



# REPORT TO EXECUTIVE

## PORTFOLIO AREA: LEARNING AND DEVELOPMENT

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Date of Meeting: 14th April 2009

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Public

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Key Decision: Yes

Recorded in Forward Plan:

Yes

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Inside Policy Framework

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Title: TULLIE HOUSE - FUTURE GOVERNANCE

Report of: DIRECTOR OF COMMUNITY SERVICES

Report reference: CS 22/09

### Summary:

This report outlines the options available to consider devolving the Museum & Arts Service to Trust.

### Recommendations:

The Executive is recommended to:-

1. Agree that Tullie House is devolved to a Trust.
2. Delegate authority to the Director of Community Services in consultation with the PFH for Learning and Development to procure the necessary support for establishing a Trust, and progress this, reporting back at key stages.
3. Requests Council on July 14<sup>th</sup> to approve a supplementary estimate of £150,000 to fund the support necessary to progress the establishment of a Museum Trust.
4. Refer the issue to Community O&S at its meeting on 28<sup>th</sup> May for comment.

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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: CLS 003/06, CS 56/06, CS 30/07, CS 88/07, CS 09/08

## **1. INTRODUCTION**

- 1.1** A report was commissioned from Egeria Ltd who are acknowledged experts in the area of Museum Trusts. That report is appended (Appendix 1) and in brief covers the rationale for devolving services to a Trust and places it within a strategic national context. The consultants report does not consider the local implications in so far as the City Council is concerned and this report will make reference to that.

### **1.2 An outline of the Museum & Arts Service**

- a.** The City's Museums & 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 Arts Council England North-West, to deliver a quality arts service at a local level. Tullie House attracts over 311,000 visitors per annum (2007/08) and has an overall usage of 490,000 (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 income targets, which have been difficult to achieve and 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 that has proved unrealistic. 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 £450,000 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 Scottish Portrait Gallery, Exeter Museum, British Museum and the Victoria & Albert Museum.
- 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 Guildhall 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.

1.3 The present service, in addition to providing a Museum and Gallery space for local people and visitors to enjoy, also has a significant involvement in terms of learning and access. This aspect whilst based around the resources of Tullie is supported in the main by funding from Renaissance in the Regions. That funding will be worth over £450,000 in 2008/09 and that helps fund additional staff and activities for primarily local people, including for example free access to under 16's.

1.4 The infrastructure of the buildings is an integral part of the service and currently plans are underway to develop an RDA funding project to help interpret the Roman

Heritage of the area, (Roman Gateway). Over £560,000 of external funds will be used to implement this scheme.

- 1.5 A further proposal involving a bid to the European Regional Development Fund (ERDF) is being progressed for a future capital development of the site.
- 1.6 The service is also at the heart, both strategically and practically, of the historic quarter developments which are being progressed through Carlisle Renaissance.

## **2. BACKGROUND**

- 2.1 Consideration of options for Carlisle's Museum & Arts Service go back to 1999 when 'Options for Leisure Provision' prepared by KPMG was submitted. When the development plan for Tullie House was agreed, it was recognised that there would be a need to revisit the options for governance at some stage in the future.
- 2.2 The City Council has already established one Trust, Carlisle Leisure Ltd, which was set up for the purpose of managing the City Council sport facility portfolio. A Museum Trust arrangement is not unsimilar in that their common purpose is to benefit the service, working with their local authority partnerships to deliver quality leisure opportunities.

## **3. STRATEGIC CONTEXT**

- 3.1 The present Corporate objectives which the Museum Service contributes towards are Learning City and Carlisle Renaissance. In particular through the range of learning and access activities especially, the service contributes significantly to Learning City with several thousand young people using the service annually.
- 3.2 In the development of the Historic Quarter, Tullie House particularly can help to be a catalyst for the regeneration of the area. It is recognised as a substantial service both locally and in the region. With the activities planned to maximise the impact of Hadrian's Wall and the potential benefits that could bring to the City and surrounding area, Tullie House will be expected to play a major part in this development. North East and North West Regional Development Agencies, Hadrian's Wall Heritage Company and Cumbria Tourist Board collectively are determined to improve the general offer to visitors using the wall as a means to help achieve that outcome.

3.3 The emerging tourism partnership could both participate in and benefit from Tullie becoming a trust, as the visitor economy is a key component of the future success of the service. In addition, the Friends Group is already an excellent vehicle for local people and communities to be involved with the museum and it is envisaged that they would play a part in the service moving forward under a new governance arrangement. As Tullie has a key role in providing a museum and arts service to local people, it is essential that local people are able to play a full part in the development of a trust. In part that would be through reporting back through the democratic process and also via the representation via the Friends Group and discussion with them as to the most effective way for them to be involved has yet to be undertaken.

3.4 Tullie House is a site with a significant Roman Collection and a blossoming partnership with the British Museum. Consequently the strategic pieces of this jigsaw are becoming aligned, in which Tullie House can play a major part.

Whilst this role could occur as a direct delivered service or a Trust, it is the latter vehicle which would provide the greater flexibility and freedom to act in such a potentially dynamic environment with other partners. Potential funding opportunities could be limited just to a Trust from existing or new partners, which could deny the service the chance to deliver the outcomes that it is well placed to provide, it were to remain a direct Council service.

3.5 Within the North West, Tullie House has shown it can play a major role in as a sub regional facility. The fact it was chosen as one of the Hub sites indicates how important it is seen to cultural development at a regional level.

3.6 The significance of the existing budget cannot be overlooked from a corporate perspective however. Currently efficiency savings corporately have required service reviews within the Museum and Arts budget. This led to savings being achieved in recent years which have contributed to the corporate whole. A direct service provides such financial flexibility, whilst devolving to a Trust would make this much more difficult. A Trust would have a set allocation of funding from the City Council and although some efficiencies could be negotiated with the Trustees as part of the devolution, any short-term gain is unlikely. There is a potential saving on the NNDR (rates) which could benefit the corporate finances. However, that is based on the premise that the Council retains some or all of the NNDR saving arising from creating a Museum Trust.

- 3.7 The converse is that full rate relief is given which would include the 80% mandatory and 20% discretionary. In such a situation, depending upon what decision is made on the 80%, the 20% figure would cost the Council to provide the Trust will relief on it. Longer term it could be that there is a saving accruing to the Council, because any inflationary increase to the Museum budget could be removed. Requiring the Trust to find the money to pay salary increases, higher fuel bills etc. (N.B. This is not a situation which has a built in inflation increase into it).
- 3.8 Increasingly, service delivery is being required to be more efficient and effective, both to help the achievement of corporate priorities and to satisfy customer expectations. The commissioning of services has become an established method of ensuring services achieve these outcomes. It has been used very successfully in Social Services and Education and incorporating it within the procurement of Museum Services would be an extension of this approach. This could help to ensure the service delivers the outcomes sought for it in line with corporate priorities and allows for flexibility where these might change over time.
- 3.9 Establishing a Trust will take an investment of staff time and a budget to help buy-in external support for the Council or the Shadow Trust. Therefore the rationale for devolving the service should not be seen as financially based at the outset.
- 3.10 If a Trust is to be created for the Museum Service, the decision should be based upon whether continuing a direct delivery provides the most appropriate strategic fit with the aspirations the Council has for the Museum Service and the Historic Quarter.
- 3.11 A Trust has undoubted benefits to offer from the way it can act independently yet in partnership with the Council and others to achieve a range of outcomes. It presents few disadvantages; however corporate financial flexibility is a significant one, and the impact on the Council overall. It is likely that if a Trust is created the Council transformational work will need to take account of the impact on central charges.
- 3.12 The type and style of Trust will be determined largely by Trustees but the norm would be a company limited by guarantee and established as a charity.
- 3.13 In summary the Executive need to balance the advantages and disadvantages of moving to a Trust which are briefly:  
Advantages  
Ability to focus on the core business of providing a museum service

