



Derby City Council

The Future of Derby Museums Service
A Review of Alternative Governance Models

August 2011

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1. PURPOSE OF THE REVIEW

This review identifies and assesses the alternative governance models for the future delivery of Museums Services in Derby and recommends the most appropriate governance model for the Council's museums portfolio.

The review sets out the business viability for this preferred governance model.

The review provides the City Council with the methodology and timetable through which the proposed governance model can be established – in line with the scheduled launch date of April 2012.

2. INTRODUCTION AND BACKGROUND TO THE REVIEW

Winckworth Sherwood LLP (“**WS**”) have been appointed by Derby City Council (the “**Council**”) to carry out a governance review in relation to the future of its museum services (the “**Services**”).

We are delighted to have been appointed to assist with this review.

We fully appreciate the importance of these Services which are inextricably linked to the future economic and social prosperity of the City.

The Council undertook a fundamental review of the Services between October 2009 and July 2010.

The significance of this review was the recognition of the potential to re-position the City's heritage as a driver for the Council's wider objectives for the regeneration of the City.

This recognition has transformed the Council's view of the Services.

The Council now recognises the linkages between the Council's heritage and the City's future.

This radical re-thinking of the Council's heritage assets has informed the Transformation Programme for the Service.

The **Museums Transformation Programme** approved by Cabinet in October 2010 was developed to address the following issues:

- to establish an affordable model for the museums that will have a major impact on helping realise the City's ambitions;
- to maximise income opportunities and end over reliance on public sector funding, including Renaissance Funding; and
- to use the City's world class heritage to help drive forward the Council's economic and community regeneration and attract local, national and international partners to promote “the place where ideas become reality”.

The Museums Transformation Programme has five key objectives.

The action plans to realise each of these objectives are set out in the Museums Business Plan 2011 – 2014:

These five objectives are:

- to instigate a two year project plan from April 2011 for the redevelopment of the Silk Mill as a major visitor attraction. In order to do this the Silk Mill's Industrial Museum will be mothballed in March 2011;
- to carry out an affordable rolling redevelopment of the City Museum and Art Gallery with immediate effect;
- to instigate a programme to take Derby's Museum collections into community venues during 2011;
- to continue to operate Pickfords House Museum whilst building a partnership to support the establishment of an international centre for Joseph Wright; and
- to restructure the Service by April 2011 as a transitional phase towards a new governance model, based on greater entrepreneurialism, more commercial working and the building of partnerships that are national as well as local

Significant progress has been made to action each of the five objectives set out in the Transformation Programme.

Importantly, the Service has undertaken a radical staffing restructure which has enabled it to meet immediate cash savings required by the Council but, most significantly, has released additional resources and capacity to drive forward the Transformation Programme.

Other key actions and developments include:

- **Joseph Wright of Derby Campaign**
- **Silk Mill Development Plan**

A summary of the significant progress to date in relation to both of these important initiatives is set out in Appendix 1.

The next critical phase of the Transformation Programme is to identify and explore alternative governance models which will not only realise the potential of the Services but, more importantly, will establish the national and international reputation of Derby as a centre of innovation, invention and technological application and thus contribute to the long term economic success of the City.

We set out below our findings with regards to this review and our key recommendations.

If approved by members, then the establishment of a new governance model for the Services will be an important and high profile project for the Council.

It is critical that **the Council retains “ownership”** of the project at the next stage and, most importantly, ensures that those engaged in the new governance arrangements fully understand and embrace the Council’s aspirations for these Services.

It is strongly recommended, therefore, that lead members **“champion”** this project.

We would like to thank all those members, officers and key stakeholders who met with us during the consultation phase of our appraisal.

We would like to thank, in particular, Claire Davenport as the lead director in relation to this project and Stuart Gillis, who has been instrumental in developing, articulating and inspiring others in relation to the vision for the future of Derby Museum Services.

“The City that we see today is the product of this story. This heritage of innovation and world changing ideas is alive and unbroken.

This is a heritage to inspire. It is the foundation for developing the identity of the City over the next generation and beyond. This legacy has the potential to attract and engage business, create a visitor destination of distinction, connect communities and raise aspiration both within and beyond the City.”

**Extract from Derby City Council’s
Museums Transformation Programme**

3. APPROACH AND METHODOLOGY

One of the key objectives set out in the Museums Transformation Programme approved by Cabinet in October 2010 was to “restructure the museum service by April 2011 as part of a transition towards establishing an independent organisation to run Derby Museums – based on greater entrepreneurialism, more commercial working and building partnerships that are national as well as local. The intended launch date is April 2012.”

The purpose of this review is, therefore, to identify and assess the alternative governance models for the Services and, in particular, identify which model will deliver the Council's vision for the Services and realise their important role in the future of the City.

WS are the lead consultant in relation to this review.

WS specialise in local government projects and in particular in relation to arts and heritage. The WS team has undertaken over 75 feasibility studies in relation to leisure, arts and heritage projects and have established over 50 new “not for profit” organisations to work in partnership with local authorities and deliver leisure, arts and heritage services.

We have visited the following facilities:

- Silk Mill Industrial Museum
- City Museum and Art Gallery
- Pickfords House Museum
- Bold Lane Museum Store

We have undertaken the following key tasks:

- a review of the existing services;
- consultation with key stakeholders;
- through meeting with officers, members and key stakeholders, confirmation of the key issues for the Council in relation to any governance model;
- identification of the alternative governance models;

- an analysis of which of the alternative governance models will achieve the Council's vision for the Services;
- a more detailed financial, legal, operational and practical evaluation of the recommended governance model.

It should be noted that the review is ongoing.

Subject to member and officer comments on this report, the next key stages will be:

- ongoing dialogue with members, officers and key stakeholders;
- identify/address any issues emerging from this report;
- detailed business planning to develop an initial business plan for the new governance arrangements;
- further reports to members and officers seeking decisions in relation to key aspects of the new governance arrangements as the project progresses (as highlighted later in this report).

4. EXECUTIVE SUMMARY

4.1 Recommended Option for Museum Services

It is our recommendation that the NPDO option or “Trust Option” is the option most likely to deliver the Council’s vision for the museum services as set out in the Museums Transformation Programme.

We would recommend the new NPDO be established as a company limited by guarantee and registered charity.

This is a fit for purpose and tax efficient legal structure to optimise opportunities going forward.

It is also an enormously flexible structure with opportunities for expansion, diversification and collaboration going forward.

There are significant advantages of the NPDO option. These are set out in detail in Section 12 of our report.

