

Bath & North East Somerset Council		
MEETING:	Council	
MEETING:	10 November 2016	
TITLE:	Update on Destination Management Commission	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Bath Tourism Plus: Proposed Business Objectives		

1. THE ISSUE

- 1.1. The Council commenced the procurement process for the new Destination Management contract in December 2015. The preferred bidder is Bath Tourism Plus (BTP), a Company jointly owned by the Council and Bath Chamber of Commerce.
- 1.2. There has been some delay in finalising the contract as a consequence of due diligence issues relating to BTP's ongoing pension liabilities.
- 1.3. The Council and Bath Chamber of Commerce, as co-owners of Bath Tourism Plus, have reviewed options. The Recommendation for the Council to take sole ownership of the Company is made to ensure the ongoing viability of Bath Tourism Plus and the successful delivery of Destination Management services.

2. RECOMMENDATION

The Council is asked to:

- 2.1. Delegate to the Strategic Director (Place) authority to extend the existing contractual arrangements between the Council and BTP (the Company) until the ownership issues (2.3 refers) are resolved.
- 2.2. Delegate to the Chief Executive and Strategic Director (Place), in consultation with the Leader, the Cabinet Member for Economic Development, the s151 Officer, and the Monitoring Officer, authority to finalise and agree the Articles of the Company and other such matters necessary for the Council to (i) take sole ownership of the Company (ii) deliver the objectives identified in this report (iii) finalise the new contractual arrangements for the Destination Management contract.
- 2.3. Delegate to the Leader the exercise of all Council functions as sole shareholder representative of the Company, with the exception of disposing of ownership of the Company.

- 2.4. Delegate to the Strategic Director (Place) authority to finalise service provision arrangements between the Council and BTP for all required support services, including officer support.

3. RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

3.1. FINANCE IMPLICATIONS

- 3.1.1. EY have undertaken a financial review of Bath Tourism Plus.
- 3.1.2. The key issue highlighted through this review was that with the crystallisation of the Pension deficit, the acquisition of the company would not be favourable. However, the Pension deficit is not expected to crystallise (3.3.3 refers).
- 3.1.3. The EY report confirmed that the Company had generated cumulative post-tax surplus, before the pension liability, of £47K over the three years to March 2016, and that the existing business plan protects pre-tax surplus for the period to March 2019 of £347K.
- 3.1.4. In addition, the EY report highlighted several matters for further consideration. Of those, the key items requiring further work include:
- Review of most updated information, once available, for the last financial year (including pension valuation and statement of accounts).
 - Preparation of Completion Accounts at the date of acquisition. This will enable correct valuation of the acquisition.
 - Confirm accounting treatment of the acquisition.
 - Review the tax position of the proposed acquisition.
 - Review the tax position of the subsequent wholly owned organisation and the transactional relationships.
 - Revision of the business plan and forward projections for the Company once acquired.
- 3.1.5. Initial review of the impact of acquisition on the business plan, undertaken internally, indicates that the core financial objective around reducing Council contract reliance is achievable; however further more robust estimates and business planning work is required.
- 3.1.6. The cost of the contract over the coming 3 years is incorporated within existing budgets, although budget virements will be required in the coming years to align as required.
- 3.1.7. There is a Strategic Review budget target linked to the reduction in the contract value over the coming three years. Although indications at this time are for the full target to be achieved by 2019/20, the incremental saving toward the total value within the 2017/18 and 2018/19 years is now considered unlikely.

3.2. PROPERTY CONSIDERATIONS

- 3.2.1.** BTP currently occupy the ground floor of Abbey Chambers where the Visitor Information Centre is located, with office accommodation on the first floor.

3.2.2. BTP may wish to relocate in the future. As part of the dialogue process for the Destination Management contract, it is understood that BTP's senior management are considering options for alternative provision. There is potential impact to the Council's commercial estate should BTP change locations, but this could be offset by leasing the property to another occupier.

3.3. TUPE & Pension Considerations

3.3.1. There are no implications for Council staff.

3.3.2. If the Council takes sole ownership of the Company (2.2 refers), this will *not* trigger a TUPE transfer of BTP's staff, because there is no change of employer.

3.3.3. The proposed change will not change BTP as a legal entity, so it should not trigger a crystallisation of BTP's pension deficit.

