



CORPORATE RESOURCES OVERVIEW AND SCRUTINY COMMITTEE

Committee Report

Public

Date of Meeting: 12th June 2008

Title: Museums & Arts Service Future Governance

Report of: Director of Community Services

Report reference: CS 37/08

Summary: This report provides as an appendix, Executive Report CS 26 08. That report details the background to and options for the museum service moving away from direct Council control to a separate trust.

Questions for / input required from Scrutiny:

Are there specific issues at this stage of consultation that members require further information on?

Recommendations:

Members note the report and provide comments back to the Executive on the proposal.

Contact Officer: Mark Beveridge

Ext: 7350

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: CS 26/08

Background

The future governance of the museum and arts service is an important issue for the Council to consider at this point. The service has developed considerably in recent years largely due to the input and funding from the Renaissance in the Regions. However, issues with the building fabric and suitability of storage are aspects of the service, which require significant additional investment to be made to effect the changes outlined in the development plan. Such investment would help the service delivery and enable it to meet the expectations of the local and visiting public. Whilst also helping to ensure it plays a full part in the City Historic Core development.

However, future governance is not simply about securing external funding, it is principally about delivering the service in a different way. One that could, like other trusts before it, help to provide what people seek from it in a very responsive and appropriate manner.

The report appended to this one was considered by the Executive and outlines the option and provides further details of the issues involved.

The Proposal

The report seeks agreement to move the governance issue forward, by trying to get a suitably experienced and appropriate person for the Chair of Trustees, along with trustees to form a shadow board. In seeking to locate such people the Council would ultimately be in a position to decide if requirements for devolving the service to a trust could be met and thus proceed further towards that goal.

The budget provision being sought would at this time be used to procure specialist advice to advise officers of the most effective and efficient route to achieve devolution for the service. It would also be used to seek suitable candidates for the role of chair and potential trustees, their identification forms an integral part of the final decision members will be asked to make in the future.

Conclusion

If the Executive agree to move forward in principle with devolution, that does not remove the final decision from the Council. At some point in the future a further report will be presented to members. That would outline the progress that would take place over the next few months, seeking the balance of the budget to enable a chair, trustees and staff to move down a parallel route to the Council in preparing the service for becoming a trust.

This would culminate in a final agreement between the two parties, or not as the case may be and the service would move on from that point.

The budget requirement at this stage is £50,000 which will be considered by Council and the overall budget provision would be £150,000, the balance of the latter sum is to pay for external advice, such as legal and financial, for both the Council and trust.



REPORT TO EXECUTIVE

PORTFOLIO AREA: Learning and Development

Date of Meeting: 29th May 2008

Public

Key Decision: Yes

Recorded in Forward Plan:

Yes

Inside Policy Framework

Title: TULLIE HOUSE GOVERNANCE OPTIONS AND DEVELOPMENT PLAN

Report of: THE DIRECTOR OF COMMUNITY SERVICES

Report reference: CS26/08

Summary:

This report presents Members with options for the future governance and operation of Tullie House, including moving the museum service from a direct Council delivered service to one operated by a Trust.

Recommendations:

The Executive is recommended:

1. To approve in principle devolution of the full responsibility for delivering the museum service to a charitable body (trust) and authorise officers to progress this work, subject to a final report in the Autumn.
2. Forward the report to CROS (12th June) and Community O&S (5th June) for comment.
3. To request Council to approve an initial budget of £50,000 to progress this first stage

Contact Officer: Mark Beveridge

Ext: 7350

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1. BACKGROUND INFORMATION AND OPTIONS

1.1 CONTEXT

- a. The need to consider future options for the City's Museum and Art Service was first considered by elected members in 1999 when "Options for Leisure Provision" prepared by KPMG was submitted. The Council at its meeting, 10/09/02, considered and agreed to explore the options available for the delivery of the service at Tullie House including the setting up of a Trust as "potentially the best way forward of delivering the Executive's long term objectives". The issue was also discussed at Community Overview and Scrutiny in October 2002 (COS.137/02) and the Executive (Ex.218/02) when report LCD.22/02 was presented. In addition CLS 49/03 considered the options. When Council agreed to progress the development plan for improving the facility the decision at that time was to consider the governance issue once the plan was at a stage to progress. The HLF gave approval in 2007, for a development grant to submit a Stage One application for funds, which is currently being progressed.
- b. An ongoing issue for the Council in recent years has been the cost of providing the museum and arts service in light of other competing services and emerging priorities. It represents a significant capital and revenue investment for the city and yet in the past few years has been unable to achieve the income targets set in the annual estimates. In the past any deficit has been managed due to the financial flexibility of the former Leisure & Community Department, which contained any overspends within its overall budget. This situation no longer applies. Although to-date since re-organisation the income under recovery has largely been met corporately. This has become increasingly difficult to achieve and for 2008/09, the income deficit will have to be found from internal virements, primarily within the Tullie House budget.
- c. The museum itself although the subject of two major capital investments in the 1990's, it now requires a significant overhaul to enable it to compete for customers and with the competition that now exists. In addition as part of the historic core developments within Carlisle Renaissance, it is timely that an HLF grant has been provided to give an opportunity for the capital bid to be developed. Although earlier work by ABL Ltd identified a potential £14m scheme, it is recognised that such expenditure is beyond the resources of the City Council alone to find. Even with substantial lottery support a single project is not feasible and any capital improvement would need to be in stages.

Devolving the service to a trust would provide the potential for making access to capital funds from external bodies easier than is the case for a directly run Council service.

