

Cheltenham Borough Council

Cabinet 19 September 2023

Extension of the contract with The Cheltenham Trust

Accountable member:

Councillor Max Wilkinson Cabinet Member Economic Development, Culture, Tourism and Wellbeing

Accountable officer:

Richard Gibson, Head of Communities, Wellbeing & Partnerships

Ward(s) affected:

All

Key Decision: No

Executive summary:

The Cheltenham Trust (TCT) was established as a consequence of a commissioning review into how best the council could continue to support the delivery of its leisure and cultural services and manage the associated buildings. A 10 year management agreement was entered into from 1 October 2014 and an annual management fee is paid to enable the Trust to deliver the agreed services.

The premises leases are 15 years but automatically terminate on expiry of the management agreement. No changes are planned for the lease arrangements.

As part of the agreement, the council has the option to extend the agreement by a further five years to 2029. Confirmation of the council's intentions in regard to the extension need to be communicated in writing to the Trust within 12 months of the end of the initial term – ie by 30 September 2023.

It is the council's intention to extend the agreement by up to 5 years, as per the provision within the management agreement, but that the council will introduce a rolling break-clause that CBC can trigger with 12 months' notice at which point the council need to re-procure the services.

It is noted that there is instability in the market of leisure and culture suppliers as they attempt to price in the impacts of inflation. The rolling break-clause will enable us to procure when the market conditions are more favourable to the council.

Recommendations: That Cabinet:

- i. extends the management agreement between the Council and The Cheltenham Trust for up to 5 years from 1 October 2024 as per the provision within the management agreement;**
 - ii. subject to approval of The Cheltenham Trust, agrees a variation to the agreement that will introduce a rolling break clause that can be triggered by the Council at any point after year 1 of the extended term, subject to the council giving the Cheltenham Trust 12 months' notice.**
 - iii. delegates authority to the Chief Executive, in consultation with the Cabinet Member for Economic Development, Culture, Tourism and Wellbeing, to agree the length of the extended contract and any variation provisions;**
 - iv. delegates authority to the s.151 officer, in consultation with the Cabinet Member for Finance & Assets to agree the level of the management fee each year during the remaining term of the contract.**
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1. Implications

1.1 Financial, Property and Asset implications

The current management agreement is structured to provide an annual management fee to the Cheltenham Trust for the operation of the Council's culture and leisure venues in the town. The Council retains responsibility for the maintenance, repair and utility costs of these buildings. The contract extension and rolling break clause recommended in this report will allow this arrangement to be reviewed and allow time for other models of delivery to be considered.

Likewise, over the last three years the Council have provided capital budget to invest in our cultural venues which at the same time has allowed the Cheltenham Trust to generate income from commercial activities on a larger scale than they had previously. This has built greater resilience within the Cheltenham Trust business model through the pandemic which in turn supported the ongoing operation of the Council's culture and leisure provision in the town.

The generation of this income and increased financial self-sufficiency it has provided for the Cheltenham Trust has also supported the delivery of a four year reduction in the annual management fee – from £811k per annum in 2021/22 to a forecast £511k in 2024/25 in line with the Council's Medium Term Financial Strategy. This reduction has delivered £200k of base budget savings to date which has assisted the Council in managing the wider economic pressures of the last three years. In particular, this has supported the increased costs of utilities and repairs in the buildings operated by the Cheltenham Trust. It is these factors which will need to be considered when reviewing the management fee for the remainder of the contract, as well as preparing the new contract specification for the re-tender.

Signed off by: Gemma Bell, Director of Finance & Assets

1.2 Legal implications

The Council entered into a contract for services with The Cheltenham Trust on 30th September 2014 in respect of the Council's Leisure and Culture Services for a fixed period of 10 years with

the ability to extend for one period of up to 5 years (known as the “management agreement”). An extract of the Contract regarding the extension process is below. The Council also granted leases to the Trust of the Wilson Art Gallery & Museum, Leisure-at Cheltenham, Prince of Wales Stadium, Cheltenham Town Hall and Pittville Pump Rooms. These leases were granted for 15 years from 1st October 2014 and will terminate when the Contract ends, so the leases do not require amendment.

The Council has asked the Trust to agree a rolling break-clause, meaning that the Council can terminate the management agreement at any time during the 5 year extension on the giving of 12 months prior written notice. The Trust does not have to agree to this amendment. If the amendment is not agreed, then the management agreement will expire on 30th September 2029 unless any of the existing provisions relating to termination arise as set out in clause 33 of the management agreement (e.g. due to fundamental breach of contract or insolvency of the Trust).

No more extensions of the management agreement are permitted under current procurement legislation and prior to its expiry, if the Council wishes to continue to outsource the leisure and/or culture services, it will need to conduct a competitive procurement process compliant with the procurement legislation in force at the time.

From the contract:

The Council may serve written notice to extend the Initial Term of this Agreement for a period of up to five (5) years (the "Extended Term") at the end of the Initial Term, provided the Council gives such notice not later than twelve (12) months before the end of the Initial Term. Subject to any counter notice issued by the Trust under clause 2.3, the Initial Term of the Agreement shall be extended to include the Extended Term.

If the Trust does not agree to the Extended Term proposed by the Council under clause 2.2, the Trust may serve a counter notice on the Council, such counter notice must be served within three (3) months of the date the Trust received the Extended Term notice issued by the Council. The counter notice must set out the reasons why the Trust is opposed to the proposed Extended Term and, where appropriate, must set out evidence of why the proposed Extended Term would not be viable. In the event that the Trust issues a counter notice under this clause 2.3, the Agreement shall not be extended to include the Extended Term.