Flexibility to establish plans and policies quickly and appropriate to current and potential audiences  
Funding arrangements that create a stable planning basis for planning and development  
Financial advantages from being a charity  
Opportunities to make new connections and develop new partnerships  
Greater attractiveness for potential donors and people considering long term loans to the collection  
Job satisfaction increased for staff and greater motivation to succeed

#### Disadvantages

Loss of corporate financial flexibility for the Council, with a defined sum tied to the trust agreement  
Lack of influence and accountability over future decisions affecting the museum service once a trust is established  
One off costs for devolving service have to be borne by the Council  
Loss of reputation for the Council and trustee if the trust fails  
The trust might develop a status and reputation that make it a substantial influence and put it at odds with the views of the Council  
The priorities of the Council and those of the trust might be different over time  
Legally difficult to reverse once a final agreement is entered into  
Uncertainty for staff subject to change away from the Council as an employer  
Existing staff pension arrangement might be too expensive to maintain long term

The Director of Democratic Services also addresses this aspect in his comprehensive comments at the end of this report.

## 4. FINANCIAL ISSUES

- 4.1 The Museum & Arts service is budgeted to cost £2,135,000 in (2008/09) net of income, though including capital charges. Over the same period the income target expected from the service is £515,000, across all activities.
- 4.2 Rates – The cost for NNDR is £126,000 2008/09. This sum could be saved entirely at the expense of the Trust or be shared with a Trust, subject to agreement. The Council is 100% liable for this sum currently. A Trust with charitable status could receive 80% mandatory relief of this sum plus a further 20% discretionary rate relief, of which 75% is a cost to the Council for this discretionary amount.

- 4.3 VAT – The Council recovers all the tax incurred, subject to certain limits, under a special legal regime detailed in the 1994 VAT Act. Advice on this matter has been sought and received from LaVat (a copy of their advice is appended). That information was available and considered by Egeria Ltd when they produced their draft report.
- 4.4 CENTRAL ADMINISTRATION – As with any service that ceases to be a direct Council responsibility, central charges will need to be saved or re-apportioned to the remaining services in the Council. Given the impending transformational work across the Council, it is anticipated this is an area which will be addressed through that work if a trust is created.
- 4.5 SET UP COSTS – It is anticipated that up to £200,000 will be required to cover one off costs that will be incurred by both the Council and the Shadow Trust. A budget of £50,000 was initially provided for the work and the balance of that is still available to be added to the £150,000 being sought in addition in this report. Help is available from DCMS and Museum Libraries and Archives, who are preparing model contract documentation to assist councils to devolve services to trust without the significant legal costs that such work has generated in the past. These can be used as the basis for a legal agreement. Other local authorities have already placed such services in trust and they have already been helpful to this Council and would continue to be a source of information.
- 4.6 CAPITAL INVESTMENT – A major attraction of a Trust is their potential to attract new funds for infrastructure improvements and activity development. It is possible that a Shadow Board of Trustees might seek some form of dowry, however, that is unknown at the present, ahead of a Chair and Board being established.
- 4.7 LEGAL ISSUES – If a trust is established, there will need to be a form of agreement between the Council and the new Trust. It is anticipated that it would take the form of a partnership agreement incorporating elements of the new approaches to commissioning which are being developed across the cultural sector currently
- 4.8 What is clear however, is that the collections will remain the property of Carlisle City Council and which a Trust would have access to for the purposes of delivering the service.
- 4.9 PROPERTY ISSUES – It is anticipated that as with Carlisle Leisure Ltd, the buildings would remain under City Council control and leased to a new Trust. Again the details will need to be incorporated into the partnership agreement.



4.10 PERSONNEL ISSUES – When Carlisle Leisure Ltd was created, the existing staff together with their terms and conditions were transferred to Carlisle Leisure Ltd. It is anticipated that a new Museum & Arts Trust would have the same arrangements and TUPE would apply. Nonetheless, close consultation with staff and their Trade Union Representatives would be a key part of establishing a Trust.

#### 4.11 PROPOSED TIMETABLE

ACTION	DATE
Report to Executive seeking authority to proceed to Trust	14 <sup>th</sup> April 2009
Report to Community Overview & Scrutiny	28 <sup>th</sup> May 2009
Report back to Executive	1 <sup>st</sup> June 2009
Report to Council	14 <sup>th</sup> July 2009
Implementation	July 2009 – September 2010

#### 4.12 THE WAY FORWARD

In order for a trust to be established it will necessary to appoint a chair who will lead the shadow board, it is proposed that a formal recruitment process is undertaken to ensure that the very best candidate is selected. That will involve producing a job description to show prospective people what will be expected of them and interviews by a panel of members/officers.

It is proposed that an internal project group will be established which would consist of officers and the portfolio holder. Working to a Prince 2 framework it will oversee the process of trust formation from the authority's' perspective.

The budget sought for establishing a trust is an indicative estimate based upon the experience of other authorities that have gone down this route. It is primarily to buy in additional capacity and expertise to supplement Council officers, which is what other councils have had to do. Currently the DCMS and Museum Libraries and Archives are working to produce model documents, which can be used as the basis for a partnership agreement. If they are available to use then the considerable legal cost associated with the setting up a trust could be reduced. Part of the proposed budget would be needed to pay for the shadow trust to buy in their own advice, such as legal and financial, as they go about the business of setting up the trust.

Once a Chair was appointed, they would undertake the responsibility for appointing trustees who they would work with on a shadow board. That shadow board would together with the existing staff seek to put in place all the necessary pieces to create a trust.

During this process key decisions would need to be referred back to the Executive for consideration, until such time that a date is agreed for the trust to be established, which would then be a decision that would require from Council to devolve the service formally to a trust.

At some future date, it will also be necessary to agree issues such as: member/officer representation the trust board, any capital investment , how the trust performance will be measured, etc. those and many others will need to be addressed as part of developing a partnership agreement for final approval by Council probably sometime in 2010.

## **5. CONCLUSION**

- 5.1 Establishing a Trust for Tullie House offers the potential for the service to move forward as an independent organisation without the restrictions that are a necessary part of Local Government. Places as it is at the heart of the historic quarter it would enable the service to play a major part in that development.
- 5.2 Although Trusts are often attributed with accessing new sources of funds, that cannot be a guarantee of success. However, establishing a Trust is a positive statement to potential funders that the Council wishes to move the service on beyond what it can achieve through direct delivery alone. In that sense, it might encourage funders to allocate funds for capital development or projects which might otherwise be limited or not available to the Council itself.
- 5.3 The appointment of a Chair for the Shadow Board is seen as a key role, which will drive this exciting new chapter in the long history of the service. The Council will take the lead in securing a suitable Chair by advertising for suitable candidates and having a formal recruitment process. That will be preceded by devising an appropriate job description and person specification.
- 5.4 There are a lot of new developments on the horizon for Carlisle, with education (secondary, higher and further) together with the outcomes of Carlisle Renaissance and the potential benefits of the airport to the City. It is appropriate then that Tullie House joins this list and illustrates how the City Council is prepared to engage in new ways of service delivery to ensure that the City Museum & Arts Service retains its position locally, regionally and nationally.

