

CABINET

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ENGLISH HERITAGE LOCAL MANAGEMENT AGREEMENT RENEWAL

Portfolio Holder:	Councillor Howard Doe, Deputy Leader and Portfolio Holder for Community Services
Report from:	Richard Hicks, Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive
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Summary

This report sets out details of the proposed renewal of the Local Management Agreement (LMA) with English Heritage for the operation and maintenance of Rochester Castle, Upnor Castle and Temple Manor for a five year period.

1. Budget and Policy Framework

- 1.1 The successful operation and maintenance of Medway's historic buildings is recognised within the council's policy framework. The 2017/18 Council Plan states:

Medway: "A place to be proud of"

"We want Medway to be a place that local residents and business are proud of. We will keep the streets clean and safe and promote Medway's rich heritage to attract visitors and inward investment."

- 1.2 Whilst approval of the LMA is a matter for Cabinet, additions to the Capital Programme are a matter for Full Council.

2. Background

- 2.1 Medway Council has a LMA with English Heritage for the operation and maintenance of three historic properties – Rochester Castle, Upnor Castle and Temple Manor.

- 2.2 The previous agreement ran for five years until April 2017. Under the terms of the previous agreement, English Heritage undertook repairs to the perimeter wall of Upnor Castle. These costs escalated to more than £400,000 of which English Heritage initially requested half from the council.
- 2.3 While discussions between the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive and English Heritage have subsequently reduced this request to the council to £80,000, the matter highlighted deficiencies in the LMA, which exposed the council to sudden large capital funding demands, exacerbated by English Heritage undertaking the procurement.
- 2.4 The LMA is now due for renewal and during discussions with English Heritage, officers have sought to address issues which have arisen, including limiting the council's capital financial exposure to a maximum of £100,000 per annum and to having responsibility for the procurement of future maintenance, but with joint contractual responsibility with English Heritage.
- 2.5 The basis for the capital funding requirement requested in this report derives from Asset Management Plans, which have been undertaken for each historic property included in the LMA. These plans have produced a schedule of works, which have been assessed by council officers to require funding of circa £1m over the course of a five-year agreement until 2022. Under the terms of the proposed LMA, this cost is to be shared equally between the two partners. Therefore, the council will be responsible for £500,000, over the five year period, which equates to a capped total of £100,000 per annum.
- 2.6 The draft Heads of Terms are set out as follows:
- *Following a review of the previous LMA between Medway Council and the Historic Buildings and Monuments Commission for England (via English Heritage) further clarity on the procedure for organising capital works is necessary.*
 - *This is essential for both organisations, which are under significant budget pressures and the amendments are set out to ensure cost certainty over a five year period and to clarify how future works will be procured.*
 - *Within a new Schedule 7, an Asset Management Plan (AMP) will be included, which sets out works based on a priority for repair. This schedule is to be reviewed twice (dates to be agreed) a year on site to agree specific works that will be undertaken during a financial year period.*
 - *The total annual budget for each year will be capped at £200,000 per annum for a five year period. English Heritage and the council will bear the total costs equally (capped at £100,000 per annum for each party) for the agreed programme of works, including professional fees. If a surplus remains for each annual period, this will be carried forwards to the next period, for a maximum of three years.*

- *Annual inspections of each site will be undertaken, at which both English Heritage and the council's Capital Projects team shall supply technical advisors, who are qualified to review Heritage buildings. They will review the AMP for each site and use their technical experience to jointly agree which works are considered a priority to be undertaken during the following annual financial period.*
- *The works identified to proceed are to be completed in a cost effective way and within the budget limits specified (£100,000 per annum per party). In circumstances where costs might exceed the budget or exceptional, unforeseen events occur, then alternative measures are to be implemented to safeguard the building until the subsequent financial year, when further budget allocations can be released.*
- *The council will organise the procurement of a Contractor to undertake the works with English Heritage approval and the council will manage this process, including the coordination of consultants that may be required. Both the council and English Heritage will be jointly responsible contractually for the payment of the agreed works.*
- *Quarterly meetings will be held between agreed representatives of each party at which relevant operational matters will be discussed.*
- *Amendments to the current LMA to be agreed by each party prior to the completion of the formal contract renewal.*

2.7 Should the Cabinet be minded to approve the draft Heads of Terms and English Heritage obtaining their internal approvals, both parties will be able to sign and complete the final legal agreement by March 2018.

3. Options

3.1 The options considered were:

- A) Renewal of the LMA on existing terms;
- B) Renewal of the LMA on amended terms; or
- C) Cessation of the LMA and responsibility for the operation of the buildings handed back to English Heritage.

Option A

- The difficulties experienced, particularly with the potential exposure of the council to a sudden, unforeseen and uncontrolled capital funding requirement meant the existing LMA was not considered an appropriate ongoing arrangement.

Option B

- The operation of the historic properties does have an annual net revenue cost to the council, particularly for Upnor Castle and Temple Manor, where both access and on-site facilities are limiting factors on the number of visitors they attract each year. However, these historic properties are the cornerstone of Medway's rich heritage offer, reflecting the ambitions

outlined in the Council Plan and attracting a range of visitors on an annual basis.

Rochester Castle, in particular, is recognised as of strategic importance to the council's cultural offer, not only for its intrinsic historic importance, but also as a major cultural venue, such as the castle concert series and the Christmas market.