3.3.4. Options under consideration are:

(a) Do nothing – the Council as sole shareholder becomes the ultimate guarantor. However, the pension deficit would remain on the BTP balance sheet which could restrict its cash-flow and investment options in the future.

(b) Bring the deficit 'back in house' - BTP would retain responsibility for future service contributions, with the deficit balance (plus any reserves) transferring back to the Council. This would then be subsumed within the wider B&NES deficit, with recovery managed through existing recovery payment processes, although BTP would be expected to contribute to these payments.

Option (b) is preferred.

4. STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

4.1. This proposal will support the delivery of the Medium Term Financial Plan and Strategic Review objectives.

4.2. The Company will be governed in accordance with the powers set out under S1 of the Localism Act 2011 (The General Power of Competence) and in accordance with any Company governance arrangements the Council implements in due course.

5. THE REPORT

5.1. Background

5.1.1. Bath Tourism Plus (BTP) was established by the Council and Bath Chamber of Commerce in 2003 to deliver the Council's tourism and conferencing services. It is classed as a separate Local Authority influenced company and was established as a non-charitable company limited by guarantee. This governance model met the Council's needs at the time, but Officers and the Bath Chamber of Commerce believe that the current and future needs are best met by the change to sole ownership (2.2 refers).

5.1.2. BTP has two members, the Council and Bath Chamber of Commerce Limited, with the Council holding a type of 'golden share' to be used in specific situations of disagreement between the two members.

5.1.3. Since its incorporation, BTP's scope of operation has grown significantly to include many successful commercial trading activities (such as the Christmas Market), alongside the contract for core services from the Council.

5.2. Destination Management Commission Process

5.2.1. The Council commenced the procurement process for the new Destination Management contract in December 2015. BTP is the preferred supplier.

5.2.2. However, still to be resolved is the treatment of the pensions liability (3.3.3 refers) which, from a procurement perspective, is currently considered too great a risk to award a contract.

5.2.3. In order to address this issue, Officers reviewed the options set out in (3.3.4).

5.3. Wholly-Owned Subsidiary of the Council

5.3.1. The recommended option is to progress to where BTP is a wholly-owned subsidiary of the Council, making the Council in its corporate capacity the sole shareholder of the Company.

5.3.2. As sole shareholder, the Council would be able to exercise control over risks, such as the pension liability.

5.4. Legal Process

5.4.1. The decision to restructure BTP is down to the members – the Council and Bath Chamber of Commerce (BCC).

5.4.2. The most expedient approach would be for a written special resolution, agreeing to amendments to the Articles, signed by an authorised representative of the Council and BCC.

5.4.3. The new Articles would take effect immediately and a copy of the new Articles and signed resolution must be with Companies House within 15 days of resolution.

5.4.4. Any new governance arrangements can be implemented immediately after the special resolution has been passed. Legal advice has indicated that this is preferable to prevent delay and uncertainty within the BTP workforce.

5.5. Governance Arrangements

5.5.1. Based on independent expert legal advice, the Company would remain a Company Limited by Guarantee with the Articles being altered to enable the company to distribute surplus to its members.

5.5.2. A Board of directors will be put in place to oversee and manage the Company in accordance with the objectives set by the Council.

5.5.3. The Company would be 100% Council-owned at shareholder level. It would operate through its Board. The Directors would have a duty to act in the best

interests of the Company, which would be to maximise the return/benefit for the shareholders (the Council).

5.5.4. Advice has been received that, to avoid any inherent conflict of interest between the role of Council officers and Board members, Board members cannot be drawn from the Place Directorate or have a Culture, Tourism or Economic Development role.

5.5.5. The Councillor and Officer roles would be unpaid although expenses to attend Board meetings would be in line with normal Council policy.

5.5.6. Non-Executive Directors will be appointed, following an external process (as advised by the Monitoring Officer), with the approval of the Leader and the Chair of the Board.

5.6. Financial Due Diligence

5.6.1. Feedback from EY showed that BTP has delivered an operating surplus each year ranging from £80k to £150K, which has been transferred to the reserve needed to cover pension liability.