## **6. CONSULTATION**

- 6.1 Staff have been engaged in the Egeria work and kept informed of progress as this will continue as this work progresses. The Friends of Tullie House, Overview and Scrutiny, Portfolio Holder, SMT, and JMT

## **7. RECOMMENDATIONS**

The Executive is recommended to:-

1. Agree that Tullie House is devolved to a Trust.
2. Delegate authority to the Director of Community Services in consultation with the PFH for Learning and Development to procure the necessary support for establishing a Trust, and progress this, reporting back at key stages.
3. Requests Council on July 14<sup>th</sup> to approve a supplementary estimate of £150,000 to fund the support necessary to progress the establishment of a Museum Trust.
4. Refer the issue to Community O&S at its meeting on 28<sup>th</sup> May for comment.

## **8. REASONS FOR RECOMMENDATIONS**

To enable the work to commence to create a museum trust, which will begin with appointing a shadow chair for the trustees.

## **9. IMPLICATIONS**

- Staffing/Resources – There will be a need to put together an internal group of officers who can carry out the necessary work to create the trust. External expertise for both the Council and the shadow trust will be required and the existing budget plus the supplementary estimate would be used to purchase that. The extent of that advice might be affected by the amount of change that occurs internally as a result of changes to the officer structure.
- Financial – The overall revenue or capital financial impact on the authority of the service transferring to a Trust is not clear at this stage.  
The business case and how this proposal fits with the Transformation process will need to be developed prior to Council making a final decision regarding the transfer of the museum service, which is understood will be discussed at Council in 2010

Council will need to approve a supplementary estimate of £150k to enable the work to look into establishing a Trust to be carried out. This will place more pressure on the revenue reserves of the Council and if approved will be incorporated to the updated Medium Term Financial Plan

- 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, 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:

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

- 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.
- 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 (provided that the Council has regard to its own community strategy when determining whether to exercise these powers) 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. There are advantages and disadvantages that would need to be rehearsed in this form of 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).

## **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 or sub-let 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 and the County Council 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 best consideration 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.

## **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 museum contributes to existing priorities and will continue to do so whether directly delivered or via a trust. The effectiveness of the outcomes it can achieve will be generally enhanced if a trust is created.
- Risk Management – If members agree to this report recommendation the project would be managed under Prince 2 as the acknowledged corporate approach to reducing risk for projects
- Equality and Disability – Not applicable in the context of this report as the service already ensures that the activities it provides are accessible and do not discriminate against any specific group
- Environmental – Not applicable in the context of this report
- Crime and Disorder – Not applicable in the context of this report
- Impact on Customers – The museum service is dependant upon customers for its continued success. As a trust the customer experience is likely to be enhanced with the addition of new resources arising from capital developments that a trust can attract, which would not be available to the local authority.



# **FUTURE GOVERNANCE OF MUSEUM SERVICE**

## **Update Report**

**for Carlisle City Council**

**January 2009**

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# 1 Introduction to the Study

- 101 In 2003 Carlisle City Council, following a report by KPMG on *Options for Leisure Provision* in 1999, considered the full range of options for delivering its museum and arts service, which included the Tullie House Museum and Art Gallery, the Guildhall Museum and arts development functions.
- 102 Having analysed their respective merits and disadvantages, it recommended that consideration should be given to the following two Options for change:
- transferring delivery of the service to an organisation with charitable status specially created for that purpose; or
  - the creation of a charitable trust to fundraise for museum development, while leaving service delivery in-house.
- 103 We were commissioned by the Council to review the process to date, clarify the issues that had been identified, and help the Council fully-define these Options in advance of a consultation process. We reported our conclusions to the Council in September 2003, which were:
- that devolution of the museum service to a charity specially created for that purpose appeared to have the greatest potential for delivering the Council's museum service, although financial benefits would be marginal;
  - the strategic, district-wide enabling role of the arts development function differed somewhat from the museum operation, which largely relates to the management of museum facilities in Carlisle, and consideration should be given as to whether arts development should be disaggregated from the museum service and retained as an in-house, strategic function;
  - the devolved solution would provide a more stable operational and financial regime for the Museum's operation; and
  - a more focused and independent organisation would be able to enhance performance in all areas of its work, cut costs, add value to existing programmes, and develop new activities that might not otherwise be possible.
- 104 The other Options evaluated as part of the study, including retention of service management in-house but with an independent charity created to fundraise for the Museum's development would not, or would not be likely to, deliver all these benefits.

- 105 However, it was noted that, even in the preferred devolution Option, advantages would only be achieved if it were possible to recruit a high-calibre board and put in place top management that is suitably-qualified and experienced to run this type of organisation. Failure in this respect would constitute the major risk.
- 106 It was also noted that the brief for review was defined in terms of the advantages to the Museum and its users. It was acknowledged that there was another significant agenda, falling outside of the scope of the review, relating to whether, or how far, the change would compromise or displace other of the Council's corporate policies and strategies.
- 107 Consideration of the issue was deferred by the Council until it was possible to progress a development plan for improving the Tullie House Museum. In 2007 the Heritage Lottery Fund awarded a project planning grant, and as part of that process consideration of governance options was re-activated.
- 108 Following a number of internal briefing and a seminar for Elected Members in which we have assisted, we have been commissioned to update our 2003 report and indicate whether any issues have arisen in the intervening years that would influence the decision to be made.
- 109 This report is not a comprehensive update of our 2003 report; much of the contextual information about the museum, its collections and activities, and the area it serves remains relevant today. Nor is it intended to revisit the whole range of options for delivering museum services considered by the Council during past years as, for that purpose, the 'Green Book' evaluation we undertook in 2003 continues to be valid. Today, in 2009, the alternatives available are to devolve or to retain the museum service in house, and our attention focuses on that.
- 110 The report is therefore set out in three sections:
- an updated account of devolution and experiences elsewhere in the UK;
  - material changes in context since 2003; and
  - an assessment of the devolution option in the light of those factors.
- 111 Again, as in 2003, we have been asked to look at the options from the perspective of advantage to the Museum and its users rather than from the corporate perspective of the Council.