In summary, it is our view that the establishment of an NPDO for museum services would:

- Demonstrate the Council’s understanding of the linkage between the Council’s heritage and its future economic and social prosperity.
- Demonstrate the Council’s commitment to radically re-think Derby’s cultural offer and explore new ways of working to achieve the Council’s aspirations for the City
- Provide the vehicle to enhance Derby as a premier visitor destination.
- Drive forward the Museums Transformation Programme and help deliver the Council’s corporate and strategic objective for an active and cultural life.
- Lead the Joseph Wright of Derby Campaign.
- Lead the Silk Mill Redevelopment Plan.
- Be a key partner in delivering the Council’s regeneration strategy and act as a catalyst for other regeneration initiatives.

- Exploit Derby's world class heritage assets for the benefit of Derby, promoting Derby as a centre of excellence for innovation, technology, engineering and hence for investment.
- Have freedom of operation to make quick decisions to maximise funding and partnership opportunities.
- Take a more entrepreneurial, commercial approach to service improvement but operating within the ethos of the public sector.
- Develop and maximise commercial and income generating opportunities.
- Be an opportunity to secure stakeholder involvement in the strategic direction of the new organisation as well as fostering community engagement at a more local level.
- Attract external funding not available to the local authority including, in particular, charitable trust funding and better access to national lottery funding.
- Deliver immediate business rate savings which over five years would represent £250,000 which can be reinvested in the services and act as a lever to attract additional external funding.
- Reinvest 100% of any surpluses generated to continuously improve the heritage offer and drive forward the Museums Transformation Programme.
- Be tax exempt including exemption from corporation tax thus ensuring that all income generated by the organisation is reinvested to achieve the Council's vision of the heritage services.
- Maximise VAT reliefs.
- Maximise gift aid opportunities, creating new sources of income.
- Maximise opportunities for corporate donations and sponsorship.
- Be able to develop innovative group structures to attract investments from public and private sources in return for a dividend.
- Establish a trading subsidiary to maximise commercial opportunities in a tax efficient structure.

- Provide stability to the services to allow for longer term business planning and thus deliver better outcomes.
- Allow for Council representation on the Board of the NPDO thus ensuring the Council continues to be involved at the strategic decision making level.
- Establish a robust contractual arrangement to ensure the Council retains significant strategic control, setting key strategic outcomes for the organisation and monitoring the delivery of these outcomes.
- Establish a new strategic partner for the Council to drive forward other cultural initiatives.
- Be a flexible legal structure which would allow the Council to transfer other leisure cultural heritage services to the NPDO.
- Establish a strategic partner to fully engage in, contribute to and promote the Derwent Valley Mill's World Heritage Site and collaborate with other charities involved in the Derwent Valley World Heritage Site.
- Act as the "keeper of the story" in terms of Derby's story of innovation and inspiration.
- Be a low risk option for the Council.

4.2 **Critical Success Factors**

Critical to the success of this initiative would be as follows:

- Lead member and officer support and "ownership" of the project throughout the implementation stage of the project and in the long term
- A robust business plan
- Continued Council funding on a fixed or rolling basis to facilitate business planning and deliver better outcomes.
- A commitment to recycle business rate savings
- An equitable sharing of maintenance responsibilities for the existing buildings with a potential for transferring additional risk to the NPDO in relation to any new facilities

- A partnership approach to service planning and identifying and delivering future development and improvement opportunities
- A fully resourced budget for buying back existing support services and/or procuring support services from alternative third parties in the future, with a potential sharing of any future savings in relation to support services
- A shared vision between the two organisations
- High calibre trustees with a range of skills and expertise to contribute to the success of the organisation
- Regular and continuous dialogue between the new organisation and lead members and officers of the Council to identify opportunities for ongoing collaboration and joint working
- Regular dialogue with key stakeholders involved in the World Heritage Site to maximise the opportunities the World Heritage Site presents for all parties.

4.3 **Option for Leisure and Other Cultural Services**

We are aware that the Council is exploring alternative delivery options for other Council services including:

- Leisure Facilities;
-
- Libraries;
- Leisure and Cultural Development
- Performing Arts and Events

We are also aware that the Council is developing two new premier leisure facilities which will be of significant regional, if not national interest.

The establishment of an NPDO for museum services does not in any way preclude the Council exploring alternative delivery options for these other services.

If the Council was minded to explore the NPDO option for the wider leisure and culture portfolio, then there are a number of ways in which this could be

structured including:

- Extending the role and remit of the museum NPDO;
- Creating a group structure which includes the museum NPDO as well as a newly established leisure NPDO.

A diagrammatic summary of these potential structures is set out in Appendix 6 of our Report.

None of these options are precluded by establishing the museum NPDO at this stage.

Conversely, it is suggested that there are significant advantages of establishing the museum NPDO at this stage.

It would give both the Council and the NPDO an opportunity to establish the new working arrangements.

Most significantly, it would give the NPDO an opportunity to build capacity and mobilise before taking responsibility for a wider portfolio.

In particular, it would allow the new NPDO to, recruit the specialist teams required to run the new leisure facilities with a particular focus on the conferencing, concerts, events and the other commercial opportunities that the Multi Sports Arena site, for example, offers.

Potentially transferring all of the facilities including the new facilities to a newly established organisation would be of higher risk and thus this risk can be significantly mitigated by transferring to an organisation (or group structure) with an established management team and proven track record in delivering services in partnership with the authority.

We do not recommend that the Council defers the decision to establish the museum NPDO whilst it gives further consideration to the options for the wider leisure and culture portfolio.

Significant progress has been made with regards to the Museum Transformation Programme which has gained tremendous support from key stakeholders in the public, private and voluntary sectors.

There is a significant risk that this goodwill would be jeopardised and funding and

partnership opportunities lost.

5. POLICY BACKGROUND

5.1 National Policy – Coalition Government's Agenda

Over the years, all political parties have encouraged local authorities to review their services and to develop innovative partnerships with public, private and voluntary sector organisations to improve public sector service delivery.

The current Coalition Government is fully committed to the role of social enterprises, charities and co-operatives in delivering public sector services.

This was first stated in the Coalition's programme for government:

- “we will promote the radical devolution of power and greater financial autonomy to local government and community groups;
- “we will support the creation and expansion of mutuals, co-operatives, charities and social enterprises and enable these groups to have much greater involvement in the running of public services;
- “we will give public sector workers a new right to form employee-owned co-operatives and bid go take over the services they deliver”.