- d. In the case of Carlisle Leisure Ltd., the service was tendered on the open market, which had become established in leisure facility management. The staff upon winning the tender established a trust to enable the service to flourish and cap the annual commitment the Council makes to the service with a number of planned management fee reductions linked to the Council's capital investment post transfer. Similarly, trusts have been used to achieve such outcomes for museum services elsewhere in the UK. However the key difference is that in the case of museum services there is no flourishing market of providers and the normally accepted route is to devolve the service to a charitable body, i.e. a trust. That then works in partnership with the authority at a more strategic level to ensure the service delivers on Council objectives whilst receiving an agreed level of subsidy. The precise details and nature of this agreement would be subject to detailed discussion with a shadow board, prior to a final conclusion by both the Trustees and Council.
- e. Option appraisal for the delivery of Public Services is a key part of a Best Value Review process (as set out in guidance from the Audit Commission.) However it is important to note that how the service is delivered will have a fundamental impact on the type of service it becomes. The final decision needs to take account of this as well as what offers the greatest potential ensuring the service best delivers on customer expectations. Members should be aware that there is are no substantial savings to the Council, other than that arising from the rates (NNDR), to be derived from the transfer of the service away from direct control of the Council, at least in the short-term. Indeed, until a shadow board is determined it is not possible to state what they would envisage as a acceptable amount of funding for the service, which would may include the NNDR sum identified as a potential Council saving. Establishing a museum trust simply to achieve savings is not a recommended route to take. Two primary reasons used to-date for other authorities moving down this route are:

To make financial savings or to provide a remedy for a failing service. The latter does not apply in Carlisle, although corporately the former has direct relevance.

The following underpin the rationale for moving the service to a trust:

- Providing a single purpose, so the trustees and staff can focus on the service without consideration of the corporate issues, which are a necessary aspect of being part of the Council.
 - Community Involvement either through being a trustee or involvement with the Friends or wider community groups, this fully supports the ethos set out in the recent Government white paper on Communities.
 - Financial and managerial autonomy, a trust can be more responsive to situations and is able to act more decisively. Potentially attracting more external funding for specific projects.
 - Organisational change, trusts have quickly shown that staff are more committed to the service and develop a greater sense of ownership.
- f. At the heart of the decision about the future of the service is not what is best for the service, nor what is best for the Council as a corporate body, but how the public interest can best be served. The decision sought from members is strategic, it will determine how the museum service can be best placed so that it is able to respond and deliver the changes demanded by the market and the audience it serve locally and regionally. Tullie sits at the centre of the Historic Core and the work being progressed through Carlisle Renaissance is designed to add maximum value to this part of the City. A Trust would be an ideal vehicle to work with the partners to enable the implementation of any changes identified through this work.
- g. Nationally there has been a considerable move towards setting up trusts for delivering museum services. The distinction for these trusts is the devolved nature of the transfer. They are charitable bodies, with a long-term relationship between the Council and the trust. All aspects of the service are transferred, the trust is not merely a key holder for day to day operational issues. There is risk sharing between the Council and the Trust.
- h. Trusts are not the only option; some have become part of a larger museum body, e.g. Tyne and Wear Museums, a few have gone down a private sector route and others have been outsourced to other existing museum organisations. Within Cumbria, Tullie House is the largest museum service and could if a trust were created potentially seek to operate other similar services elsewhere in the County.

THE NATIONAL POLICY AGENDA

The influence of central government and the agenda it has set recently cannot be ignored. These priorities as exemplified by National Indicator 6 'Participation in regular volunteering' and NI 7 'An environment for a thriving third sector'.

NI 6 recognises the importance of volunteering in empowering individuals, contributing to strong communities and adding value in the delivery of public services. Whilst NI 7 recognises the importance of the third sector to strong active and empowered local communities; the value to responsive and effective local government as well as the value of local government to the third sector itself.

This policy context provides a valuable insight into how the devolution of services connects with the emphasis on the role of the Third Sector in planning and delivering public services as part of the Local Government and Public Involvement in Health Act.

1.2 AN OUTLINE OF THE MUSEUM & ARTS SERVICE

- a. The City's Museums and Arts Service (including Tullie House Museum, Archaeology and Art Gallery, the Guildhall and Arts Development) have gradually developed over the past 15 years, with two major capital developments, Tullie House extension and the Border Gallery and the Millennium Gallery. The Service was historically the regional service for Cumbria and over 50 full time staff are involved in delivering a diverse service to locals and visitors. Currently the Service works across Cumbria, largely in partnership with other organisations. It is grant- aided by ACE North-West, to deliver a quality arts service at a local level although this is likely to change following funding decisions nationally. Tullie House and Guild Hall attracts over 291,000 visitors p.a. (2007/08) and has an overall usage of 467,000 (2007/08 which includes web site visits, outreach and arts events).
- b. Tullie House Museum and Art Gallery is an important asset for Carlisle, ensuring the care and interpretation of Carlisle's culture and heritage, as well as providing a popular visitor attraction. Visitor trends are fairly consistent from year to year. However the Service has been set unachievable income targets, which are largely dependent on visitors buying admission tickets for the Border and

Millennium Galleries in Tullie House. The income targets have been subject to above inflation rises in recent years and also were linked to the business plan of the millennium gallery. The service has strong links with local organisations and receives support from the Friends of Tullie House. The opportunity for people to find out about the place they live in is valued by residents across the District and is evidenced by the high satisfaction rating it received in recent surveys.