## 2 Devolution to Museum Charities

### What is Devolution?

- 201 Devolution takes place when councils choose to discharge their responsibility for a service through delegating the direction and management of that function to a new, specially-created organisation (invariably a not-for-profit organisation) using their powers in s 12 of the Public Libraries and Museums 1964 and ss 11 and 145 of the Local Government Act 1972. Organisations created for devolved museums are normally registered as charities to gain the fiscal benefits that come with that status.
- 202 Devolution differs from other forms of outsourcing in that:
- it is based on creating a purpose-designed organisations, rather than contracting with an existing entity;
  - the new museum organisation is a charity so that there can be no distribution of profits to its board or members; and
  - the new organisation does not merely follow a specification designed by the council, but, subject to the general terms and conditions of the Funding Agreement with the council, is given freedom to operate.
- 203 The key elements in devolution to a charity are:
- the creation of an incorporated body, registered as a charity, to be a special purpose vehicle to manage the museum, with, if necessary, a subsidiary trading company to undertake non-charitable trading activities;
  - recruitment of a group of individuals, mainly independent of the council, to constitute a board of trustees;
  - the council nominates a minority of board members, sufficiently small to ensure that the museum charity is neither 'controlled' nor 'influenced' in terms of local authority legislation;
  - transfer of staff and operational property to the new entity, with transferred staff conditions of service and pension arrangements protected under the TUPE regulations and the government's *Code of Practice in Workforce Matters in Public Sector Service Contracts*;

- the council retains ownership of the key assets (in the case of museums land, building and collections) which are leased or loaned;
- the arrangements for the transfer, leases, loans and future financial support by the council are defined in a suite of inter-connected, formal, legally-binding Agreements with the new body, as follows:
  - a 'transfer agreement' which transfers the council's contracts, staff, operating assets used in running the museum to the charity,
  - a 'collections agreement', dealing with the loan of the council's museum collection to the charity, and
  - a 'funding agreement' which covers the terms upon which the Council will provide continuing funding for the charity in return for the provision by the charity of services needed for the continuing operation of the museum.

204 As charities can only engage in activities that are 'wholly and exclusively charitable', substantial commercial activities such as retail, catering and other forms of hospitality that the charity wishes to operate in-house are conducted by a wholly-owned subsidiary company.

### What Other Museums Have Been Devolved?

205 The following table shows the other museums that have been devolved, and their current status.

Year	Museum	Local Authority
1975	Black Country Museum, Dudley	Dudley Metropolitan Council
1977	Torfaen Museum Trust, Pontypool	Torfaen Borough Council
1985	Pallant House, Chichester	Chichester City Council
1986	Godalming Museum Trust	Waverley Borough Council
1991	Braintree Museum Trust	Braintree District Council
1991	Geffrye Museum, London	ILEA
1991	Horniman Museum, London	ILEA
1992	Museum of Kent Life, Maidstone	Kent County Council
1993	Dacorum Heritage Trust, Berkhamsted	Dacorum Borough Council
1994	Kelham Island Museums Trust (later Sheffield Industrial Museums Trust)	Sheffield City Council
1995	Bodelwyddan Castle Trust, Prestatyn	Denbighshire County Council
1997	Thinktank, Birmingham	Birmingham City Council
1998	Sheffield Galleries & Museum Trust	Sheffield City Council
1999	St Helens Museum (as World of Glass, St Helens)	St Helens Metropolitan Council

Year	Museum	Local Authority
2000	Holst Museum, Cheltenham	Cheltenham Borough Council
2000	Bexley Heritage Trust	London Borough of Bexley
2000	Bowes Museum Trust, Barnard Castle	Durham County Council
2001	Harrow Museums Trust	London Borough of Harrow
2001	Smithills Hall & Park Trust, Bolton	Bolton Borough Council
2001	South London Gallery	London Borough of Southwark
2002	York Museum Trust	York City Council
2002	West Dorset Museum Trust	West Dorset District Council
2003	Coventry Transport Museum (Museum of British Road Transport)	Coventry City Council
2005	Helena Thompson Museum, Workington	Allerdale District Council
2006	Scarborough Museum Trust	Scarborough Borough Council
2008	Wandsworth Museum Trust	Wandsworth LB
2008	Coventry Arts & Heritage Trust	Coventry City Council

- 206 Two other museums were devolved from other forms of local authority structures in 2008 – Beamish, from a Joint Committee, and the London Transport Museum, from an operating arm of Transport for London. In recent years a number of other museums have been devolved alongside other leisure and cultural facilities and services into conglomerate culture/leisure trusts, as follows:

Year	Museum	Local Authority
2003	Wigan (as part of Wigan Leisure & Culture Trust)	Wigan Metropolitan Borough Council
2007	Rochdale (as part of Link4Life)	Rochdale Metropolitan Borough Council
2007	Glasgow City Museums & Art Gallery (as part of Culture and Sport Glasgow)	Glasgow City Council
2008	Luton (as part of Luton Cultural Services Trust)	Luton Council

## What Is The Experience of These Devolutions ?

- 207 Research carried out for the Museums, Libraries & Archives Council (MLA) and published in 2006<sup>1</sup> showed that 23 local authorities had devolved to charities museums of all types and size during the preceding thirty years, more than half of which had taken place since 1995. Several other local authorities were working in the same direction.
- 208 Since the report a further three museums have been devolved as stand-alone museum organisation, and three as part of leisure/culture trusts.

<sup>1</sup> Babbidge, Ewles & Smith *Moving To Museum Trusts: Learning From Experience* (2006)

209 The three substantial reasons for devolution identified by the study were:

- the development of a new museum or capital project;
- a response to funding difficulties; and
- an outcome of external or Best Value review, to enhance a museum's efficiency and effectiveness.

### **What Has Been The Experience of Devolved Museums?**

210 The advantages experienced by devolved museums reported in the MLA study were as follows:

- a new sense of direction and purpose, freed from the wider corporate issues of local authorities, with the ability to focus on their core business;
- flexibilities and freedoms to establish plans and policies appropriate to the need of current and potential audiences, users and stakeholders;
- management structures that enable timely decisions at the most appropriate organisational level;
- a sustainable planning framework derived from funding arrangements that create a stable basis for planning and development;
- benefits from the fiscal advantages of charitable status and to increase income through commercial activity and sponsorship;
- opportunities to make new connections and develop new partnerships; and
- a greater attractiveness to donors, or persons considering long-term loans of collections.

211 Most also reported that the process of change re-energised the museum, but that rarely was there a substantial financial saving to the devolving local authority. The additional resources were brought into the museum, not just on transfer but consistently thereafter, were from public funds and related to improving or adding value to services, rather than substituting for the existing subsidy.



- 212 The advantages of those museums that had been transferred to culture or leisure trusts were less clear. Many of the disadvantages experienced by museums as part of local authorities are associated with any conglomerate structure irrespective of their constitution, and in these circumstances the primary benefits of clear direction and focus may not be as present.

### **Have Devolved Museums Been Successful?**

- 213 Only one devolved arrangement (Smithills Park at Bolton) has failed, when the museum returned to local authority direct management. The failure took place within two years of transfer, and was largely due to unrealistic expectations on the part of both council and the trustees of the charity it created. Poor preparation and a 'master-servant' Funding Agreement also contributed to the difficulties.
- 214 Although devolved museums have been sustainable, most have had to overcome difficulties, both during and after transfer. These have been caused by the following factors:
- the council failing to understand that the trustees of the new charity are not mere ciphers, and that the process of devolution represents a bargain being struck between the council and the trustees – the council cannot impose agreements on new bodies, these have to be negotiated;
  - inadequate time being allowed for the transition from council to charity, and especially to give the trustees of the newly-formed charity an adequate period for planning and review in advance;
  - trustees not having the wherewithal to access advice that is independent of the council;
  - difficulties in recruiting trustees with the appropriate skills, expertise and time to perform their roles;
  - poorly-drafted transfer agreements that omit key factors that have to be negotiated subsequently;
  - inadequate reporting requirements by the charity to the council, and poor communication between both; and
  - political sensitivities within the council, changes of corporate direction and in key personalities.
- 215 None of these difficulties is inevitable, and effective planning, robust agreements and documented systems can reduce their

likelihood/mitigate their impact. Where there is continuing mutual respect between council and charity, difficulties can be managed so that the relationship between council and charity can be sustained.