The commitment to the role of social enterprises was reinforced in the Coalition Government's first White Paper which highlighted four principal themes:

- give communities more powers;
- encourage people to take an active role in their communities;
- transfer power from central to local government; and
- support co-operatives, mutuals, charities and social enterprises.

The latest White Paper “Open Public Services” published in July 2011 establishes a policy framework across the public sector for giving people “more freedom, greater control and local control”.

The White Paper sets out five principles for public service moderation:

- **choice** – wherever possible, to increase choice;
- **decentralisation** – power should be decentralised to the lowest appropriate level.

- **diversity** – public services should be open to a range of providers;
- **fairness** – to ensure fair access to public services;
- **accountability** – public services should be accountable to users and tax payers.

This new policy framework provides important support and focus for this review and consideration of alternative governance models.

Issues arising: The Transforming Derby Museums programme is entirely consistent with this new and emerging national policy.

5.2 **Local Policy - Derby City Council's Council Plan 2011-2014**

The Council fully recognises the challenges it faces with budget pressures.

Most importantly, however, it remains fully committed to delivering the best possible services for its local communities.

Derby City Council's Plan 2011-2014 sets out its six key outcomes for 2011-2014 based on feedback received from residents, visitors and partners through the “three wishes consultation campaign” completed in 2010.

The Council aims to work together so that all people in Derby will enjoy:

- a thriving, sustainable economy;
- achieving their learning potential;
- good health and well being;
- being safe and feeling safe;
- a strong community; and
- an active cultural life.

The Council's museum services are inextricably linked to achieving these key outcomes and this is fully recognised throughout the Council Plan including in relation to an active cultural life.

The Council fully recognises the role of culture in achieving its key outcomes and its contribution to the economic, social and environmental wellbeing of the area.

With particular regards to culture, the Council is committed to encourage more people to take part in cultural activities.

The key actions identified in the Council Plan to achieve this specific outcome include:

- setting up a cultural board to be responsible for identifying new approaches to funding;
- developing and implementing a joint marketing strategy for culture including an online gateway for all cultural activities; and
- delivering the Museums Transformation Plan.

Clearly, it is critical that any alternative governance model for the museum services meets the Council's corporate and strategic objectives as set out in the Council Plan and most importantly contributes to the achievement of these key outcomes.

Culture is inexplicably linked to the wider regeneration of the City and this is clearly recognised by the Council and reflected in its regeneration strategies.

Arguably Derby's past is the key to its future.

Its heritage is one of innovation. The value of this is to continue to inspire future generations and to ensure that Derby retains its national and international reputation for industry and technology.

Investing in Derby's heritage is therefore investing in Derby's future. It places, quite rightly, the museum services at the heart of the Council's regeneration strategies. More significantly the museum services have the potential to act as a catalyst to regeneration and the economic, social and environmental well being of the area.

Going forwards, Derby's heritage should be at the heart of Derby's regeneration strategy, using its heritage assets to promote Derby as a centre of excellence for technology, engineering, innovation and hence for investment.

Any future governance model must facilitate and contribute to this wider

regeneration role.

Issues arising: The Transforming Derby Museums programme is critical to the Council achieving its Corporate and Strategic Objectives. Any future governance model must help deliver its vision for these Services but should also be seen as an integral driver of the wider regeneration agenda.

6. LOCAL AUTHORITY MUSEUMS IN THE NATIONAL CONTEXT

Local authorities are facing unprecedented challenges on their budgets requiring a radical re-evaluation of how they deliver their services including heritage services.

These fundamental service reviews are against a background of increased public expectation in terms of the heritage offer.

It is also against a background of policy uncertainty for the museum sector.

6.1 Strategic agencies

The transfer of the Museums, Libraries and Archives Council's ("**MLA**") expertise to the Arts Council on 1 October 2011 is in process, with the MLA winding down completely by April 2012.

The MLA has been closely involved with Renaissance Funding which has hugely benefitted regional museums and has been at the forefront of policy advocacy for museums.

Renaissance programme funding, which provided Derby Museums with revenue funding of up to £390,000 per annum ended in March 2011. Through its innovative response to a changing Museums sector, the City Council was successful in attracting a further one off grant of £531,000 in 2011/12 to drive forward the Museums Transformation Programme.

The Renaissance programme is due to continue under the Coalition Government. From 2012/13 this will be administered by Arts Council England. ACE have announced initial plans to develop Museums Renaissance. Through the Transforming Museums programme, Derby Museums will be well placed to apply for the **Programme of Major Grants** (equivalent to ACE's National Portfolio Programme for other arts bodies). This is an example of how the right strategy, including the council's commitment to foundation funding, can provide the platform to engage major funders, and thereby maximise additional income and opportunities for the city through the Museums programme.

6.2 Capital Funding

In the past, outside the national sector, where museum services have thrived it is almost always with the backing of the local authority, whether as a direct service provider or in partnership with an independent museum, often run as a charitable

trust. This backing can take a number of forms. One important element is financial investment – both through capital and revenue funding support from the local authority. However, at least of equal significance is the incorporation of heritage assets into the mainstream Regeneration development agenda for a given place. The organisations that are successful in attracting significant inward investment in heritage assets are the ones where heritage development is a high profile driver of economic and community regeneration. Derby City Council has not succeeded in attracting significant development resources for its museums in the recent past. It may be considered that the City Council has not sufficiently understood the way that the City's heritage can be aligned towards high value Regeneration agendas. Through developing the Transforming Derby Museums Programme, the City Council has created a platform for aligning heritage to a broad based Regeneration. This is the appropriate model for attracting inward investment into the city's heritage. The strategic outcome focus of the new organisation is demonstrated in the table (below).

6.3 Strategic areas through which the City Council should engage Derby Museums

Economy	Community & Health
<ul style="list-style-type: none"> • building the tourism offer • marketing Derby to business • developing creative industries • breaking down the false distinction between creativity and engineering • realising City-centre development 	<ul style="list-style-type: none"> • leading community heritage • building community bonds • enabling volunteering • engaging young people • celebrating diversity • realising ownership of shared heritage • being a focal point for active citizenship • raising enjoyment • celebrating distinctiveness • building pride & sense of place

Learning	Environment
<ul style="list-style-type: none"> • inspiring people & increasing confidence • raising attainment • developing community and workforce skills • show-casing Derby's creativity • encouraging enterprise 	<ul style="list-style-type: none"> • setting an example • being an innovator • showing, sharing how and why • recording the City's progress • setting the next challenge • inspiring action

From this analysis, it can be seen that the City Council will need to balance alternative pressures for its limited capital resources against the strategic Regeneration potential of its Museums and Heritage assets. A degree of council capital funding will be expected in Silk Mill and other development plans. Through a high quality / high value strategic approach this may be expected to be between twenty and forty per cent of the total development costs.