- c. Carlisle City Museums and Arts have the potential to be a centre for excellence for the North West region. The establishment of the North West hub with Tullie House as one of the principal partners, alongside Manchester City Art Gallery, Bolton and Preston Museums and the Manchester University Museum is recognition of the Service's national reputation. This partnership has benefited from substantial central government funding amounting to £400,000 in 2008/09 to develop learning and access.
- d. The national reputation of the museum service has resulted in a number of joint projects being developed with for example: the British Museum, Tyne and Wear Museums, Tate Liverpool. As well as being awarded the Best Large Visitor Attraction in the North West in 2007.
- e. Museums are generally viewed as an important part of the social wealth of a community and although not set up to make a profit, they have in recent years become more focused on the need to generate income and reduce the amount of subsidy it takes to operate them. Considerable progress has been made in recent years to develop income streams such as meetings, weddings and activity sessions to help offset the admission short fall. The outreach work that Carlisle's Museum Service is involved in ensures that the Service is not restricted to the physical fabric of Tullie House. Indeed, most of the learning and access work has focused on this aspect.
- f. The Guild Hall and the archaeological aspects of the Service add to the considerable potential of the whole museum. The city of Carlisle sits on Hadrians Wall and as such the historical lineage stretches back hundreds of years. This is an essential and important aspect of the museum service that has yet to be fully explored. The artefacts from the Millennium dig, plus the Viking find at Cumwhitton are two new additions to the collection yet to be displayed. The work of Hadrian Wall Heritage Company provides an excellent opportunity to develop this interpretative work and use the significant location of Tullie at the Western end of the wall.

1.3 OPTIONS FOR THE FUTURE DELIVERY OF THE MUSEUM AND ARTS SERVICE

- a. The Council paid particular care to ensure a sound process for the externalisation of the leisure facilities. District Audit at the time, was particularly interested in the way that decision had been reached. To achieve clarity of purpose it is again necessary to ensure that a robust approach is taken to exploring the options available to the council and to learn additional lessons from previous processes. However, in considering the options it is also necessary to be pragmatic and refrain from seeking out competition where it does not yet exist.
- b. The Council has a number of options available to it for the delivery of the museum & arts service. They were comprehensively covered in CLS 49/03.
- c. Local Authorities are able to deliver Museum and Arts Services in a variety of ways in addition to directly provided, (further details for the various Trust options are provided in the Director of Legal and Democratic Services comments and at Appendices A, B & C)
 - Development Trust for the sole purpose of raising capital for the improvement of the building. This type of trust is specific to a project and has no involvement in the operational aspects of the service. If this route were taken the service would remain under the direct control of the Council.
 - Not for Profit Distributing Organisations (NPDO's): which can take a variety of forms:
 - Industrial & Provident Society (IPS)
 - Company Limited by Guarantee (CLG).
 - Unincorporated trust
 - Community Interest Company

These vehicles are the means by which the operation of the service moves away from Council control to an independent body, as CLL is. However, in the case of CLL the service was outsourced to a “contractor” for 15 years and covers the functional management roles of facility management. A devolved approach, where the Council actively seeks to work with a group of people in achieving the best arrangement for the public is a different route to that taken with CLL. In the case of the museum and arts service it would become a charitable organisation, to enable it take advantage of the status a charity has.

- Independent Private sector management company. It is unlikely that tendering the service would produce any interested parties other than another Trust, which could be an option to explore. Unlike the sports sector there is an absence of an established market, as well as being an expensive exercise in itself. (This does not preclude seeking expressions of interest from potential operators via an advertisement in appropriate journals if members wish.)
- Pursuing a devolved route and establishing a trust to take on the full operational and strategic aspects of the service would be the recommended route, based on the experience of other organisations around the UK.

1.4 FINANCIAL ISSUES

The Museum and Arts Service is budgeted to cost £2.086m (2008/09) net of income. Income for the same year is expected to be £467,700 over all activities (A copy of the financial summary page for Tullie House and the Guild Hall are included in appendix D). To-date no financial assessment has been carried out of the economic benefit to the city derived from visitors to Tullie House or the Guild Hall.

a. RATES

The current cost of Rates for the service is estimated to be £123k Tullie House and £2k Guildhall (2008/09). Depending upon the type of organisation operating the Service, part or the whole of this could be saved and/or re-invested, but would be subject to agreement between the Council and the Trust. As a direct Service the Council is currently liable for this sum. A Trust (NPDO) with charitable status could receive 80% mandatory relief of this sum, which is equal to £98,000 plus a further 20% discretionary rate relief, of which 75% is a cost to the Council. The law has changed the basis of valuation for properties of this kind and the level of saving which can be achieved is not as great as that predicted in the late 1990s.

b. VAT

The City Council is in a position to recover all input tax incurred, subject to certain limits, under a special legal regime detailed under the VAT Act 1994. However, VAT regulations are complex and the rules governing charitable bodies and those bodies providing cultural activities differ greatly from those imposed on local authorities. Therefore the rules would need to be

scrutinised in detail before the VAT implications of a NPDO could be assessed.

c. CENTRAL ADMINISTRATION

Appendix D includes estimated central costs re-charged to Tullie House and the Guild Hall, 2008/09. Excluding capital charges for which there is a corresponding credit elsewhere in the Council's accounts, central and departmental administration totals £376,000. Whether a trust is created or not the issue of these central service charges could still be addressed and have perhaps received an unnecessary focus in previous discussions about governance of the service. In other Authorities agreement has been reached to enable the Trust to continue to receive the Council services for up to 2 years allowing time for the Trust to establish what is required and the Council to corporately address the issue of central charges.

d. ONE-OFF COSTS ATTRIBUTABLE TO SETTING UP A TRUST

A sum of up to £150,000 is estimated to be required as necessary to cover one off costs associated with pensions, consultancy, and internal & external opportunity costs, advertising for expressions of interest. A budget would have to be agreed with the trustees who would be able to use it, in order to buy in their own advice as they go about the business of setting up the trust. One third of this sum would be required at the outset to enable work to progress. This would include appointing a consultant to help officers and members for example, through the process of identifying suitable candidates for the role of chair and other shadow board members.

e. CAPITAL INVESTMENT

When the contract was established for the management of the Leisure Facilities, the Council agreed as part of its partnership with Carlisle Leisure Limited to invest £1.14m in the buildings. This enabled the capital investment objectives to be met from within and this was the most beneficial position for the Council. In return the Council achieved savings of £300,000 for the investment made.