Option C

- Returning operational control of the historic buildings to English Heritage would initially result in an annual budget saving for the heritage department. However, it was recognised that this could have a significant negative impact on the council's cultural offer, as well as potential additional budgetary pressure, if English Heritage were to question and/or introduce charges for many of the activities currently run within the sites.
- There would be a reputational risk and potential negative perception for the council, which would also undermine the Council Plan ambition to promote Medway's rich heritage, should the council relinquish involvement and operation of these important assets.

4. Advice and analysis

- 4.1 Of the options considered, Option B is considered the most suitable for the council to proceed with. The draft amended Heads of Terms, as set out in section 2.6, will provide greater financial certainty for the council. This will also allow the council to maintain control of the operation of these important historic properties and continue to deliver and enhance its heritage and cultural offer in line with the ambitions of the Council Plan.
- 4.2 Given that negotiations are ongoing it is recommended that delegated authority be given to the Director of Regeneration, Culture, Environment and Transformation and Deputy Chief Executive, in consultation with the Deputy Leader and Portfolio Holder for Housing and Community Services, to conclude negotiations and finalise the LMA, including the amended Heads of Terms, with English Heritage, subject to Full Council approval of the funding. However, should negotiations not be concluded on best terms then a report will be brought back to Cabinet accordingly.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Capital funding for maintenance and repairs	The age of the historic properties contained within the LMA increases the potential for sudden maintenance and repairs, allied often to the requirement for specialist contractors to undertake the work. This has the potential to expose the council to sudden capital funding pressures, as experienced with the works undertaken to the wall at Upnor Castle in the past year.	The amended LMA Heads of Terms defines the maximum budget implications for the council in each year of the agreement. This provides clarity from a budgeting perspective, while setting aside significant funding each year to maintain the historic properties, which will help minimise the risk of sudden major issues arising.	B2
Contractual liability resting with the council	Under the terms of the current LMA, the council will have responsibility for the procurement of contractors to undertake any works arising. This has the potential to expose the council to sole contractual liability.	The amended LMA Heads of Terms states both the council and English Heritage will be jointly responsible contractually for the payment of the agreed works.	C2

6. Consultation

- 6.1 The draft Heads of Terms for the amended LMA have been reviewed by council officers in partnership with representatives of English Heritage. Subject to the draft amended Heads of Terms being approved by both Cabinet and English Heritage Board, both parties will be able to sign and complete the final legal agreement by March 2018. However, should negotiations not be completed on best terms, then a further report will be brought back to Cabinet accordingly.

7. Financial implications

- 7.1 Previous repairs to the perimeter wall at Upnor Castle will require a contribution from the council in the sum of £80,000. This will require an addition to the Capital Programme, which is a matter for Full Council. The £100,000 per annum maximum funding requirement for the LMA with English Heritage over the five year period will be considered as part of the 2018/2019 budget setting process.

8. Legal implications

- 8.1 The draft heads of terms have been considered by Legal Services and in order to assist council officers in managing the new LMA, the new agreement will need to be carefully drafted to ensure that the agreed obligations on both parties are clearly defined and are enforceable. Critical obligations, such as paying for works, should have an appropriate and proportionate remedy in the event of a breach.
- 8.2 In order to make the council and English Heritage jointly responsible contractually for the payment of the agreed works, the works contracts would need to be agreed and signed by the council, English Heritage and the contractor (tri-party). However, this approval process may not be manageable within the timescales for procuring and carrying out necessary works. If the council must bear all the contractual risk of paying its contractors, the full costs of works and English Heritage are late in paying the council their share of the costs, remedies, such as the late payment of interest, can be included in the LMA to help mitigate the risks to the council.

9. Recommendations

- 9.1 Cabinet is asked to approve option B (renewal of the Local Management Agreement (LMA) with English Heritage on amended terms), as set out in paragraph 2.6 and 3.1(B) of the report.
- 9.2 Cabinet is asked to delegate authority to the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive, in consultation with the Deputy Leader and Portfolio Holder for Housing and Community Services, to conclude negotiations and finalise the LMA, including the draft amended Heads of Terms, with English Heritage subject to Full Council approval of the funding. However, should negotiations not be concluded on best terms then a report will be brought back to Cabinet accordingly.
- 9.3 Cabinet is asked to recommend to Full Council to approve a capital payment of £80,000 to English Heritage, as Medway Council's contribution to wall repairs undertaken at Upnor Castle.
- 9.4 Cabinet is asked to note that that the council's contribution of £500,000, capped at £100,000 per annum, under the draft amended Heads of Terms for the amended LMA will be considered as part of the council's budget setting process.

10. Suggested reasons for decision(s)

- 10.1 The amended LMA will set out a binding service level agreement with English Heritage, providing a structured programme for the operation and maintenance of three historic properties in Medway and budgetary certainty.
- 10.2 The proposed capital payment of £80,000 recognises Medway's commitment to the maintenance of the Upnor Castle wall, while significantly reducing the original sum being requested. The proposed capital contribution of £500,000,

over five years, capped at £100,000 per annum, recognises Medway's commitment to the ongoing management of these important heritage properties, in line with the Council Plan.

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Appendices

None.

Background papers

None.