6.4 **Future capital and revenue funding models for high value regional museums**

The new financial climate requires a radical new approach to the standard funding model for many museums. The basis for this approach has been set out within the Transforming Museums programme, as has the recognition that this business model is best suited to a governance arrangement that is strategically aligned to, but independent of the local authority.

The successful business model for Derby Museums will position capital and revenue funding from the City council as the funding foundation. By ensuring a) the high profile / high value strategic alignment to the City's Regeneation, and b) the development of commercial and fund-riasing expertise, the Museums organisation will seek to attract additional income and inward investment through the following means:

- commercial and trading activities

- partnership working (the potential benefits of this are being evidenced through the collaborative approaches to the Joseph Wright Campaign and the Silk Mill development programme)
- Arts Council England – strategic agency funding
- sponsorship, gifts, bequests
- Heritage Lottery Funding
- grants from charitable foundations

6.5 Understanding the compelling story of the place

In addition to this business specification, the Museums organisation (and the City) will make itself most attractive to inward investment when it draws together the areas where the City's heritage can be seen to be a) of world-class significance and b) highly relevant to regeneration agendas. In Derby these areas are likely to be:

- **The World Heritage Site** – there are strong indications of major funders being frustrated by the paucity of high value schemes along the Derwent Valley. Without the right plan Derby is in danger of missing its opportunity
- **The Wright of Derby Collection and the Enlightenment Story** – the recently secured involvement of the Tate, British Museum and Yale University in this field is an indication of the quality of resource at Derby's disposal. Moreover this resource can be developed as a key dimension to the way in which the City promotes itself as a global place of creativity to new and existing economies and investors.
- **High Technology Engineering** – the City has a three hundred year living tradition of world class creativity in this sector. The Silk Mill was the world's first factory. The entire building was conceived as a giant 'engine'. A redeveloped Silk Mill and the (already successfully developed) Roundhouse are the City's twin icons of past engineering excellence. They have the potential to be realigned with each other and alongside the modern manufacturing sector as integral drivers of the ongoing renewal of Derby's manufacturing excellence.

Issues arising:

Derby Museums will be operating in a highly competitive environment to secure necessary and long overdue development funding as well as other external revenue funding. As the lead strategic agency for the City's development, the City Council will need to help the new organisation realise its potential and thereby help sustain Regeneration within the City.

Recommendations:

The Council to:

- realise the potential of its World Class Heritage assets;
- place its heritage asset at the heart of the Council's regeneration strategy and use the new governance model to attract new funding partners and investment;
- to allocate sufficient revenue resources to the services to enable it to realise the vision set out in the Museums Transformation Programme and lever in additional funding using Council core funding as a foundation.

7. OVERVIEW OF DERBY MUSEUMS SERVICE

A number of site inspection visits have been made, in-depth discussions with key staff held, and a number of versions of the revenue budgets, records of fundraising and capital investment and space use schedules have all been examined. In addition, a number of documents have been reviewed which cover the recent history of the service and its reorganisation.

7.1 Buildings

The service runs at three main sites; the Museum and Art Gallery on the Strand, the temporarily closed Industrial Museum at the reconstructed former Silk Mill, and the former residence of Joseph Pickford, Pickford's House on Friargate.

The **Museum and Art Gallery** in Derby is part of a 19th century countryside movement that grew up in cities as a consequence of the Industrial Revolution which saw Museums as a key element in the social movement for education, instruction and self-improvement. The



Museums Act 1845 authorised the levying of rates to provide for museums in places with a population of more than 10,000. This and subsequent enabling legislation throughout the 19th century saw a growth in municipal Museums based on an assertion of civic pride as well as an ethic of social good. Derby Museum and Art Gallery opened in 1879 as tangible evidence of the City embracing this civic vision.

The current Museum and Art Gallery building is shared with Derby Central Library and occupies the first floor of the original 1879 and 1915 buildings, and all but part of the ground floor of the 1964 extension. The Library and Museum have separate entrances – and the facilities can feel disjointed. The Museum is adversely affected by this, with minimum



visitor orientation space, a limited shop and no catering facility. Significant parts of the ground floor space are also allocated to Library offices and back-up services at the expense of visitor interests and the presentation of public areas as a cohesive whole. This results in a visitor journey sequence which is somewhat confused, and a facility that is less than the sum of its parts.

The Museum has suffered from tired displays. The opening of the Soldiers Story gallery in 2009 is the one example of long term re-display in the last ten years. This issue is now being addressed through an innovative and affordable new business model for re-displays. Consequently under the Transforming Derby Museums programme one gallery redisplay was completed in May 2011 and two more redispays are due to be completed within the current financial year. This business model has been achieved through a staffing restructure, the establishment of non staffing budgets and concept planning that is attractive to small to medium level external funding.

In addition to this relatively low cost development, there is a compelling regeneration case for a significant development of this building (currently the Library, Museum, Art Gallery and Museum Square) as an integrated cultural facility. This concept would be intended to realise a best value solution to the building, igniting civic pride and acting as an anchor development to support Derby's Cathedral Quarter's independent retail offer and early evening economy. The case for this was set out in the 2010 fundamental review of Derby Museums by Cathedral quarter businesses and stakeholders, and needs to be evaluated as part of the City's Regeneration framework.

The museum and art gallery element of this facility has the potential to be the central attraction helping to attract a family based clientele to the area and to the museum.

In the DCC 2001 Best Value Review, the building was assessed as grade C (Poor, exhibiting major defects and/or not operating as intended). A number of the negative access factors that contributed to this rating have been addressed, for example with the recent installation of a lift., roof repairs and refurbishment of temporary gallery spaces.

The **Industrial Museum** is on the site of the world's oldest factory, the Silk Mills built by George Sorocold in 1702 and 1717.

The foundations and parts of the tower from the 1717 mill are still visible. The long connection with silk production ended in about 1908. In 1910 the building was largely destroyed by fire. The shell of the tower and the outline of the doorways leading into the original five floors were saved. These can still be seen today on the tower staircase. The building was rebuilt at the same height but with three storeys instead of five. The Silk Mill opened as an Industrial Museum in 1974 and – in need of major refurbishment - was mothballed in 2011.

