pressures amounting to c £0.75m in its revenue budget for 2017-18. As a result, the Council removed proposals for savings in 2017-18, part of which had been postponed from previously agreed savings. BMT had limited unrestricted reserves to draw on and maintained that any further reductions to its contract fee of £3.183m put it at significant risk of not continuing as a going concern. This was in spite of the Trust having reduced its operating costs by approximately 40% over the previous five years whilst also demonstrably increasing its commercial and trading income. Appendix 1 includes BMT's impact evaluation of further reductions in finance.
- 5.7 In late July 2017 BMT presented a revised version of the original MoU to the Council illustrating various substantial changes to previous contract, lease, governance and financial matters. The main changes proposed were;
- 5.7.1 Moving from short-term to long-term (25 year) leases across the nine sites - BMT provided evidence that many external grant makers and funders will only support organisations that can demonstrate long-term leases to ensure that their funds deliver the social benefit for which they are being provided. It was therefore important to BMT that this arrangement was put in place to increase the level of external funding available (both capital and revenue).

- 5.7.2 Moving to a long- term (25 year) Service Agreement and Collection Agreement, BMT's position is that short-term rolling contracts prevent the Trust from being able to effectively plan and build partnerships for the long term and that if the contract is co-terminus with the leases, the Trust is more able to fulfil their service and maintenance obligations involved with managing and occupying the buildings and sites concerned. BMT provided various examples of other Local Authorities long-term museum management contract arrangements from around the UK to illustrate why the Council should also appoint them as single contractor for the period proposed. It is evident from the research undertaken by officers that many of these arrangements are on a local basis and there are no other identifiable museum contract providers in the marketplace.
- 5.7.3 Moving from an 'Agent' to 'Principal' arrangement with the Council for VAT purposes, whilst BMT has operated as 'Agent' for the Council since its inception in 2012, both parties have independently received external VAT advice that longer lease agreements makes BMT more independent and necessitates moving to a 'Principal' arrangement. A 'Principal' status follows the same arrangements for the museums provision in other cities such as Bristol, Glasgow, Coventry, Luton, York and Hampshire.
- 5.7.4 Agreeing a 4 year business planning cycle including a 4 year funding review from the Council to align with ACE funding timeframe (2018-2022). The funding profile to be reviewed every four years in accordance with the terms of the Revised Service Agreement and will be subject to appropriate break clauses if required.
- 5.7.5 Changes to Governance arrangements via BMT's Articles of Association, including the terms of director appointments. In addition, BMT propose to rationalise some of its operations including dissolving TT Entity as a separate legal entity if the Thinktank lease proposal is accepted by the Council.
- 5.8 In April 2018, BMT presented its 10 year Strategic Plan approved by its Board, for two scenarios. Both scenarios were predicated on BMT changing its VAT status from an 'Agent' to 'Principal' basis. Scenario 1 was based on the Council becoming directly responsible for the Thinktank lease and demonstrated a requirement for an additional circa £3.145m in financial support from the City over 10 years from 2018. However, BMT's Scenario 2 position representing 'status quo' retention of the Thinktank lease, demonstrated a deficit from 2019/20 with a projected overdraft of £5.2m for the Trust in 2027/28 which is clearly not sustainable. Further negotiations with BMT resulted in the submission of a revised 10 year Strategic Plan on 31 May. Scenario 1 proved financially viable and acceptable for both BCC and BMT, and is taken forward as set out in this report.
- 5.9 Whilst BMT's business plan references its capital ambitions for the redevelopment of BMAG (as part of the Council House and Extension refurbishment project) and the construction of a new Collections Store, the Full Business Case for each has yet to be established. These will both be addressed in future reports to cabinet. In the meantime, BMT have built in some costs for the closure of BMAG and the running of a new Collections Centre but these can only be indicative at this stage and BMT will need to absorb any additional financial impact of these projects going forward.
- 5.10 Due to the requirement to enter into a single contractor negotiation, Corporate Procurement advised the service to undertake a market sounding exercise, the outcome of which would enable the Council to have a better understanding of the likelihood of generating a competitive response to a requirement should it go through a full procurement process.

- 5.11 It is not envisaged that any market sounding will reveal alternative providers, but in order to minimise the risk of challenge and to satisfy the qualifying principles for a single contracted negotiation, the current contract and lease agreements have been rolled over whilst the market sounding exercise takes place. Subject to the market sounding not identifying an alternative operator, a single contractor negotiation will commence with the incumbent trust i.e. BMT, given their knowledge and expertise of managing the sites and the collection.

6. Evaluation of alternative option(s):

- 6.1 To do nothing – the existing leases and service contract expire at the end of July 2018. If new agreements are not put in place there will be no continuation of the service in its current form.
- 6.2 Bring the service back in house: BMT has been operating the Council's museums service since 2012, with all staff having transferred at the time of appointment. 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 an operational level. The Council would also not be in a position to apply for the funding required to meet the shortfall from the Council which would be available to charitable organisations.

BMT is wholly owned by the Council and was established for the purpose of managing the service. It has already secured funding from Arts Council for 2018-22.

- 6.3 To enter into alternative contract and leasing arrangements with Birmingham Museums Trust Ltd for a lesser term: BMT have in effect rejected any lesser term. The proposed arrangements will facilitate the company's effective management and operation of the sites and enable the Trust to build resilience and develop a sustainable business model going forward whilst maintaining break clauses to accommodate any changes necessary or desirable by the Council. Alternative allocation of responsibilities or lengths of agreements could introduce risk to one or both parties and endanger the future viability of the Trust.
- 6.4 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 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 contend with resulting risks to BMT such as loss of Accreditation status from ACE and funding from external partners.
- 6.5 Run a competitive tender for an alternative provider. The contract would be loss making without supplemental, charitable funding and would not therefore be viable for a commercial operator. BMT has the expertise and experience to manage the Council's collection and was established for this purpose.

7. Reasons for Decision(s):

- 7.1 To ensure continuity and stability of the existing service, effective management of sites and safeguarding of the city's museum collection and to meet the obligations associated with ACE and Heritage Lottery Fund conditions and ACE's Accreditation process.

- 7.2 To provide high quality cultural activities which contribute to the Council's ambition to improve cultural engagement by residents, and to build the city's reputation as a regional capital.

Signatures		<u>Date</u>
Cabinet Member Cllr Jayne Francis, Education, Skills and Culture
Cabinet Member Cllr Brett O'Reilly, Finance and Resources
Chief Officer Jacqui Kennedy, Corporate Director - Place

List of Background Documents used to compile this Report:

Draft revised Memorandum of Understanding between Birmingham City Council and BMT
Draft Contract Template, Service Schedule, Lease Agreements documents
BMT Business Plan 2018-28 and financial forecasts
BMT Collections agreement
Cabinet report – Birmingham Museums Trust Contract and Lease Agreement 2016-21

List of Appendices accompanying this Report (if any):

1. BMT Contract Report
2. EA Ref EA002902

Report Version **Dated**

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) tackle prejudice, and
 - (b) promote understanding.
- 5 The relevant protected characteristics are:
 - (a) marriage & civil partnership
 - (b) age
 - (c) disability
 - (d) gender reassignment
 - (e) pregnancy and maternity
 - (f) race
 - (g) religion or belief
 - (h) sex
 - (i) sexual orientation