### **What Happens To The Museum Staff On Transfer?**

- 216 All staff employed by council in its museum service would, on the date of transfer, automatically transfer to the employment of the charity their terms and conditions of employment protected under The Transfer of Undertakings (Protection of Employment) Regulations ('TUPE') so that, in effect, those employees would be treated as if their contracts of employment had originally been made with the charity. TUPE lays down a duty for both the council and charity to inform and consult with affected employees and their appropriate representatives.
- 217 Employees pension rights would be protected under the statutory *Code of Practice on Workforce Matters in Public Sector Service Contracts* (2005). LGPS Regulations allow employers who are carrying out similar work to that of local government to join the Local Government Pension Scheme as an Admitted Body. However, there is no legal requirement for the Pension Fund to admit any new employer into LGPS, and if this were not to happen the charity would be expected to purchase a package for transferred employees (and those other employees to whom it wishes to extend the option of membership) on the open pension market.
- 218 The Code also states that new employees recruited after transfer must be offered 'employment on fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred employees'. The Code does not preclude non-pension terms and conditions that differ from those of transferred staff, as long as this does not result in a less favourable package overall.
- 219 As for pensions, new recruits must be offered either:
- membership of the Local Government Pension Scheme (LGPS); or
  - membership of a good-quality employer pension scheme, whether a contracted out, final-salary based defined benefit scheme, or a defined contribution scheme – in the latter case, the employer must match employee contributions of up to 6%, though either side could pay more if they wished; or
  - membership of a stakeholder pension scheme with an employer contribution.

- 220 The new service deliverer would become responsible for meeting the costs of protected employment terms and conditions that flow from the transfer of staff. This includes the responsibility to the pension provider to meet any deficiency contributions relating to individual employees. It is usual for the council to indemnify the charity for any deficiency pension contributions that relate to an employee's service with the local authority, so that the charity's liabilities extend only from the date of transfer.
- 221 In previous devolutions employees who disagreed, in principle, with the concept of devolution, or did not wish to transfer for other reasons, left the museum, through redundancy or redeployment, in advance of transfer.
- 222 Yet, according to the MLA study, the experience of most staff that transferred has been positive, and they reported:
- greater job satisfaction and increased motivation;
  - management more prepared to make timely decisions; and
  - stronger team spirit.
- 223 In the majority of Devolutions the head of the council's museum service decided not to seek appointment as the chief executive of the devolved charity, or has not been appointed to that post by the charity's trustees, and has taken redundancy. The skills associated with being a successful council officer are not necessarily those of the head of a small charity.

### **Haven't Successful Devolutions Relied on a Strong National Economy?**

- 224 Clearly, the strength of the economy in recent years has been used by devolved museums to maximise their performance, and has the potential benefit of income streams from business or individuals has provided encouragement for devolutions. However, it is notable that a number of devolutions (around 30%) took place during the recessions of the mid-1970s, early 1980s and early 1990s, when devolved organisations were seen as vehicles to achieve developments that would not be possible within a financially-constrained local authority. In each case the planned development has been achieved.

### **What Are The Fiscal Advantages Available to Charities ?**

- 225 Charities enjoy following fiscal advantages:

- charities have mandatory relief from 80% of national non-domestic rates (NNDR), and discretionary relief of up to 100%;
- all gifts to charity are free of Inheritance Tax, Stamp Duty (where it applies) and Capital Gains Tax, as are the proceeds from disposal by the charity, subject to those assets being applicable to, and applied for, charitable purposes; and
- the Gift Aid Scheme enables charities to benefit from Gift Aid equal to the basic rate of Income Tax relief in respect of donations of money, shares or land and the full value of admission charges where visitors make a voluntary payment of at least 10%.

226 Although there are some VAT concessions for charities, these are never material in a devolution situation. VAT applies to charities as it does to other organisations, though there is a tougher regime for non-profit organisations than there is for local authorities. It is important, therefore, that VAT issues are considered carefully in advance of all devolutions.

### **Does Devolution Lead to Financial Savings by the Council ?**

227 Although financial imperatives have driven a number of devolutions, only in very few cases have their any substantial short-term financial gains to the council, for the following reasons:

- having to substitute for funding previously allocated by the council is unlikely to be acceptable to any board of high-calibre trustees during transfer negotiations; and
- many museums have had maintenance deficits or other liabilities that have had to be remedied as a consequence of transfer negotiations.

228 The major opportunities for savings lie in the longer term, and follows from increases in funding being based on consumer inflation, and not growth in the economy, which is the key driver for local authority budgets, especially as reflected in rises in average earnings. Over the past thirty years growth has been double consumer inflation. The challenge for the museum charity is to fill the gap between inflation and growth by operational efficiencies, earning additional income, and stimulating charitable receipts.

### **What are the 'One-Off' Costs of Devolution?**

229 Every devolution is different; some have been achieved for a few thousand pounds, with everything being done in-house; others,

reliant on external skills, have cost tens of thousands. Much depends on who does what (council or charity), how much the council is prepared to do in-house, and the ease of the transfer negotiations. The following are the key cost areas that will fall on the council:

- costs of recruiting trustees (advertising, hosting briefing session etc);
- servicing meetings of shadow board (room hire, refreshments, secretariat services);
- preparing transfer documentation (a set of precedent documents is shortly to be available from MLA, but these only provide a basis, and will need to be adapted to suit local circumstances);
- legal, financial, personnel and other advice for both council and shadow trustees;
- public relations including launch event.

### **Is it Easy to Recruit Trustees?**

- 230 Many devolved museums have secured trustees of distinction and expertise who made a substantial contribution both to the transfer phase, and subsequently. Some have no immediate connection with the area in which the museum is located, but have been motivated by the challenge of leading a museum devolution.
- 231 The factors that can be attractive to potential trustees include:
- the *organisational* challenge of restructuring a cultural organisation;
  - the *business* challenge of developing entrepreneurship in a not-for-profit context;
  - the *translation of commercial skills* to a charity;
  - an *emotional commitment* to the locality which the museum serves; and/or
  - an *interest or passion* for the museum's key areas of interest.
- 232 In many cases councils have solicited the interest of a person with whom it felt it could do business, to be the first chair of trustees. Sometimes that person had already been a champion for improving

the museum; in other cases they came to the task cold. Their key characteristics were:

- complete independence of the council;
- contacts and networks to facilitate the foundation of the charity;
- personal distinction to attract other trustees of high-calibre; and
- lack of other commitments or interests that would stand in the way of their contribution to the new charity.

233 Having recruited the chair, the next stage is for the chair to recruit a core 'shadow board' to negotiate the transfer with the council, agree the founding documentation, and act as a project committee to implement the transfer. Part of this implementation was the recruitment of the balance of the board, including those nominated by the local council. Ideally, the full board was in place well before the date of transfer from council to charity. The trustees also recruit the charity's chief executive during the transitional phase.