The Silk Mill (Grade II listed) is currently under development with a limited capital and revenue budget set aside to help reinvigorate it.



A new development concept is in preparation. This combines elements of social enterprise with public access, and the theme is about inspiring creativity through engineering and technology. With the strategic support of the Council as an essential foundation, this concept has the potential to attract funding partners and be developed into a major facility for the City – in line with the Transforming Derby Museums programme.

The Silk Mill remains the building with the greatest cultural and commercial potential. In the 2001 Best Value Review, the building was assessed as grade C (Poor, exhibiting major defects and/ or not operating as intended).

The negative factors that contributed to this would in the main be addressed in any future redevelopment of the building with the exception of inadequate public car parking, although the building is within easy reach of the City centre and benefits from the new river bridge, which is part of a £2 billion City centre redevelopment in Derby.



The Silk Mill is important as *the site* of very early industrial endeavour. The Mill was in operation some 50 years before

Richard Arkwright developed his cotton spinning process at Cromford further north in the Derwent valley. It is a key site within the Derwent Valley Mills World Heritage Site and is characterised as its southern 'anchor'. This site is of global significance – but is little known about beyond certain audiences. As the Transforming Derby Museums programme acknowledges, the City of Derby is missing a major Regeneration opportunity unless it aligns this landmark site and building with a vision for the future of a city with a living tradition of invention and innovation.

From a development perspective the Silk Mill has enormous potential. Although there are acknowledged and understood defects in the building it is generally robust, has high ceiling heights and is capable of multiuse development which could be part commercial, part cultural part community-based. These aspects of the building are likely to be essential to the mixed economy model for the new organisation envisaged within the Transforming Museums Programme.

Pickford's House, a Grade I listed building, dating from 1770, was opened in 1988 as a reconstruction of the townhouse of an important local architect Joseph Pickford. It contains a series of reconstructed room sets depicting life as it might have been in Joseph Pickford's time, along with other temporary galleries. In the 2001 Best Value Review, the building was assessed as grade B (Satisfactory performance as intended but exhibiting minor deterioration).

The negative factors that contributed to this assessment were:

- Limited access for disabled people to and within buildings
- Insufficient power and data links to provide desired ICT service delivery
- Security of the building was reviewed by Alf Longhurst (MGC) in 2003. His report concluded the level of threat as being low to medium. The museum is not suitable for loans from National museums in view of the inherent physical design of the building which is difficult to address. Intruder detection around the building has been expanded as a result of the report and a digital CCTV recording system has been installed.

Although there are some negative factors, Pickfords House provides an attractive discovery-based experience for visitors. Under the guidance of some significant partners, a major Wright of Derby Campaign is due to be launched by Derby Museums in the autumn. As part of the Transforming Museums programme, this Campaign envisages the potential to develop Pickford's House as the

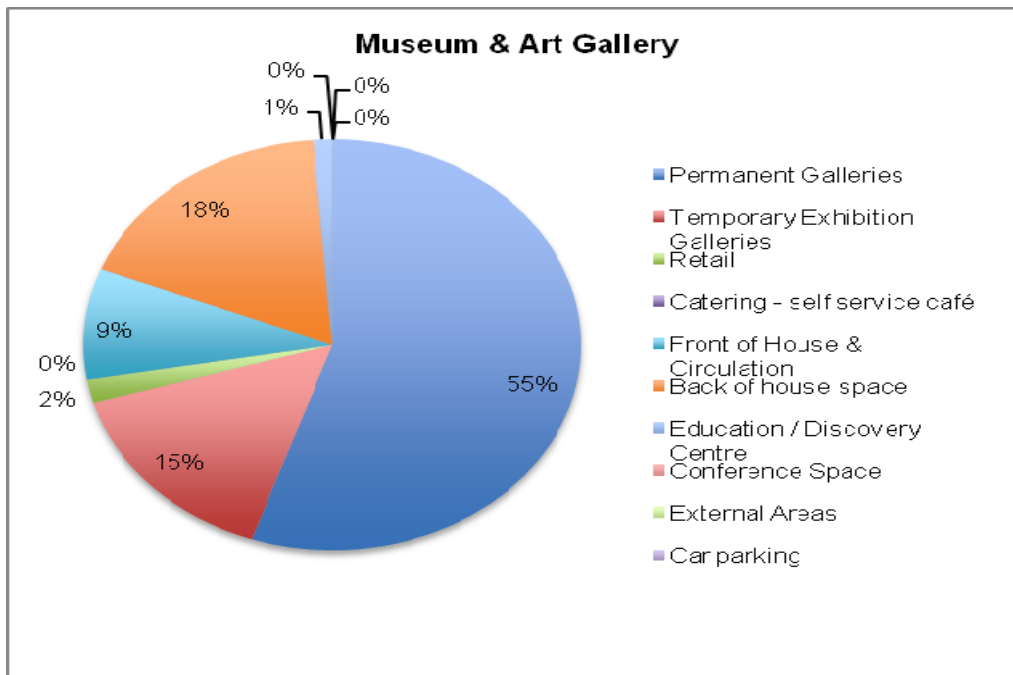
headquarters for a branch of the new Derby Museums organisation. This would aim to realise the potential of the City's Wright connections – locally, nationally and internationally.

Although current building utilisation is less than ideal, nevertheless the buildings have great potential for development, as is shown in the analysis below.