A capital sum would be helpful to any type of NPDO established for the delivery of the Museum Service if it were to have the best opportunity to succeed as a new entity and be able to secure the funds necessary from

external sources for it to grow and flourish. Equally if the Service remains in-house an investment budget would need to be made available again to enable the Service to grow. A grant application for development funds was submitted to the Heritage Lottery Fund and the Council received £41,000 to develop a capital bid for funds.

North West development agency has awarded Tullie house £550K, via the N.W. Hub (renaissance in regions) to develop the Roman heritage story line at Tullie house by 2011. It is anticipated that this would be used to help match fund other sources to assist implementation of the development plan.

Heritage Lottery Fund

The Council has been awarded the development grant for putting together a full scale capital application to HLF, the development grant is not an assurance that future money will be granted. However it is encouraging that the HLF feel sufficiently confident in the submission for the development grant that they have awarded the Council this sum. The Council has one year from the award to complete and submit the capital bid.

Members may recall that the budget cost for the scheme outlined by the consultants was in the region of £14 million and that was some two years ago. Clearly the sum is not realistic for the Council alone to pursue, nor was it meant to be, as it was a figure relating to a series of improvements which would progress if and when finance from external resources became available.

If members wish officers to pursue a Trust as the vehicle for the service it would be possible to task the Trust to implement a capital bid. The plan with the capital improvement programme at Tullie was that it would be phased to facilitate operational expediency and fund raising.

1.5 LEGAL ISSUES

If a development trust is favoured the legal issue would be largely unchanged and all the current operational responsibilities would be with the Council for it to determine. The following information is only relevant if a full Trust were to be established, to operate the service. (NB Extensive comments from the Director of Legal & Democratic Services are provided elsewhere in this report).

a. Contract

The experience of establishing Carlisle Leisure Limited is that the cost of setting up a Trust would involve costs of up to £150,000 for external advice on legal and financial issues as well as internal re-charges plus the internal officer time involved. It would raise some complex legal, personnel, administrative and financial issues for early resolution and would require a management contract and lease between the City Council and a Trust. The collections would remain the property of the City Council and the Trust would have an agreement to use them for the service, but not disposal without reference to the Council.

b. Leases

Any leases the Council has would need to be assigned where necessary to the Trust. However the experience of CLL was that some companies refused to deal with CLL unless the council acted as guarantor because the company had no track record.

1.6 PROPERTY ISSUES

If the Service remains under direct Council control the property issues continue as now and maintenance and property investment are for the Council to resolve.

Property related issues are further complicated because of the listed building status of Tullie House. Any lease to a Trust would require careful wording regarding responsibility for repairs and maintenance. The option is for the property issues to remain the responsibility of the Council or to transfer them to the trust with a long term repairing lease at a nominal rent, with any maintenance deficit being addressed as part of the transfer negotiation.

1.7 PERSONNEL ISSUES

Under a re-organised arrangement there would be scope to review the staffing structure if necessary and seek an alternative arrangement that better equips it with the ability to deliver a more dynamic and flexible service. It is generally accepted practice that a Trust would do this itself. The following are issues only if a Trust were to be established:

a. TUPE

The Council currently directly employs all 50 plus staff in the Museum Service therefore establishing a Trust would require their transfer out of Council employment. They would transfer with the rights that they possess at the date of transfer and any future terms and conditions would be for a Trust to determine directly with the staff.

b. Pensions

The pension rights of the current staff would be protected until the time of transfer and thereafter become the responsibility of the Trust, which could seek admittance to the Local Superannuation Scheme.

c. Consultation

Full consultation would be necessary throughout the process with staff and Trade Unions.

d. Impact on other Council staff

There would be an impact on other staff in the rest of the Council if a Trust were established. The central re-charges would have to be absorbed (which financially is not feasible in the medium to long term) or saved corporately and the impact that would have is yet to be determined. This would need to be assessed once trustees were in place and had come to a view as to what they required or were willing to pay for from the Council. However, this could result in changes to staff structure in the Council for those staff not transferred.

1.8 RISK ASSESSMENT

Any of the options discussed in the report including the ones recommended for future work present a potential risk for the Council and prior to any final decision being taken, it is proposed that a risk assessment would be an integral element to determine the Corporate risks involved.

1.9 INDICATIVE TIMETABLE FOR INFORMATION

ACTION	DATE
Report to Executive with outline of viable options	29 th May 2008
Report to Community O&S	5 th June 2008
Report to CROS	12 th June 2008
Report back to Executive	30 th June 2008
Council Decision on initial proposal and agreement of budget	15 th July 2008
Report back to Executive	Autumn 2008
Report to Council for final approval	Autumn 2008
Implement Option – indicative time required	18 –24 months after Council considers decision (NB this period will vary depending upon an agreed time-scale with a Chair of Trustees and the shadow board)

CONCLUSION

The question of creating a trust to manage the museum and arts service is something that the Council has considered on a number of occasions in the past.

This current review itself is revisiting the question as agreed by Council last time the issue was raised when the development plan was agreed. That proposal was an ambitious target for the service which was budgeted at over £14 million. An investment which was recognised as beyond the means of the City Council alone to facilitate.

The primary benefit of establishing a trust to run the museum and arts service is it would provide the staff and trustees an opportunity to deliver the investment programme whilst at the same time cap the Council commitment to the service in revenue terms. Although, conversely it also removes the corporate budget flexibility of a directly provided service, taking as it would over £1 million from the revenue budget and tying it to a long term (largely irreversible) agreement with a trust, which when added to the CLL contract would total approximately £2 million of the revenue budget in the two vehicles. However it should be noted that if the Council were to continue with the current direct delivery and pursue the HLF funding, financial flexibility would be as much a barrier as devolution to a trust. This is because of the grant conditions that would be associated to any offer which normally

require at least the same level of funding not less, before the funding body will agree to the money being invested.