234 The first members of the shadow board were often recruited through the chair's contacts, but thereafter a more formal recruitment process, including advertising for candidates, came into being.

### **Can the Council Take Over The Direct Running of the Museum from the Charity in the Future?**

235 Then principle of the devolution is that the arrangement should be 'irreversible.' Although the council may have established the charity, it cannot wind it up. The Council would only return to direct delivery of the museum in the following circumstances:

- where both council and charity agree to such action;
- the council or the trust give notice to terminate at the end of the period of a funding agreement, under the terms in that agreement;
- where either the council or the charity is in default of the terms of the agreement, which allows for termination of the arrangement, and the aggrieved party decides to take that action rather than requiring the defaulting party to perform its obligations; or

- where the charity goes into administration or is to be wound up on the grounds of insolvency.

236 In any of these circumstances buildings or land held in connection with the funding agreement, and the council's collections held on loan by the charity, would revert to the Council. Unless otherwise agreed at the time, other property owned by the charity would remain as its assets. Staff employed by the charity would expect to transfer to the council under the provisions of TUPE, unless the council required the charity to make the staff redundant.

### **What is the Duration of Funding Agreements?**

237 Funding agreements for the earliest devolutions were usually for three to five year periods. There has been a trend in recent years to longer agreements, with some running for periods between fifteen and thirty years. This move to longer-term funding agreements follows from the following:

- grant contracts with the Heritage Lottery Fund and other funders requiring grantees to sustain the assets for which their funding was provided for at least a thirty-year period;
- as the agreements are binding on successor authorities, some district councils at risk of amalgamation into larger unitary councils feel that this helps to safeguard local museum provision, and the local identity it represents, into the longer term;
- providing sufficient comfort to potential trustees that the council will not renege on their bargain at an early opportunity;
- to enable the trustees of the charity to develop realistic long-term strategies; and
- given the limited capacity for the council to make short-term financial savings, to guarantee some long-term financial benefit to the Council.

### **What About Capital Funding?**

238 Funding Agreements normally only cover core revenue support. It is open to Councils to provide additional funding for one-off projects, building improvements and purchases of expensive items for the collections. These are negotiated individually, and the level and type of support (if any) is entirely at the Council's discretion. Most devolved bodies have considerable success in fundraising for

such projects, with any council support representing a small proportion of the total cost.

- 239 Funds for small-scale capital purchases of plant or equipment would normally be found by the charity from its own resources, and this would be reflected in negotiations over core funding between council and charity prior to agreeing the transfer.

### **What are the Major Risks ?**

- 240 The major threats to long-term success are:

- inability to secure trustees with the distinction, skills and experience appropriate to the role, and prepared not merely to attend meetings but to put advocacy for the museum at the top of their personal agenda;
- the charity being distanced from the council, and losing political support (this is to some extent the impact of not recruiting appropriate trustees);
- long-term pressures on a council's core funding, with external bodies with short-period funding agreements being given a lower priority than maintaining services delivered in-house, and the corporate centre;
- loss of reputation to both council and the charity's trustees if the arrangement fails.

- 241 For the local authority, there are additional risks of:

- the charity ceasing to purchase central services from the council leading to additional costs falling on the council;
- the charity developing a reputation and status that makes it a substantial influence in the area, with views that may not always coincide with those of the council;
- the charity developing other interests and activities (funded from other sources) that fall outside of the council's priorities.

- 242 Risks are minimised when:

- the council approaches the devolution with the understanding that it is entering into a bargain, and regards the charity as a true long-term partner, with which it is sharing both benefit and risks, to sustain and improve the museum service;



- care and trouble is taken to recruit a board with the skills and commitment necessary, rather than just filling places with the people who populate many other local committees and boards;
- the council not attempting to impose its own business plan on the charity in advance, but leaves the charity trustees' to come up with their own business model and strategic plan; and
- adequate time being allowed for planning and the transfer process – the absolute bare minimum period is nine months, and it is more prudent to plan for a period of between twelve and eighteen months.

# 3 Current Issues

## Government Policy

### *Local Government Performance Framework*

- 301 The period since 2003 has seen continuing change for local government. There is a greater focus on statutory services and a commissioning approach to service delivery is being encouraged. There is an increasing emphasis on local bodies working together, and to streamline local authority services, especially where there are two tiers of local government.
- 302 The Comprehensive Spending Review 2007 reformed the performance management framework, placed a stronger emphasis on new relationships with the voluntary and community sector, and included a smaller, streamlined set of 30 new Public Service Agreements (PSAs) that articulated the government's highest priorities for the period of 31 March 2011.
- 303 A framework of 198 National Performance Indicators (NIs) is to be used to measure local government performance towards achieving the national priority outcomes which local councils will be responsible for delivering, either on their own or in partnership with others.
- 304 PSA 21 focuses on building cohesive, empowered and active communities, with the aim of creating thriving places in which there are shared values and a sense of belonging. People's perceptions of their local communities will be used to measure progress, alongside commitments to increase participation through volunteering and in a wide variety of cultural and sporting activities. NIs related to PSA21 include
- NI 7 - Environment for a thriving third sector; and
  - NI 10 - Visits to museums and galleries.
- 305 As performance data for these indicators will be collected on a top-tier basis, high-performing districts may find their achievement masked by the results from other districts in the county area.

### *The Local Government & Public Involvement in Health Act 2007*

- 306 The Act makes a commitment to more responsive local services, including:
- more choice in the way local services are designed and delivered;
  - a new duty for councils and other best value authorities to inform, consult, involve and devolve; and

- greater opportunities for communities to take on the management and ownership of local facilities and assets.

## **Carlisle City Council**

307 Carlisle's Community Plan was revised by the City's Local Strategic Partnership refreshed in May 2008. Priorities were established relating to:

- climate change and the environment;
- children and young people;
- economic development and enterprise;
- healthy communities and older people, and
- rural community planning.

308 Carlisle Renaissance, founded in 2005 following the floods of that year, is an initiative promoted by the City Council with the aims of regenerating the city centre. A partnership of the City and County Councils and North-West Development Agency, it has a wide range of stakeholders from both public and private sectors.

309 A private sector-led Board, supported by a programme team, was established in 2008 to oversee delivery. The City Council has committed capital funding to support the acquisition of property to support key regeneration schemes in the City Centre, and to fund an in-house delivery team and a range of project development works in support of this programme. Partners include Cumbria County Council, Northwest Development Agency, Government Office North West and English Partnerships.

310 The financial pressures on the Council have increased, particularly due to:

- the costs of implementing the Pay and Workforce Strategy; and
- the government's requirement that councils make annual efficiency savings of 3%, leading to a virtual cash standstill in its financial contributions to the council's activities.

312 The general financial outlook apart, these pressures are likely to increase from the next actuarial valuation of employer's pension contributions, due in 2010, and the business rates revaluation due in the same year.

- 313 To address these issues the Council has undertaken a series of service reviews with the aim of making financial savings of around 5% of the gross budget. As part of its service review to contain budgets, the Council removed £25,000 from the Arts service for 2008/09, and plans that this should increase to £50,000 in each year from 2009/10.