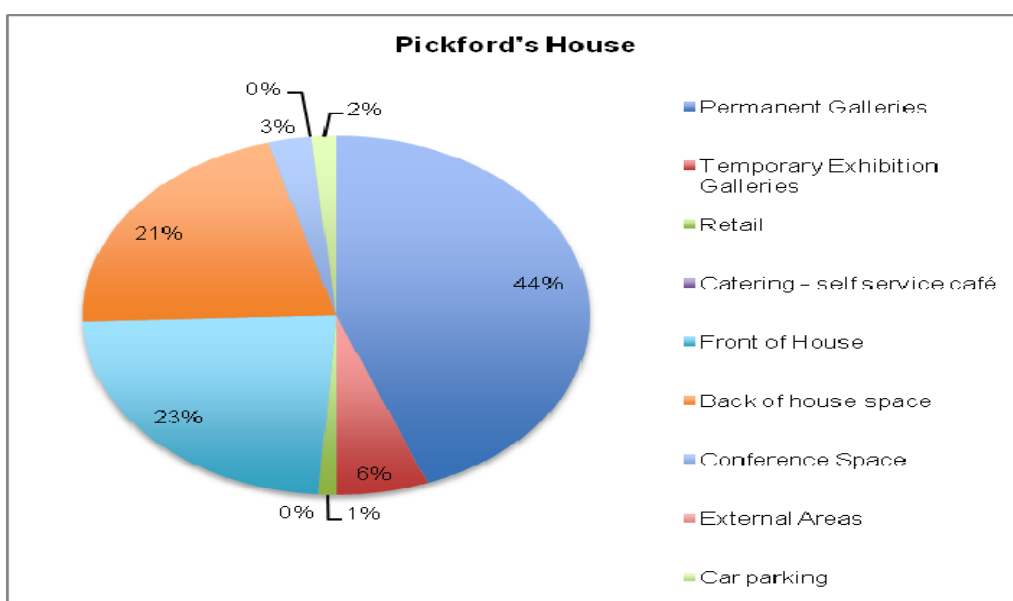
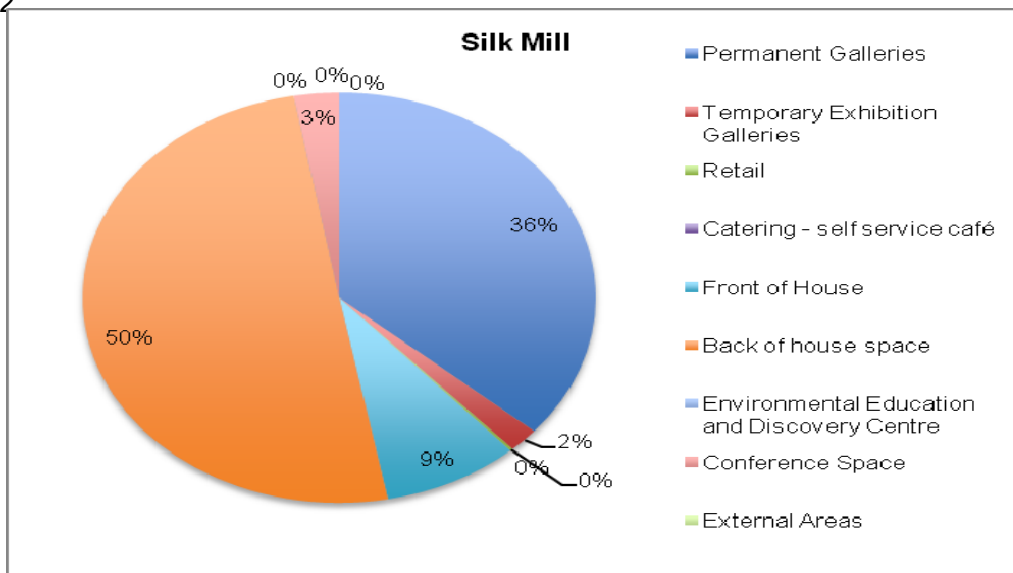
This helps demonstrate that both the museum and art gallery and the Silk Mill have the capacity for a variety of uses, as part of a financially viable, carefully balanced business model for the new organisation. Potential uses include:

- commercial development
- secondary spend facilities
- event and conference space
- new galleries
- lettings and other uses
- temporary exhibition space

	Museum & Art Gallery	The Silk Mill	Pickford's house	Bold lane	Totals
Display space	1,033.00	1,149.00	318.00	0.00	2,500.00
Temporary exhibition space	322.00	90.00	109.00	0.00	521.00
Other public space	300.60	335.47	68.00	0.00	704.07
Object stores	187.00	672.00	62.00	857.00	1,778.00
Non public space	303.00	688.05	115.00	0.00	1,106.05
Vacant space	0.00	714.00	0.00	0.00	714.00
Total	2,145.60	3,648.52	672.00	857.00	7,323.12



7.2



Collections

The highlight of the collection is a group of paintings by the celebrated 18th century Derby artist Joseph Wright, associate of the Royal Academy (1734-97) which include portraits, landscapes, subjects from literature and scenes of industry and scientific equipment that are memorable depiction of the ferment of discovery which is the 18th Century Enlightenment. This collection has recently been Designated – officially recognised as being of international importance. It comprises 34 oil paintings and over 500 drawings and prints, original frames, personal items and related documents. This is the largest collection of the artist's work in any public Gallery in the world, public or private. This collection is further enhanced when it is considered as part of the museums wider Enlightenment holdings, including the large collection of fine Derby porcelain, produced in the City since about 1750.

Joseph Wright has been acclaimed as 'the first professional painter to express the spirit of the industrial revolution'. His paintings of the birth of science out of alchemy, often based on the meetings of the Lunar Society, a group of influential scientists and industrialists living in the English midlands, are a significant record of the struggle of science against religious values in the Age of Enlightenment. collection

The full extent of Derby's Museums holdings amount to an important regional collection. The number of objects is not known exactly but is estimated to be around 300,000 items, with up to 1 million photographs¹. There are around 120,000 collection records. Approximately 95% of the Museums Service collections are in store.

The collection categories include

- Archaeology (19,800 items)
- Costume & Textiles (7,668)
- Derby porcelain & pottery (8,693)
- Ethnography – Africa, China, India, Japan, America, Polynesia (1,277)
- Paintings & Drawings (4,180)

¹ The Future of Derby Museums Service, July 2010

- Industrial History – transport, mining, engineering (9,235)
- Military History (5,678)
- Social History (28,821)
- Plants (10,000)
- Insects (35,000)
- Molluscs (5,000)
- Minerals/ rocks/ fossils (6,000)
- Birds & Mammals (2,000)
- Birds Eggs (2,000)
- Bones & miscellaneous (1,000)

A visual inspection has been made of the Bold Lane store, where conditions are fairly typical of regional museums of Derby's size.

Derby Museums is embarking on a significant development in its approach to collections. This includes:

- A major focus on inspiring people through the City's living history of world class creativity. Much of this focus is planned for the Silk Mill where it is envisaged that the high technology of one generation will be used to inspire people when juxtaposed with cutting edge technology produced in the City and area today.
- A New Enlightenment approach to display. This approach is intended to combine a modern Wikipedia discovery style with the Enlightenment concept of a museum as the repository for all the ideas in the world under one roof. This approach is being developed as part of the Transforming Derby Museums programme and is intended to underpin the development of the Museum and Art Gallery.
- Making greater use of collections currently in storage

The service has the collections material to provide exhibitions, temporary and permanent, events, programmes and learning activity to support this direction.