However, as with the establishment of CLL the control that the Council has, must be relinquished and although members would have representation on the trustee board, they would be serving the best interests of the trust as they would be obliged to do, not that of the Council.

It is expected that a trust would be able to attract alternative sources of external funding, not currently available to Local Authorities. However, it is not possible to give any potential gains from this source, as each application is independent and subject to a range of competing factors.

As members will know, the principal saving in such a transfer is the NNDR, however, it is important that a trust be seen as a method for enhancing an already good service and not as a cost saving measure. The exact details for the partnership agreement would be subject to detailed discussions with the trustees. The move to trust for the museum service is for the long term and should not be seen as a quick fix. Potential savings accruing to the Council would be in the longer term and thoughts of reducing funding or notional profit share at the outset are misleading. No trustee would consent to a transfer scheme on that basis.

The devolution of the service to a charitable trust should be seen in the context of the changing role of local government nationally. As well as the local picture where a vibrant and pro-active trust with a committed board of trustees could add value to the development of the City alongside the University and Carlisle Renaissance. Tullie House is at the heart of the Cultural Core and will play a significant role in making that part of the City an even more attractive place. As a trust this role would provide the service increased flexibility to maximise its' contribution alongside other organisations.

It is proposed that if members wish officers to pursue a Trust then an internal group would be established with representation to be determined. The next step along the road would be for another report to be presented to members in Autumn 2008, which gives details of a potential and trustees. At this point, if members agreed, a shadow board would be established. Both the Council team and that Board would work to produce an agreement, which would be considered in one final report to members before a trust was established. That process could take up to 2 years, so the decision sought in this report from members although setting the groundwork for devolution does not bind the Council to a final decision.

2. CONSULTATION

2.1 Consultation to-date

PFH, SMT, JMT, Executive,

2.2 Consultation Proposed

PFH, Executive, CROS, Community O&S,

3. RECOMMENDATIONS

3.1 The Executive is recommended:

1. To approve in principle devolution of the full responsibility for delivering the museum service to a charitable body (trust) and authorise officers to progress this work, subject to a further report in the Autumn.
2. Forward the report to CROS (12th June) and Community O&S (5th June) for comment.
3. To request Council to approve an initial budget of £50,000 to progress this first stage

4. REASONS FOR RECOMMENDATIONS

The need to resolve the governance issue for the museum and arts service has taken time to enable Members to fully consider the decision. This recommendation will ensure a decision is taken which will enable the issue of trust to be move forward.

5. IMPLICATIONS

Staffing/Resources – As with the establishment of Carlisle Leisure Ltd and Carlisle Housing Association, there would need to be a team of Officers tasked with devolving the service to a trust. If members approve this decision in principle the group would work on the issues to be resolved prior to the final decision being considered by members later in the year. These staff would be taken from existing resources with an impact on their current workloads. A budget of £150k is required to cover the cost of advice for the Council and Trustees in preparing for a transfer to

a Trust. This group would be supplemented by external expertise to provide advice and assistance for which budget provision of £50,000, is sought in this report.

Financial – The revenue and capital implications of the options to be considered will need to be very clearly laid out to enable a fully informed decision to be made. How proposals deliver the goals set out in the Corporate Plan, Medium Term Financial Plan, Capital Strategy and Asset Management Plan all of which are currently being updated, need to set out.

Revenue - the Leisure contract included a reduction of the fee to the Council over the first 5 years of the contract once the capital works had been completed. If capital investment is planned by the Council the amount of 'payback' if any will need to be carefully considered.

Budget Savings - currently the total expenditure for the Museums and Arts Service forms part of the gross budget from which the Council has agreed considerable savings should be made. This includes £1.6m for salary savings. If this service with circa £1m gross expenditure is to be excluded from the savings target and the Service Reviews are not to include this area this reduces the scope considerably. If this position is to cover a longer term period then that inflexibility as said in the report will exist for however long the contract or new arrangement lasts (which in the case of a Trust could be continuous)

The NNDR saving could produce a saving to the Council of circa £100k but this would need to form part of the costing plan.

Sustainable business - part of the reason for looking at the option to change the management arrangement is to tackle the current imbalance perceived between the costs and income generated from Tullie House. Options which clarify an acceptable level of subsidy will need to be presented for Council to consider. The revenue cost and income to be generated should be reviewed in the light of the service to be provided in the future from Tullie House and the capital investment the Council agrees to make. Performance measures will need to be developed and how these will impact on the Council for each option will need to be provided.

Capital Investment - the purpose of the investment and how it will meet with the overall priorities of the Council will need to be clarified as part of the reports presenting the options. How the investment can assist with the achievement of a reduced fee in the future if that is the case should form part of that. How this investment fits with the Capital Strategy and Asset Management Plan will need to be shown. A level of capital investment which is realistic and can deliver what the Council agrees is relevant and is affordable will need to be provided. The current plan is unrealistic at £14m.

Renaissance/Asset Review/LAV etc - More detail will need to be provided on how this initiative fits with these other significant initiatives. The ownership of the assets

involved and the maintenance costs and programme and whose responsibility will be clarified in future reports.

Impact on the Organisation of the City Council - some significant charges are made to this service for Community Services Management, IT and Personnel. As well as the directly employed people in the Museum and Arts Service, others in management and support services such as these may also be affected. The one off and recurring costs and the impact on the authority will need to be included in the future report.

Shared Services - the opportunities for options under this method of delivery which have been investigated will form part of the next report."