## **The Museum Service**

### *Policy Context & Performance*

- 314 The museums service is well-placed to support the Council's key three key priorities:
- *Carlisle Renaissance*, and the regeneration of the City Centre;
  - *Carlisle As A Learning City*, which seeks to develop Carlisle as a place where people can improve their skills and expertise, whether academically or through practice; and
  - *Cleaner, Greener, Safer*, which includes Carlisle's aspirations in terms of social cohesion, quality of life and environment.
- 315 Since 2003:
- the Council has increased its net spend on museums from £1.345 million in 2003/4 to £1.699 in 2008/9, a 26% increase compared to the Council's net revenue budget increase of 29%, and central charges rising by 105%;
  - visit numbers to Tullie House, having risen to exceed 300,000 in 2005, have dropped to back to around 280,000, with visit numbers to the museum and gallery areas around 30% of that figure, and apparently reducing;
  - school visits increased from 11,252 in 2003/4 to 12,496 in 2007/8 ;
  - Best Value Performance Indicators show the Museum to be in the top quartile in terms of visits per head of population, usages per head of population, school visits and resident satisfaction (which rose from 61% in 2000/1 to 71% in 2006/7, placing it in the top 10 of all English councils);
  - Tullie House was the winner of the 'Large Visitor Attraction Category' in 2007 for both Cumbria Tourism and the Northwest Tourism Awards, and won the Silver Award at Visit England's *Enjoy England for Excellence* Awards in 2008.

### *Renaissance in the Regions*

- 316 Given the constraints on council expenditure, some of the credit for sustaining this level of performance must come from Tullie House's status as a Hub museum in the national *Renaissance in the Regions* programme. Since 2003/2004 the Museum has received £1.285 million in funding from this source (£426,000 in 2008) which is currently enabling it to employ 13 extra staff on fixed contracts in

connection with projects aimed at community education and outreach and access to the Museum's collections.

- 317 The Renaissance initiative is currently going through a fundamental review. Irrespective of wider financial considerations, it is likely that the Review will lead to changes the way in which Renaissance is organised. As it is a fundamental review, there is no guarantee that all those museums that currently Hub members will remain as such, or even whether the concept of Hub museum is retained.

#### *Arts Council Funding*

- 318 In December 2007 Arts Council (ACE) advised the Council that it could be discontinuing its £71k grant for arts development to the Council would be halved in 2009/10 and thereafter discontinued. This grant was used in part to subsidise the Tullie House temporary exhibition programme.
- 319 ACE acknowledged that Tullie House is of strategic importance for visual arts provision in the region, and during the funding transition period it undertook to give attention to its longer-term funding relationship with Tullie House.
- 320 While a number of local authorities receive grant-aid from the Arts Council as 'Regularly Funded Organisations' it appears that local authorities benefit less from the grant regime than independent entities. It is implicit in Arts Council policy<sup>2</sup> that it sees local authorities as strategic partners in funding the arts, especially through the medium of LAAs, not as recipients of revenue support.

#### *Heritage Lottery Fund*

- 321 The substantial funding required to hold the 2012 Olympics in the UK has led to the appropriation of a large part of that proportion of the National Lottery allocated to 'good causes' for that purpose. The Heritage Lottery Fund, along with the other Lottery distributors, will see its income drop not only in the period to 2012, but to 2018 to deal with the cost over-runs on the Olympics already identified.
- 322 HLF's budget for each year will reduce from £220 million to £180 million in each year to 2012/13, allowing for the following distribution of grants on general programmes:
- £20 million for grants over £5 million;
  - £38 million for grants of between £1 million and £5 million;
  - £45 million for grants of £50,000 to £1 million;

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<sup>2</sup> *Arts Council England's work with Local Government (2007)*

- £16 million for grants of under £50,000.

323 It follows from this that the number of grants awarded for large capital projects will be reduced, and as all grants above £1 million will be in a UK-wide competition, the success standard will be very high. In the future, HLF's strategic emphasis will be on small activity projects, where decisions will be taken by regional committees. This increases the challenge for future bids for major redevelopments at Tullie House.

#### *Administration Charges*

324 The central costs of administering the Museum, at over £300,000 represent a substantial burden. It is probable that the charity could procure the services provided by the council at a substantially lower sum. The balance between what the devolved museum continues to purchase from the council, and what it procures from elsewhere, would represent a continuing cost to the Council.

### **The Financial Downturn**

325 The general economic climate in the UK is subject to the international downturn. While this is depressing inflation, which was seen as a potential economic threat in the first half of 2008, this benefit is offset by more substantial negative factors:

- assets have lost value;
- borrowing is more difficult and expensive; and
- cash-poor businesses are vulnerable to collapse.

326 While so far an effect of the credit crunch has been that market rates have remained above the level of the official rates, future trends are likely show lower yields.

327 The negative impact of the downturn on the museum sector can be summarised as follows:

- paid-admission museums may see visit numbers and admission income shrink;
- retail and catering proceeds may reduce due to lower spending by visitors;
- corporate hire of facilities and business sponsorship is likely to reduce dramatically until business confidence improves;

- charitable trusts and foundations whose grants derive from investments are likely to have less money for distribution;
- personal giving will reflect any downturn in individual incomes, and reduced asset values will lead to legacies and bequests being worth less;
- some payroll costs (eg pension contributions) are likely to rise, on top of an announced increase in National Insurance from 2011;
- volatility in energy markets creates the risk of higher fixed costs;
- added financial burdens on central and local government resulting from increased use of personal services and reduced income from charges (eg for planning and car parking) will limit the scope for sustaining cultural spend;
- local authority museums operating on an annual funding regime risk 'death by a thousand cuts', where a continuous attrition of revenue budgets, though representing small amounts of money each year, collectively, and over time, compromise levels of service and satisfaction.

328 However, some museums may find themselves able to sustain their position as:

- free-admission museums attract visitors displaced from admission-charging museums;
- this may enable retail and catering operations in free admission museums to offset lower spend-per-head by a larger number of transactions;
- low inflation may limit payroll and other non-energy, costs;
- measures to alleviate unemployment may lead to schemes that generate direct or indirect financial benefits;
- people working less hours or who are unemployed may create volunteer opportunities that are capable of generating benefit in the longer term; and
- the downturn may stimulate actions to improve efficiency and economy that have been desirable for some time, but which have been hard to justify in the previous financial environment, or where it was preferred to focus energies on development options.

## The Charities Act 2006

- 329 In 2003, the only option for creating an incorporated charity (ie one with its own legal personality) was to constitute the charity as a company limited by guarantee. This also provided (in normal circumstances) a limit of financial liability to members of its governing bodies.
- 330 The Charities Act 2006 introduced a number of reforms, including the new constitutional form of Charitable Incorporated Organisation (CIO). This new form has the same characteristics of the company in terms of legal personality and limited liability, but means there is only regulator (the Charity Commission) rather than the two to which charitable companies are subject (the Commission and Companies House).
- 331 As this new form is not a company it is not subject to the provisions of the Local Government & Housing Act 1989, which limits local membership of company boards to 20% lest those companies become 'influenced' or 'controlled', and thereby subject to local government financial controls. Although it is likely that the Charity Commission would require some (and probably a majority) of the governing body not to be members or officers of a single council, the allowable board membership is likely to be greater than 20% in CIOs, without the charity falling within the scope of the 1989 Act.