5.6.2. A risk-based due diligence with Finance officers and consultants EY examined the status, financial issues and related risks of the Company at the proposed point of transfer to a Council wholly-owned company; with the exception of the pension issue, this was satisfactory.

5.6.3. A review of BTP's proposed business plan was positive and showed alignment with the Strategic Review, savings and income plans for this area of service. There is a reduction of contract value over the lifetime of delivery, aligned to the Company becoming more self-sustaining. A revised business plan will be developed once sole ownership has been agreed. Proposed business objectives are shown in Appendix 1 to this report.

5.6.4. BTP's most recent audited accounts (2014/15) show a turnover of £2.76m. Income is earned primarily from the Visitor Information Centre activity and the Christmas Market, the services contract with the Council, and some income from grants and sponsorship.

6. RATIONALE

The Recommendation for the Council to take sole ownership of the Company is made to ensure a cost-effective delivery model for Destination Management in future. The proposed change to the Council's sole ownership of the Company will give the Council greater flexibility to manage the Company and respond to changing circumstances as they occur, and will place BTP in a more financially secure position.

7. OTHER OPTIONS CONSIDERED

7.1. Officers have thoroughly examined other ways of resolving the pension liabilities issue and, having taken Legal, Pensions and Finance advice, do not recommend any other options to Council.

8. CONSULTATION

- 8.1. All proposals have been drawn up with support from Officers in relevant departments and external experts (EY), together with research into the experience of other local authorities who have, or are in the process of, establishing similar companies.
- 8.2. Consultation has taken place with the Board of Bath Tourism Plus and Bath Chamber of Commerce.
- 8.3. Consultation has been undertaken with relevant Cabinet Portfolio Holders and Group Members. All future proposals will be subject to the normal processes and consultation.
- 8.4. The Monitoring and s151 Officers have been involved throughout and have had opportunity to review and input into this report.

9. RISK MANAGEMENT

- 9.1. A risk assessment related to the issue and recommendations has been undertaken by the Council's business partner EY, in compliance with the Council's decision making risk management guidance.
- 9.2. Officers will implement a work programme to take forward the actions, and will keep Members updated on progress.
- 9.3. Over the next 12 months the work programme will include:
- Development and agreement to a new business plan
 - Agreement to a future property strategy for BTP
 - Updating the Destination Management Plan for B&NES

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Background papers	Bath Tourism Plus background information: http://visitbath.co.uk/about-visit-bath
Please contact the report author if you need to access this report in an alternative format	

Appendix 1 – Bath Tourism Plus: Proposed Business Objectives 2016-19

1. Deliver transformational change in the visitor economy, benchmarking Bath and North East Somerset against other comparable destinations and horizon-scanning for future trends and initiatives.
2. Provide a year round package of cultural events, festivals and other initiatives in B&NES in support of the cultural and creative sector. Market B&NES and beyond as a destination to the leisure and business visitor, including domestic and overseas markets.
3. Develop and deliver coordinated marketing activity that increases the visitor economy in B&NES through destination marketing and product development. Enhance the marketing, packaging and offer of events, activities and festivals and where appropriate work jointly with the Council to achieve this.
4. Work in partnership with the Cultural and Creative Strategic Investment Board to develop the quality of the destination offer for B&NES, supporting local businesses, events, festivals and visitor attractions.
5. Identify funding opportunities at a national and regional level that will secure the long-term future of our destination as a growing visitor economy. Work with the Council to develop and deliver a 5 year Destination Management Plan (DMP).
6. Continue to grow and develop private sector engagement and communication with all stakeholders, businesses and services providers to support the visitor economy. Provide a forum/platform to ensure engagement with stakeholders and the sector.
7. Provide strategic guidance in relation to market intelligence to support the Council to develop its strategic visitor economy priorities. Provide specialist advice on the visitor economy to the Council and act as the voice for B&NES at regional, national and international level. Manage the Visitor Information Centre in an efficient and effective way.
8. Distribute any surplus revenue in accordance with Council strategic objectives as set out in the Economic Development Strategy, Cultural and Creative Strategy or Destination Management Plan.
9. Reduce the delivery costs by £400,000 over the three-year contract period.
10. Develop income-generating projects such as markets, walking tours, and new events to grow the visitor economy.
11. Enable a number of strategic review projects including the visitor economy strand.