

MAIDSTONE BOROUGH COUNCIL

COBTREE MANOR ESTATE COMMITTEE

14 NOVEMBER 2012

**REPORT OF THE ASSISTANT DIRECTOR OF ENVIRONMENT
AND REGULATORY SERVICES**

Report prepared by Steve Goulette

1. KENT LIFE

1.1 Issue for Decision

1.1.1 To consider the possible management of the Kent Life Museum attraction and entering into an agreement for a company to operate this facility on behalf of the Cobtree Manor Estate , a charitable trust (CMET).

1.2 Reason for Urgency

1.2.1 The Heads of Terms need to be agreed as soon as possible to allow time to negotiate the operating arrangements before Continuum cease to manage the Kent Life Museum facility in February next year.

1.3 Recommendation of the Assistant Director of Environment and Regulatory Services

1.3.1 That the Heads of Terms detailed in exempt appendix 1 be approved.

1.3.2 That subject to the procurement arrangements being satisfied, the Assistant Director of Environment and Regulatory Services be given delegated authority, in consultation with the chairman of the Committee to authorise the Head of Legal Services to enter into an agreement with Continuum Kent Life Ltd. based on the Heads of Terms referred to in paragraph 1.3.1, to operate the Kent Life Museum facility on behalf of CMET.

1.4 Reasons for Recommendation

1.4.1 The CMET owns large areas of land to the South of Forstal Road as shown on the attached Plan 1. The land is sub-let to Kent County Council (KCC) which has sub-let it to The Museum of Kent Life Trust (MKLT). MKLT has entered into an agreement with Continuum Kent Life Ltd to operate the Kent Life Museum attraction on its behalf, on much of this land and as shown on the attached Plan 2 ("the site").

Although the site includes land north of the motorway, it is understood these fields have been little used by either MKLT or Continuum when operating the museum.

- 1.4.2 The agreement between MKLT and Continuum Kent Life Ltd contains a break clause allowing Continuum at a certain specified time to give notice to close the Kent Life Museum if it is making a loss. Continuum gave that notice to MKLT and the facility will close in February 2013 with over 30 job losses unless other arrangements are made. The MKLT agreement allows Continuum to remove the play equipment with a book value of around £180K at the end of the notice period.
- 1.4.3 Based on the Borough Council's experiences with trusts it has been possible to develop a new way of operating which would allow more income to be retained which should allow Continuum Kent Life Ltd to continue to operate the site without making a loss. The proposal is for CMET to become the facility manager and all income would be paid to CMET. CMET would then enter into an operating agreement with Continuum Kent Life Ltd for the company to operate the site on its behalf.
- 1.4.4 In order for this to become possible, the sub leases granted to MKLT and KCC need to be surrendered. MKLT has already agreed to surrender its sublease to KCC and KCC is currently considering surrendering its sub lease to CMET. This has a positive advantage to CMET in that it regains control of a significant part of its estate including the remaining land not actively used as part of the museum. MBC is now preparing the surrender documents.
- 1.4.5 In addition CMET will have to agree terms with Continuum to operate the attraction. It would be possible to seek a new operator and the staff would transfer under the TUPE regulations but this would be difficult to achieve in the timescales and Continuum would remove the play equipment which is a very good attraction at the facility (or CMET could manage the museum direct).
- 1.4.6 The accounts of Continuum have been scrutinised in detail by the Borough Council's and the charity's accountants and they are satisfied that the company has been operating at a loss and no costs have been attributed to central over heads. Therefore they are operating the facility in a sensible way, although it is felt that there could be ways to reduce their costs.
- 1.4.7 By CMET operating the site through Continuum the facility could be exempt from Non Domestic Business Rates due to the charitable and museum status and certain elements of VAT could also be exempt for the same reasons. The Council's tax advisors have confirmed that in its view admission charges and some other charges would be VAT exempt

and the Council's Revenues team has confirmed that NNDR exemptions would be able to be applied. This would provide more income and allow Continuum to continue to operate the site without incurring a loss.

- 1.4.8 Draft Heads of Terms have been agreed with Continuum Kent Life Ltd and these are attached in exempt Appendix 1. The Council's and charity's technical, legal and financial officers are satisfied that this represents the best deal given the complicated circumstances and if agreed will allow the museum attraction to remain operating with improved likelihood of future success. In addition CMET will regain control of the site and additional land south of Forstal Road.
- 1.4.9 A surplus share prediction is provided as part of exempt Appendix 1 which shows that based on current income a surplus could be shared by CMET and Continuum.
- 1.4.10 However, the proposed arrangements with Continuum whilst of benefit to all parties, do not comply with the Council's contract rules as the normal procurement process has not occurred. The procurement options are being finalised and an update will be provided at the meeting.

1.5 **Alternative Action and why not Recommended**

- 1.5.1 The heads of terms could be rejected but this would result in the Museum of Kent Life attraction closing with the loss of over 30 jobs, unless CMET managed it directly until a procurement exercise was undertaken. However CMET has no experience of running such a facility and if it was to consider doing so the risks would increase significantly, not least to the CMET of which MBC is the corporate trustee.. The proposal provides a benefit for both parties and is considered the best way forward given the complex set of circumstances.

1.6 **Impact on Corporate Objectives**

- 1.6.1 The proposal will result in two sub-leases being surrendered and CMET again being in control of its land.
- 1.6.2 The proposal to manage the Kent Life museum attraction is in accordance with the objects of the charity, Cobtree Manor Estate.

1.7 Risk Management

1.7.1 There is a risk that the sub leases are not surrendered and the Museum facility closes. It is likely that the sub leases would then be surrendered (as both KCC and MKLT have the right to give notice terminating these sub leases early) leaving the charity with a defunct facility missing the play equipment. Every effort is being made to keep the facility open and MBC is preparing the surrender documents.

1.7.2 There is a risk that agreement cannot be reached with Continuum Kent Life Ltd and the facility closes. However the Heads of Terms have been agreed in draft and are to be considered for approval in this report. It is in the interests of both parties to reach agreement.

1.8 Other Implications

1. Financial	X
2. Staffing	X
3. Legal	X
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	
7. Human Rights Act	
8. Procurement	X
9. Asset Management	

1.8.1 Financial

The financial details associated with the Heads of Terms are detailed in the exempt appendix.

1.8.2 Staffing

The staff will remain with Continuum Kent Life Ltd.

1.8.3 Legal

Legal agreements will be necessary for the operation of the site by Continuum Kent Life Ltd. and the surrendering of the sub-leases.

1.9 Relevant Documents

1.9.1 Appendices
Exempt Appendix 1

1.10 Background Documents
None

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

.....urgent
item.....

This is a Key Decision because:it involves expenditure above
£250K.....

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Wards/Parishes affected:

.....Boxley.....

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