## Fiscal Issues

### *Business Rates*

- 332 Business Rates for 2008/9 payable by the Museum on Tullie House, the Guildhall, and the Shadden Mill store are £125,500. The following table shows the result of the application of rate relief applicable to charities at the levels of 80% (mandatory) and 100% (discretionary), both including and excluding those areas used for non-charitable commercial activities.

	All premises		Excl café/shop	
	<i>Cost To Charity</i>	<i>Cost To Council</i>	<i>Cost To Charity</i>	<i>Cost To Council</i>
Current	na	£125,500	na	£125,500
Relief at 100%	0	£18,820	0	£15,690
Relief at 80%	£22,700	0	£25,100	0

*NNDR on areas occupied for museum purposes - £113,550*

*NNDR on café and shop @ 10% of floor area - £12,000*



- 333 This shows a maximum cost to the charity of £25,100 and, if the council decides to discretionary relief a maximum cost of around £18,820. In both scenarios the net benefit is around £100,000.
- 334 The calculations assume the rates due on the shop and catering areas as being a charge to the Museum. However, it would be expected that any external operator - including any Museum trading company - would be liable to meet the NNDR on the space they occupied, though this would be balanced by lower franchise rentals/ net profits for those operations.

#### *Gift Aid*

- 335 Since 2003 the Gift Aid rules on treatment of have been refined. However, the estimate in that report of between £15,000 - £20,000 remains valid. Unless admission income rises (or there is a rise in the basic rate of income tax), this sum would reduce after 2011, at the end of a transitional period during which the previous 23% basic tax rate continues to be applied to Gift Aid, when it reverts to the basic income tax rate of 20%.

#### *Value Added Tax*

- 336 The Council has taken independent expert advice on the VAT situation in the case of any devolution. This concludes that subject to the agreement between the charity and council being clearly a contractual undertaking for the provision of services, that the VAT impact on devolved arrangement could be broadly neutral. This has been the case in other devolved arrangements, but this does need acceptance that the Council's museums funding is not grant, but a payment for services.

#### *Transitional Costs*

- 337 Managing the transition - constituting and establishing the new company, the administration of the staff transfer, and preparing the leases, licences and management agreements – consumes considerable resources, both from within the authority and from external advisers.
- 338 While legal precedents are shortly to be published by MLA for the Transfer, Collections and Funding Agreements, this is only guidance, and the Council will want to take its own advice. Although the scale of cost may be reduced by using the published precedents, some expenditure will continue to be required. There will also be the costs of drafting constitutional documents and leases/licences in respect of the property occupied for the museum. The charity would also want to take its own advice.

- 339 If the charity decided to appoint a chief executive from outside the museum's staff, there will be costs for any pre-transfer appointment period, as well as recruitment costs.
- 340 The total of these transitional costs would vary depending on the amount of work that would need to be bought-in rather than undertaken in-house. The range is likely to be between £40,000 and £100,000.

## 4 Assessment

- 401 Our 2003 review concluded that Carlisle's museums had the potential to play a role across most of the Council's strategic agenda. However, a number of factors were limiting its capability to do this:
- the capacity and resource levels available increased the difficulty of moving beyond, or improving the efficiency of, core programmes;
  - financial constraints on local councils, and the government's requirement for make efficiency savings;
  - opportunities to reduce expenditure being constrained by the lack of flexibility associated with being part of a conglomerate organisation, most of which operated on a very different basis to the Museum; and
  - market limitations on the potential to increase income from activities.
- 402 To address these issues, and to enable the Museum to continue to operate successfully, be innovative, take considered risks and benefit from these risks, we identified that the following needed to be achieved:
- a structure giving greater freedom to operate entrepreneurially within highly-competitive visitor markets;
  - longer-term funding arrangements to provide a stable basis for business planning and development;
  - opportunities to increase income from commercial activities;
  - the potential for active fund-raising and the ability to attract more grants and sponsorship from organisations and individuals; and
  - greater potential for productive partnerships within the City and beyond, to reflect Tullie House's regional and sub-regional roles.
- 403 This analysis is believed to be as true today as it was in 2003. Today, the main advantages of a move to charitable status on a long-term basis are as follows:
- it is with the grain of the government's policies for developing community engagement in delivering local services;
  - it would provide a solid basis for future planning and financial security, and enable financial stability in the medium term, unshackled from the corporate issues faced by the Council;

- the risks associated with the Museum, and its development would be shared between the Council and the Museum's other supporters;
- at a time of funding pressure, it would provide access to other sources of funding not available to local authorities;
- the local authority's financial spend on museums could be more certainly planned, at least in the short-term and potentially in the longer-term;
- it would enable the development of supportive relationships with other organisations in Cumbria, especially in relation to the delivery of Cumbria's Local Area Agreement;
- it would facilitate the Museum's entrepreneurial development;
- it might be expected to enable long-term financial savings for the Council; and
- it would not risk the collections or buildings, which assets would remain in the City Council's ownership.

404 The greatest potential risks to a successful devolution are:

- if it proves impossible to secure a chair and board with the skills and commitment necessary to provide high-quality leadership to the devolution;
- the charity and the Council fail to negotiate a bargain that both meets the Council's financial requirements and what the board of the charity considers to be a sustainable outcome;
- short-term financial pressures on the Council lead to museum budgets being reduced to the extent that the level of subsidy offered to charity fails to be acceptable;
- insufficient preparation and an inadequate transfer agreement leads sets up the devolved body to fail; and
- overspend on a capital development project requires the charity to seek additional 'one off' support from the Council.

405 The table below presents an indicative financial assessment:

Element	(Reduced)/Additional Costs (£s)	
	<i>Best</i>	<i>Worst</i>
<b>Annual Costs</b>		
Fiscal Benefits	(20,000)	0
NNDR	(110,000)	(100,400)
VAT	0	10,000 <sup>1</sup>
Pension Costs	0	29,750 <sup>2</sup>
<b>Total Annual Costs</b>	<b>(130,000)</b>	<b>(60,650)</b>
<b>One-off transitional costs</b>	<b>40,000</b>	<b>100,000</b>

Notes:

1. Contingency provision for exempt supplies
2. Assumes an actuarial rate for charity 3% above current Council rate (updated from 2003 report)

- 406 This assessment, based on indicative figures for the purpose of illustration only, relates to fixed costs on a like-for-like basis with the present organisation. The financial benefits do not represent savings, as they would need to be applied to the Museum's administrative costs if financial support from the Council excluded the current value of corporate and administration charges.
- 407 It should also be noted that this represents a short/medium-term assessment. Experience of other devolutions suggests that the longer term might bring additional opportunities for efficiency savings and increasing income on the current range activities. Additionally, a more focused and independent organisation might be able to enhance performance in all areas of its work, cut costs, add value to existing programmes, and develop new activities that might not otherwise be possible.
- 408 Nonetheless, the assessment suggests that potential financial savings may be marginal, and are insufficient by themselves to argue for a change of status to Tullie House's current operation. The primary benefits lie in enhanced efficiency and effectiveness, and the capacity to mobilise resources for the Museum's development and regeneration.