

MAIDSTONE BOROUGH COUNCIL

**RECORD OF DECISION OF THE COBTREE MANOR ESTATE CHARITY
COMMITTEE**

Decision Made: 14 November 2012

**CHARITY KNOWN AS THE COBTREE MANOR ESTATE - ACCOUNTS
2011/12**

Issue for Decision

To approve the audited Report and Financial Statements for the financial year 2011/12.

Decision Made

1. That the Report and Financial Statements for the financial year 2011/12, including the Schedule of Adjustments and the Letter of Representation, all attached as Appendix A to the report of the Head of Finance and Customer Services, be approved.
2. That the Officers be requested to submit a report to the next meeting of the Committee setting out a suggested formal response to the Management Letter from the external auditors.

Reasons for Decision

In July 2012 the Committee received the un-audited Report and Financial Statements for the financial year 2011/12.

The audited 2011/12 Report and Financial Statements from the external auditors are attached as Appendix A to the report of the Head of Finance and Customer Services together with the Schedule of Adjustments, the Management Letter and the Letter of Representation.

The accounts must be approved and signed before they are submitted to the Charity Commission by 31 January 2013.

Accounts 2011/12

Following their examination of the Report and Financial Statements, King & Taylor, the external auditors, recommended a number of changes, which have now been incorporated into the audited version and are detailed in the Schedule of Adjustments shown as part of Appendix A to the report of the Head of Finance and Customer Services.

There were three adjustments in total, two of which are of a minor nature. The other adjustment relates to the Will Trust income from the Cobtree Charity Trust Ltd. The draft accounts showed a figure of £22,188. However this was understated and the correct figure should have been £45,922. The adjusted figure takes into account prior year adjustments which were not included in the draft accounts. These arose due to timing differences as the Will Trust income is not normally received until after the draft accounts have been submitted for audit.

The adjustments mean that the sum due from Maidstone Borough Council to the Charity known as the Cobtree Manor Estate has increased from £82,175 as per the draft accounts to £103,277. Now that this sum has been confirmed payment will be made as soon as possible.

The Letter of Representation and the Management Letter also form part of Appendix A to the report of the Head of Finance and Customer Services.

The Letter of Representation seeks confirmation of a number of statements relating to the audit and the information supplied to the external auditors during the course of their audit.

The Management Letter draws attention to various points of interest that the external auditors have identified. Comments on the points are set out below:-

- The level of reserves is high at the moment, but this sum is required to fund the Master Plan, which is now being implemented, so it can be demonstrated to the Charity Commission that the Charity is not accumulating excessive reserves.
- Monitoring procedures were in place during 2011/12, although this does not appear to have been recognised during the course of the audit.
- At present there is no requirement for the accounts to be formally audited by a registered auditor, but historically, the Council acting as Corporate Trustee has chosen to have a formal audit. Based on the current statutory audit thresholds, the Council acting as Corporate Trustee could still elect to have an independent examination rather than a formal audit, but this option may not be available in the future if the statutory thresholds are exceeded.

It is the intention to respond formally to the Management Letter, and a draft response will be submitted to the next meeting of the Committee for approval.

Alternatives Considered and Why Rejected

There are no alternative actions as it is a requirement that the accounts, the Letter of Representation and the Schedule of Adjustments be approved by the Council acting as Corporate Trustee of the Charity known as the Cobtree Manor Estate and signed by the Chairman of the Committee prior to their submission to the Charity Commission.

Background Papers

None.

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: **22 November 2012.**

MAIDSTONE BOROUGH COUNCIL

RECORD OF DECISION OF THE COBTREE MANOR ESTATE CHARITY COMMITTEE

Decision Made: 14 November 2012

KENT LIFE

Issue for Decision

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).

Decision Made

1. That the Heads of Terms of the agreement to be entered into in relation to the operation of the Kent Life Museum attraction on behalf of CMET, as set out in the exempt Appendix to the report of the Assistant Director of Environment and Regulatory Services, be approved.
2. That the Assistant Director of Environment and Regulatory Services be given delegated authority, in consultation with the Chairman of the Cobtree Manor Estate Charity Committee, to authorise the Head of Legal Services to enter into an agreement with Continuum Kent Life Ltd. (Continuum) to operate the Kent Life Museum facility on behalf of CMET on the basis of the Heads of Terms referred to above.
3. That the Officers be thanked for their work on this initiative.

Reasons for Decision

The CMET owns large areas of land to the south of Forstal Road as shown on Plan 1 attached to the report of the Assistant Director of Environment and Regulatory Services. The land is sub-let to KCC which has sub-let it to the Museum of Kent Life Trust (MKLT). MKLT has entered into an agreement with Continuum to operate the Kent Life Museum attraction on its behalf on much of this land and as shown on Plan 2 attached to the report ("the site"). Although the site includes land to the north of the motorway, it is understood these fields have been little used by either MKLT or Continuum when operating the Museum.

The agreement between MKLT and Continuum 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.

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 and which should allow Continuum 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 for the company to operate the site on its behalf.

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 sub-lease 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. The Borough Council is now preparing the surrender documents.

In addition CMET has 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).

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 overheads. They are operating the facility in a sensible way, although it is felt that there could be ways to reduce their costs.

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 Borough Council's tax advisors have confirmed that in their view admission charges and some other charges would be VAT exempt and the Borough Council's Revenues team has confirmed that NNDR exemptions would be applicable. This would provide more income and allow Continuum to continue to operate the site without incurring a loss.

Draft Heads of Terms have been agreed with Continuum and these are set out in the exempt Appendix to the report of the Assistant Director of Environment and Regulatory Services. The Borough Council's and the 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.

A surplus share prediction provided as part of the exempt Appendix shows that based on current income a surplus could be shared by CMET and Continuum.

The proposed arrangements with Continuum whilst of benefit to all parties, do not comply with the Council's Contract Procedure Rules as the normal procurement process has not occurred. However, the Director of Regeneration and Communities has agreed to the waiver of the Contract Procedure Rules to allow the contract to be entered into with Continuum without conducting a competitive tendering process.

Alternatives Considered and Why Rejected

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 manages it directly until a procurement exercise is undertaken. However CMET has no experience of running such a facility and if it were to consider doing so the risks would increase significantly, not least to the CMET of which the Borough Council is the Corporate Trustee. The proposal provides a benefit for both parties and is considered to be the best way forward given the complex set of circumstances.

Background Papers

None.

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: 22 November 2012.
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