Legal – There is a wide range of legal issues arising in connection with any proposal to set up a Leisure Trust in respect of Tullie House. Some have already been touched upon in this report but by way of amplification they are as follows:

Reasons for Establishing a Trust

As with any other policy proposal, the Council should carry out its own robust analysis of the various options open to it for the future of the service, consulting with other stakeholders where appropriate, and then come to an open-minded view as to what is in the best interests of the Authority, its council tax payers and other stakeholders in the light of the perceived advantages and disadvantages of the various options. Such an analysis will encompass the financial aspects of the proposals and also what is the best delivery mechanism in respect of the future of the service. The trust option is acknowledged as an option for securing the provision of services of this nature. Some of the advantages of the trust option (and there may be others) are as follows:

- o The trust can be a charity and charitable entities have significant tax advantages.
- o Charities are entitled to mandatory relief of 80% from NNDR rates and can apply for discretionary relief for the remaining 20%.
- o Attraction of business sponsorship for the trust carries tax relief on charitable donations.
- o It is reckoned that there is a greater capacity of attracting external lottery funding for development and expansion of services in some cases.
- o Whilst democratic control of the activity through the local authority might be lost, there can be increased community involvement in strategic decision-making.

- o Following transfer, trusts might be less prone to the direct financial pressures affecting local authorities.
- o The charitable trust can be a single focus body and not part of the overall local authority structure and so potentially give greater emphasis to the services themselves.
- o Local authorities can retain a strategic role in service delivery and there could be opportunities for the authority and the trust to work together in partnership to improve service delivery.
- o There be greater freedom and flexibility of operation and decision-making and an opportunity to harness public and private sector expertise on the board.

Against the above, the setting up of the trust would inevitably involve the authority relinquishing direct control of the service and arrangements would need to be put in place for the use of the assets involved in the service. Any transfer to a charitable trust is likely to be irreversible. The overall financial impact of the loss of the service on the remainder of the Council's operations would also need to be considered. If the judgement on whether or not to go down the trust route is partly dependent on a trust's ability to access funding streams not available to the Council then the prospect of achieving this should be given some consideration to be sure that it is in fact the case. It would be a question of the authority weighing up all the various advantages and disadvantages and then coming to a view on the way forward.

Powers to set up a Trust

There are both specific and general powers that would be available to the Council to enable it to set up a trust. In respect of specific powers, the Public Libraries and Museums Act 1964 enables authorities to "do all such things as may be necessary or expedient for or in connection with the provision or maintenance" of museums and also to "make contributions towards the expenses incurred by any person ... providing a museum or art gallery". There are also specific powers under the Local Government (Miscellaneous Provisions) Act 1976 enabling authorities to provide recreational facilities as they think fit and to assist by way of grant or loan towards the expenses incurred by a voluntary organisation in providing such recreational facilities.

There are also general powers under the Local Government Act 2000 to enable the authority to promote or improve the economic, social or environmental well being of its area and this should enable the Council to establish a trust and incur costs associated with its establishment. The general well being powers in the 2000 Act

are wide ranging and include power to give financial assistance to any person in connection with the objectives set out above. There are also other general powers in Section 111 of the Local Government Act 1972 giving authorities power to do anything calculated to facilitate the discharge of any of their functions.

In round terms, therefore, there should be sufficient powers to enable the Council to set up and provide funding towards a trust if this is determined to be the most advantageous option for the Authority to pursue.

The Form of Trust to be Established

Once it is decided to set up a trust, there are a number of transfer vehicles, which might be appropriate to put the trust in place. Some of them have been mentioned earlier in the report. They are:

- An Unincorporated Association. This is not recommended in circumstances where the trust would have a significant number of staff employed and other contractual commitments because, potentially, it exposes the individuals concerned to personal liability.
- An Industrial and Provident Society. Further details are given in Appendix A and there are advantages and disadvantages that would need to be rehearsed in this form or organisation before coming to a view.
- A Company Limited by Guarantee. This is probably the most commonly used vehicle for creating a new charitable trust, but again, it does have advantages and disadvantages which would need to be rehearsed and evaluated.
- The Pocket Trust. Over recent years private contractors have been using “pocket” trusts to undertake management functions as part of a public private partnership contracting arrangement. The pocket trust is usually wholly owned by the contractor and will generally be non-charitable but will be able to obtain discretionary NNDR relief. The pocket trust board will usually consist entirely of the contractor’s nominees, although there are some indications that community representation is becoming acceptable. This is probably not an appropriate vehicle for the facilities at Tullie House.
- A Community Interest Company. This is a new form of transfer vehicle that may be available for the Council to consider in these circumstances.

Careful thought will need to be given in due course as to the appropriate delivery vehicle and also, depending on which vehicle is chosen, the degree of local authority involvement in any company (if such a vehicle is used). It will be necessary to ensure that, under the provisions of the Local Government and Housing Act 1989, the company does not become either “controlled” or “influenced” by the local authority with the consequential capital expenditure implications which would be thrown back on the authority if the company were so caught by the legislation.

A Charitable or Non-Charitable Trust?

It is not possible here to rehearse all the arguments for or against a charitable trust but there are advantages and disadvantages in either option. Some of the advantages are well known e.g. relief from NNDR rates and, in certain circumstances, VAT. There are some disadvantages, however, which will need to be borne in mind e.g. that the charity can only act within its objectives which cannot be altered without the Charity Commission’s consent; that there is a relatively burdensome administration imposed on charities under current legislation; any transfer of assets to a charitable trust is irreversible; and a charitable entity must be independent and the trustees must be able to act at their discretion without interference from any other body or person.

Whether or not the charitable route would be the better option would most likely be dependent upon specialist advice in this regard.

Land Issues

The Council would, almost certainly need to give consideration to granting a long lease of Tullie House and the Millennium Gallery to the trust. It is anticipated that a relatively long lease will need to be granted to assist the trust in obtaining funding from external voluntary and private sources.