8. ALTERNATIVE GOVERNANCE MODELS

The Council will, of course, be fully familiar with the potential range of options for the future delivery of its Services.

These range from:

- retaining in house;
- joint delivery with another local authority;
- transfer of services to a newly established non profit distributing organisation (“**NPDO**”) (sometimes referred to as the “Trust Option”);
- contract with a private sector provider.

Arguably the “Big Society” has introduced further delivery options with a focus on working with community based organisations, co-operatives and charities.

A list of the full range of delivery options for local authority services is set out at **Appendix 2** with a comment on the relevance/applicability of those options for the Council’s services.

The Council have established a clear vision for the future of these Services.

Any governance model must, therefore, be able to deliver this vision and, most importantly, meet the key criteria set out in the brief as being critical to the future management and operation of the Service.

For the purposes of this review, we have identified and fully evaluated the following options:

- **status quo;**
- **merger with an existing, independent museum or other cultural organisation;**
- **a City and county wide governance model;**
- **a wider leisure and culture governance model for Derby City;**
- **a standalone governance model for Derby Museums Services;**

- **contract with a private sector entity to manage and operate Derby museums.**

We set out below a summary of each option and its potential advantages and disadvantages.

Option1: Status Quo	
Summary	<ul style="list-style-type: none"> • This would mean the continuation of the Service in house with no change to the scope of the Services or means of delivery.
Advantages	<ul style="list-style-type: none"> • Minimum impact on staff/services/service users in the short term. • Council retains direct control. • Council can continue to spread its central overhead costs across all services including the Museum Services.
Disadvantages	<ul style="list-style-type: none"> • Query long term viability/sustainability of the Service. • The Council has already recognised that “status quo” will not deliver the Council's vision for the Services. • The Council retains all the risk of the Service with limited opportunity to mitigate that risk. • Museum services are a discretionary service and whilst it is recognised that the Services can make an important contribution to the economic, social and environmental well being of the area, the current financial circumstances are such that it may become increasingly difficult for the Council to continue to fund the Museum Services at the existing levels. • Whilst all options will involve the Council retaining freehold ownership of the property portfolio, retaining in-house means 100% of the risk of the repair and maintenance of the buildings remains with the Council. • Query retention of staff. • Potential deterioration of existing portfolio, displays and

	<p>exhibitions due to no new significant capital investment.</p> <ul style="list-style-type: none"> • No NNDR benefits. • No tax benefits • Limited VAT benefits • If the Council retains the Service in house, to achieve its vision for the Services it would need to: <ul style="list-style-type: none"> • re-prioritise capital expenditure to deliver short to medium term improvements. This may have an impact on statutory services • commit significant capital investment to ensure that the Services remain “fit for purpose” going forwards • maintain (at a minimum) existing funding levels for core funding and central support overheads • If significant capital investment is not forthcoming then to contemplate further service reductions/ closures
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Option 2: Merger with existing museum or cultural organisation

Summary	<ul style="list-style-type: none"> • This would involve the transfer of the Services to an existing organisation which would then be responsible for the management and operation of the Derby museum portfolio.
Advantages	<ul style="list-style-type: none"> • Potential to transfer an element of risk associated with the management and operation of the Services. • A potential to achieve economies of scale.
Disadvantages	<ul style="list-style-type: none"> • Loss of direct control. • Query if the existing museum would share the Council's vision and aspiration for the Services and thus deliver the

	<p>transformation agenda.</p> <ul style="list-style-type: none"> • Query if there is a potential merger partner in Derby/Derbyshire. [N.B. The Arkwright Society has a proven track record in managing world class heritage assets. Whilst at this stage we are not suggesting the transfer of the Council's Museum Service to the Arkwright Society, it is recommended that the parties continuously explore options for collaboration to promote Derby and Derbyshire heritage assets for the benefit of all.]
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Option 3: City and County wide Trust (NPDO)

Summary	<ul style="list-style-type: none"> • This would involve establishing a new organisation to manage and operate the museum, arts and heritage portfolio throughout Derbyshire.
Advantages	<ul style="list-style-type: none"> • Consolidation of budgets thus maximising finite public resources. • Economies of scale. • Significantly reduced overheads and associated expenditure. • Pooling of expertise and ability to attract individuals with particular knowledge/specialist skills. • If a charitable NPDO, then significant NNDR, VAT and tax savings. • If a charitable NPDO, then an opportunity to attract external funding, maximise the gift aid scheme and corporate donations. • A significant pan-Derbyshire vehicle to promote the cultural wealth of the County. • An opportunity to promote and market Derbyshire as a whole with a consistent message. • An opportunity for one organisation to be responsible for the publically owned assets in the World Heritage Site and thus an opportunity to further promote the World Heritage Site for the

	benefit of all.
Disadvantages	<ul style="list-style-type: none"> • This would require each authority in Derbyshire at county and local level to agree to transfer the management and operation of their heritage services to one new entity. Query if each authority would agree to this. • It would require shared understanding and vision. • It would be a complex project and would require each authority to commit to the project timetable and decision making process.

Option 4: Establishment of a museums / arts / heritage NPDO

Summary	<ul style="list-style-type: none"> • This would involve establishing a new NPDO to manage, operate, develop and promote the Derby heritage portfolio. The new NPDO would be a separate legal entity. The board of the new entity would be made up of key stakeholders including the Council. The property portfolio would be leased to the entity. The parties would enter into a funding and management agreement for the management of the Services and delivery of agreed outcomes. • If established as a charitable NPDO, then it would benefit from the significant tax benefits thus ensuring 100% of surpluses generated were used to develop and promote the heritage services. Most significantly, the new organisation could act as a key delivery vehicle for wider social and economic regeneration objectives.
Advantages	<ul style="list-style-type: none"> • An organisation “owned” by those committed to Derby’s future. • Opportunity for genuine community / stakeholder engagement. • If charitable, 100% exempt from business rates thus reducing expenditure and releasing resources for reinvestment in the Services. • If charitable, 100% exempt from tax thus maximising resources