Signed off by: One Legal

legalservices@onelegal.org.uk

1.3 Environmental and climate change implications

The energy consumed at the properties managed by The Cheltenham Trust form a substantial part of the Council’s overall energy footprint. There is a direct link between the energy consumption and carbon emissions and without further action to reduce the Trust’s energy consumption, the Council will fail to meet its net zero targets. The specification, which forms part of the management agreement between CBC and TCT sets out the following commitments:

The Trust and the Council will collaborate to undertake the following activities to the support the net zero target:

- *Agree the benchmark for each building’s current footprint with a view to agreeing energy budgets based on the benchmarks;*
- *Identify lead contacts who will meet regularly to discuss energy usage. It is envisaged these will be monthly meetings to start with. The Trust will also nominate*

- other managers/staff to receive energy usage reports for their areas and take responsibility for managing energy use, unless otherwise agreed by the lead contacts;*
- *Action recommendations made by the Council to reduce usage, for example reducing excess refrigeration equipment, night time switch off routines;*
 - *Implement a behaviour change programme to encourage actions and ideas for reducing energy consumption and raise awareness of the need to reduce the energy costs;*
 - *Consider the impact on energy use of new initiatives and/or changes to building usage.*

Further action is required by TCT to meet these commitments. As part of the 5 year extension, TCT will work closely with the relevant teams at CBC to ensure the above is monitored and adhered to.

Signed off by: Mike Redman, Director for Climate Change and Place, Environmental and Regulatory Services, mike.redman@cheltenham.gov.uk

1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities: *[please delete as appropriate]*

- Working with residents, communities and businesses to help make Cheltenham #netzero by 2030
- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity

1.5 Equality, Diversity and Inclusion Implications

The specification, which forms part of the management agreement between CBC and The Cheltenham Trust sets out the following commitments:

- Ensure that the Trust's annual programme of events and activities helps to address social and economic inequalities and promote diversity and inclusion;
- Ensure that the heritage assets (buildings and our collections) managed by the Trust continue to be protected, enhanced and are accessible to the local community and visitors;
- Ensure its venues and services are compliant with equality legislation and support people who share the defined protected characteristics.

1.6 Performance management – monitoring and review

The specification, which forms part of the management agreement between CBC and The Cheltenham Trust sets out arrangements for how the contract will be managed including performance management requirements. This includes requirements on TCT to produce an annual delivery plan, submit quarterly monitoring data and produce an annual report.

2 Background

- 2.1** The Cheltenham Trust was established as a consequence of a commissioning review into how best the council could continue to support the delivery of its leisure and cultural

services, and the management of five properties (The Wilson, Town Hall, Pittville Pump Room, Leisure@ and the Prince of Wales Stadium) whilst delivering best value to the taxpayer. The Trust is not owned by the council, it is an independent company and a registered charity.

- 2.2** On 16 September 2014 Cabinet agreed to award a 10 year contract to the Cheltenham Trust (with an option to extend by 5 years) for it to run leisure and culture services - this contract is known as the management agreement. The premises' leases are 15 years but automatically terminate on expiry of the management agreement. The Trust is also responsible for managing the council's Collections of which the Arts and Crafts Movement Collection is designated and of national significance.
- 2.3** The management agreement commenced on 1 October 2014. The Trust is paid an annual management fee to run the agreed services and manage the five buildings.
- 2.4** As part of the agreement, the council has the option to extend the agreement by a further 5 years. Confirmation of the council's intentions in regard to the extension need to be communicated in writing to the Trust within 12 months of the end of the initial term – ie by 30 September 2023.
- 2.5** It is the council's intention to extend the agreement by up to 5 years, as per the provision within the management agreement, but that the council will introduce a rolling break-clause, that CBC can trigger with 12 months' notice. This arrangement will require a variation to the agreement and this will need to be agreed by the Trust.
- 2.6** The council will then need to re-procure the services and to have selected its supplier by the end of the contract term. The decision to serve notice and to go out to tender for a new provider will be taken by Cabinet.

3. Financial picture

- 3.1** The Trust is working within a financial framework of a reducing annual management fee and a requirement to make annual repayments of c£195k to repay the borrowing agreed by Council in December 2017 that funded the new splash pad facility at leisure-at.
- 3.2** The management fee for the current financial year is £611k with a forecast reduction to £511k in 2024/25.

YEAR	2021/22	2022/23	2023/24	2024/25
CBC Management fee paid	£811,000	£711,000	£611,000	£511,000

- 3.3** In addition to the management fee, the council also picks up the running costs of the five buildings that are managed by the Trust – these include energy costs, water and sewage costs, plus reactive and planned maintenance. These costs have increased significantly in recent years.

YEAR	2019/20	2020/21	2021/22	2022/23
CBC incurred running costs	£864,679	£840,454	£961,849	£1,811,962

4. Key risks

- 4.1** If the Trust fails to deliver on the contract then the council's desired outcomes (financial and non-financial) may not be achieved
 - 4.2** If the trust fails to sign up to the variation, this would mean the length of the contract extension could default to five years, so potentially hindering plans for the council to re-procure the service early
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Report author:

Richard Gibson, Head of Communities, Wellbeing & Partnerships

Appendices:

- i. Risk Assessment

Background information:

Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
	If the Trust fails to deliver on the contract then the council's desired outcomes (financial and non-financial) may not be achieved	Gareth Edmundson	3	3	9	Reduce	Ensure robust contract management in place	Richard Gibson	Contract management is already identified as a risk control on Clearview
	If the trust fails to sign up to the variation, this would mean the length of the contract extension would default to five years, so potentially hindering plans for the council to re-procure the service early	Gareth Edmundson	3	3	9	Reduce	Introduce a delegated authority for the CEO in consultation with the lead cabinet member to agree the length of term for the contract.	Richard Gibson	Contract management is already identified as a risk control on Clearview