It has to be borne in mind that there are restrictions on the Council’s use of the Millennium Gallery because it does not own the freehold itself. The Gallery is leased from the County Council for a term of 150 years and any proposal to assign the lease to a trust would need the County Council’s consent. Further, there are certain grant conditions imposed by the Millennium Commission requiring the Gallery to be used for specific purposes and opened for public use, although the Council is able to charge for access. The consent of the Millennium Commission to any disposal to a trust would also need to be obtained and the trust would have to

agree to assume the responsibilities which the Council currently has opposite the Millennium Commission in order to protect the authority's position.

Further, if the proposal envisages the transfer of land or property to the trust at less than the "best price" then careful regard would need to be had to Section 123 of the Local Government Act 1972. The Secretary of State's consent is usually required in respect of any freehold sale or lease in excess of seven years at less than the best consideration, which can reasonably be obtained. However, there are general disposal consents given by the Secretary of State which allow authorities to dispose of an interest in land at an under value where the local authority considers that it will help to secure the promotion or improvement of the economic, social or environmental well being of its area provided that the under value does not exceed £2,000,000. Careful consideration would need to be given to these legislative provisions, as well as the set aside provisions in the Capital Finance Regulations in respect of any capital receipts that might arise from the disposal.

Pensions, TUPE and other staff Transfer Issues

The transfer to a trust is almost inevitably going to involve the transfer of existing staff to the employment of the trust under the existing TUPE legislation. This, in turn, will bring in its train the necessity to cover matters such as the ongoing pension provision for staff in the same way that those issues arose and had to be dealt with in connection with the LSVT and leisure transfers.

Appointment of the Board

The appointment of the Board to operate the trust would need to be considered and there are various methodologies for doing this that would need to be examined.

Specialist Advice

Setting up the trust and putting in place the necessary documentation will be a large undertaking to ensure that both the Council's and the trusts position (if indeed this option is chosen) is properly protected. It will be a "two handed" job requiring substantial input from the Council's officers but also from specialist external advice, which will need to be commissioned, particularly in respect of legal and perhaps finance. There are a number of niche firms that have pioneered the establishment of such trusts and other authorities that have already gone down this route have generally out-sourced this particular specialist work. A sufficient budgetary

provision will therefore need to be made available to cover any external costs, which may need to be incurred.

Corporate – The proposal to devolve the service fits alongside the Community Empowerment pilots being considered and strengthens the Learning City priority by giving a trust the responsibility to deliver aspects of this for the Council.

Risk Management – The major project would be subject to Prince 2 methodology

Equality and Disability – The proposal is underpinned by equality of access for all

Environmental – As part of any negotiations the Council policies on environmental issues would be expected to be followed and enhanced, indeed from a financial perspective it would be prudent for a trust to make every effort to make savings in this area.

Crime and Disorder – The limited amount of work carried out so far could be expanded as the impact of a fully devolved trust began to establish its' own partnership and working arrangements with other organisations.

Impact on Customers – This is where a devolved trust would have the most impact, with a Chair and Board of trustees acting as guardians of the service for the local people and ensuring that the service delivers to its' maximum capacity from a customer perspective

TYPES OF NPDO (TRUSTS)

Industrial and Provident Society (IPS)

An IPS can be set up as a charitable or non-charitable organisation, both of which would comprise not-for-profit-organisations. The primary difference in their status lies with the regulatory body, which controls them. A charitable IPS is an ‘exempt charity’ which is controlled by the Registrar of Friendly Societies whilst a charity limited by guarantee is controlled by the Inland Revenue.

IPSs are registered under the Industrial and Provident Societies Act 1965. They must be able to satisfy the Registrar that the organisation is going to be a genuine co-operative or will carry on its business for the benefit of the community.

A constraint of the IPS structural arrangement, which may lead to problems if the IPS seeks funds commercially or through grants, is the inability to form a holding company/subsidiary structure. However, this can be achieved through creating another legal entity that would be wholly owned by the primary IPS.

For the Inland Revenue to consider an IPS as charitable it must have charitable objectives and be for the benefit of the community it serves.

Employee Owned IPS

This was used by Greenwich Leisure, which was one of the first trusts set up to manage local authority facilities. It is an IPS controlled by its employees with charitable objectives, and therefore not a true co-operative. It is feasible to have some non-employees on the board, but with employees electing and controlling the majority of seats on the board. As a consequence of the employee membership and directorships, this model is not eligible for charitable status, but can still obtain discretionary rate relief.

Company Limited by Guarantee (CLG)

This is the structure most often used by local authorities considering the not for profit route. It has a similar structure to a company limited by shares, the primary difference is that members do not own shares but guarantee a nominal sum on liquidation. Each member has an equal interest and voting rights at general meetings. All Companies Acts apply to the CLG, and charitable status if sought, requires registration with the Charity Commission.

Limited liability provides protection to the directors; however, this is not total protection, because directors can be disqualified from acting as director in the future. The action of the directors are generally judged against what is deemed reasonable, and takes account of the information available to them at the time of their decisions.

The CLG has to have a Memorandum and Articles, which detail the functions and powers of the company, as well as the various operating procedures it will follow. It is within these, that the local authority would seek to influence the objectives of the company.

To achieve charitable status in England requires the approval of the Charity Commission. To satisfy the Commission, the CLG must be formed solely for charitable purposes and importantly it has to be separate from local authority control. This, as a consequence, requires local authority elected members to be in the minority on the Board. Non-charitable activities e.g. consultancy, catering can be carried out by separating it from the charitable activity and forming a trading company. This subsidiary can be owned by the charity, but profits made would then have to be made over to the charity.

Forming a CLG is relatively quick and is done so at Companies House. Changes to the Memorandum Articles are also without complication, with a meeting of members who can vote and pass amendments providing they comply with the voting requirements.

The range of members, which can be used to form the Board of Directors, can be wide or narrow, depending upon the way in which the Memorandum and Articles are originally drafted. However, the Inland Revenue if charitable status is sought, and the CLG would need to operate subject to both Companies House and the Charity Commission's regulations limits employee involvement.

INDEPENDENT FOR "PROFIT" LEISURE COMPANY

This delivery option is concerned with companies, which specialise in the running of local authority leisure facilities for the benefit of shareholders. Their primary objective is to make a profit.

A number of these companies have now become part of much larger and often publicly quoted companies, which often have a wide range of other interests. This trend has seen all of the major players in the local authority sector being swallowed up by the larger parent companies which has given them access to capital investment funds which were previously denied to them because of their size and relative high risk from a borrowing perspective.

Unsurprisingly, health and fitness, catering and swimming lessons form key elements of their strategies and consequently their marketing portfolios. These companies have developed a range of brands appropriate to their product and they adopt very proactive and aggressive campaigns to ensure their brand works well for them and their customers.

The operating arrangement that would exist between an authority and a private company requires a contract specification to be drawn up and tendered against. This would form the basis of the agreement for the service delivered by the company and would help in the monitoring of the contract to ensure that the service is provided as specified. To-date this type of approach has not been used to run a museum service. This is principally due to the absence of a market in this area for these companies. The opportunity to make a profit is limited unlike the leisure sector where they based.

Trust Issues

A number of specific issues arise if a Trust were to be selected and these include:

- a. **Trustees**
A Board of Trustees would have to be established and the most equitable and productive method would be to draw up job descriptions and person specification based on the expertise required. These could then be advertised and give an equal opportunity for interested people to apply for the 8 10 positions available on the Board. Depending upon the type of Trust selected the Council could be represented on the Board by elected members but their first responsibility would be to the Trust and not the Council.
- b. **Formation**
It is envisaged that a trust would be a charity and be a company limited by guarantee, however, a chair and trustees would determine for themselves, which is the most appropriate route for them to take.
- c. **Capital Endowment**
Discussion with other authorities such as York who have gone down the Trust route for the museum service indicated the necessity of having some form of capital reserve from the outset. This would be used for development of the service either alone or in partnership with other funding bodies such as Heritage Lottery Fund.
- d. **Development Plan**
Prior to becoming a Trust the Service would need to have a Development Plan, which provided a clear strategy on how the service would move forward. This Development Plan would give an outline of the key areas for development of the Service, in particular capital proposals over the next 10-15 years. This would give the Council and the Service a clear directional plan. The plan currently being devised for HLF could form the basis for this.

Process of setting up a Trust.

If a Trust were determined to be the most appropriate vehicle for delivering the Council's objectives then a tremendous amount of work would need to be applied prior to a final contract being signed between the Council and the Trust. This would involve a team of officers representing culture, finance, legal communications, procurement, and property from the Council who would need to be almost fully dedicated to the task as buying in external expertise for legal, finance and project management.

a. Responsibilities

b. City Council

c. Initiation Group

In order to carry forward these issues, the forming of a "shadow board" should be undertaken after a decision to follow the trust route is taken. The "shadow board" should include a representation from the Council and the Friends of Tullie House, as well as from commerce, the professions, education and the media. It would be useful to have a person with a national, if not regional remit. The "shadow board" should have an independent chairperson. The recommended size of the trust board is between 8 and 12 (50% of the places should be openly advertised).

d. Specialist Support

The experience of the setting up Carlisle Leisure Limited was that the external legal and financial advice was invaluable and this would need to be provided by external firms, which have specialist knowledge of Trusts. This would be the case both for the Council and the Shadow Board.

APPENDIX D								
Tullie House Budget 2008/09								
Service	Exp Code	Expenditure NNDR ** Support Services *** Capital Charges Gross Expenditure Income						Net Expenditure
Shaddon Mill	15590	32,400	3,000	0	0	35,400	0	35,400
Tullie House Utilities	16010	151,700	0	0	0	151,700	(3,400)	148,300
Tullie House Building	16050	415,800	118,700	376,000	266,700	1,177,200	(1,200)	1,176,000
Arts	16080	144,600	0	0	0	144,600	(111,500)	33,100
Brampton Live	16085	83,700	0	0	0	83,700	(56,100)	27,600
Visual Arts	16090	90,300	0	0	0	90,300	(40,100)	50,200
Workshops & Events	16100	20,900	0	0	0	20,900	0	20,900
Conferences & Catering	16140	37,000	0	0	0	37,000	(60,200)	(23,200)
Curatorial	16170	187,800	0	0	0	187,800	0	187,800
Learning & Access	16200	74,000	0	0	0	74,000	(15,000)	59,000
Marketing	16230	107,400	0	0	0	107,400	0	107,400
Shop	16260	72,100	0	0	0	72,100	(90,000)	(17,900)
Visitor Services *	16290	343,200	0	0	0	343,200	(90,100)	253,100
Guildhall	16480	19,300	2,300	1,300	6,000	28,900	(100)	28,800
TOTAL		1,780,200	124,000	377,300	272,700	2,554,200	(467,700)	2,086,500

Notes

* - Income to be reduced by £23,100 from admin. post. Virement still to be actioned. ** NNDR Actuals for 08/09 Tullie House £123.169, Guildhall £2,310. (No figure for Shaddon Mill yet).

*** Support Services Breakdown

Service Management & Admin –	6040	
CMS Management		16,400
- Community & Culture Mgmt		33,100
- Environmental Services		<u>700</u>
		50,200
Other Internal Directorate	6041	
- Customer Contact Centre		300
- Building & Facilities		<u>99,500</u>
		99,800
Corporate Services -	6602	
- IT Services		116,600
- Finance & Audit		45,900
- RBS & Debtors		<u>5,300</u>
		167,800
Development Services	6603	11,800
Personnel	6605	46,400
		376,000