	<p>for reinvestment.</p> <ul style="list-style-type: none"> • 100% of surpluses would be reinvested into the continuous improvement of the Services. • If established with a voluntary board, then 100% VAT exemption in relation to certain supplies. • Able to attract external funding from HLF, Arts Council and Charity Grant Funding. • If charitable, able to maximise the gift aid scheme. • If charitable, able to attract corporate donations and legacies. • It would be established with a clear purpose and remit focused on promoting Derby's World Class Heritage. • Retention of existing staff and expertise through TUPE. • A social enterprise that would operate in accordance with commercial principles but with a social purpose. • An NPDO can borrow to continuously invest in and improve the facilities • A strategic partner of the Council which can assist the Council to deliver its wider economic and social objectives for the regeneration of Derby. • A "fit for purpose" organisation which can make decisions quickly and efficiently to maximise business opportunities/respond to changing customer needs and expectations. • A governance model with proven track record. • A governance model which is wholly flexible thus able to develop collaborative working at regional, national and international level. • We would strongly recommend that the new NPDO work collaboratively with other key stakeholders involved in the World Heritage Site, most significantly Derbyshire County Council and
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	<p>the Arkwright Society. This collaboration can take many forms. There are clearly significant opportunities for joint marketing and promotions. There are potentially opportunities for pooling finite resources to share certain costs associated with marketing and business development for example.</p>
Disadvantages	<ul style="list-style-type: none"> • Whilst the Council will lose direct day to day control of the management and operation of the Service, it will retain significant strategic control.

Option 4A: Arrangements with an existing Trust (NPDO)

Summary	<ul style="list-style-type: none"> • This would involve entering into an arrangement with an existing NPDO to manage and operate Derby's museum portfolio.
Advantages	<ul style="list-style-type: none"> • An arrangement with an existing NPDO with proven track record, existing infrastructure, systems, policies and procedures. • An immediate reduction in the costs of delivering the Services through economies of scale and reduction in overhead costs. • All of the advantages of an NPDO.
Disadvantages	<ul style="list-style-type: none"> • Query whether an existing NPDO would share the Council's vision for the Services/for the City. • Query whether an NPDO from another area would be committed to the Transformation Programme. • Query wider stakeholder buy-in an organisation with no local connection. • Query the level of stakeholder engagement at Board level.

Option 5: Establishment of a wider Leisure and Heritage Trust (NPDO)

Summary	<ul style="list-style-type: none"> • This would involve establishing a new NPDO for the management and operation of the City's leisure and culture
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	portfolio.
Advantages	<ul style="list-style-type: none"> • A new organisation responsible for leisure and culture across the City. • If a charitable NPDO, then significant VAT/NNDR/tax benefits. • The pooling of finite resources. • Reduction in overheads. • Economies of scale. • A consistent approach to all aspects of health and well being. • An opportunity for cross-subsidy between leisure and culture. • The NPDO model is extremely flexible. The Council could therefore establish the NPDO for museum services initially. Provided the objects of the NPDO are drafted in wide terms, then it would be possible for the Council to transfer other services to the NPDO – at a later stage. So, for example, the Council could determine to transfer other leisure or cultural services to the NPDO in the future.
Disadvantages	<ul style="list-style-type: none"> • The Council is currently exploring the future management of its leisure services. At this stage, however, the Council has not committed to transferring its leisure services to a NPDO. • Whilst there are a number of NPDO's operating a leisure and culture portfolio, the majority of NPDO's are single-focussed either leisure or culture. • Whilst both leisure and culture improve the quality of life of those who participate in them, they are very different "disciplines". • It would be more challenging to find trustees and senior managers with knowledge and expertise in relation to both leisure and culture. • Query if a combined leisure and culture NPDO could articulate and deliver the Transformation Programme for the Museum

	<p>Services as effectively as an NPDO established solely for the Museum Services.</p> <ul style="list-style-type: none"> • If the Council sought to establish a NPDO for leisure services in the future, then there would be opportunities for collaboration and joint working between the leisure NPDO and museums NPDO to maximise resources and deliver better outcomes for the benefit of the local community.
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Option 6: Arrangements with the private sector

Summary	<ul style="list-style-type: none"> • This would involve transferring the Services to a private sector operator following a voluntary competitive tender (VCT) process and entering into a contractual arrangement with the private sector operator to deliver the Services in accordance with a service specification.
Advantages	<ul style="list-style-type: none"> • Potential to transfer some risk to the private sector partner. • Potential to require investment as part of the contract.
Disadvantages	<ul style="list-style-type: none"> • Whilst there are a number of private sector operators providing leisure management services, there are no private sector operators providing heritage services. Some private sector operators have tended to manage art facilities. There is, however, no proven track record. • Query culture/ethos of private sector operator and whether this is compatible with Services of this nature. • Query a national private sector operator's commitment to Derby. • No community engagement. • No stakeholder involvement at Board level. • No guaranteed reinvestment of surpluses in the portfolio. • No NNDR/VAT/tax advantages.

	<ul style="list-style-type: none"> • Not eligible for HLF/Arts Council/charity funding. • Not eligible for gift aid scheme or corporate donations. • A private sector contractor will seek 20/25% return on any capital investment. • No scope for local authority to spread overheads. • Query integration with other local authority services e.g. library and leisure. • Query engagement with wider stakeholding group. • Query commitment to public sector terms and conditions and, in particular, LGPS. • A client/contractor relationship rather than a “strategic partnership”. • Query role as “cultural leader”.
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9. FEEDBACK FROM KEY STAKEHOLDERS

As part of this review, we have undertaken key stakeholder consultation. We set out in **Appendix 3** those key stakeholders who we have had an opportunity to consult with to date. Consultation is ongoing and we will continue to feed back on the outcome of this consultation as the process continues.

We summarise below the key issues/themes emerging from the stakeholder consultation.

Stakeholders	Key issues/themes
Council members	<ul style="list-style-type: none">• A recognition that the museum collections and displays are “old fashioned” / “stagnant” and need “invigorating”• A recognition of the importance of the Silk Mill and a desire to maximise its role and contribution to the World Heritage site and broader cultural offer• A desire to “sweat the Council’s assets”• A recognition that museum services are a discretionary service and, whilst they have an invaluable contribution to the quality of life for the residents and visitors to Derby, the Council has a number of competing priorities and needs to prioritise statutory services• A clear recognition that to deliver the Council’s vision for the Services, the governance model must be one that “frees the new organisation from Council bureaucracy”, “that allows it to make quick decisions, to maximise opportunities and delivers better outcomes”• A real opportunity to engage with key stakeholders who fully understand the importance of Derby’s heritage and who want to work with the Council to maximise the heritage

Stakeholders	Key issues/themes
	<p>for the benefit of all</p> <ul style="list-style-type: none"> • An acknowledgement that financial savings are not the key driver but it is essential that the new governance model delivers the Council's vision and aspirations for the City • A desire to ensure that there was no erosion to staff terms and conditions • A requirement to be satisfied that safeguards are in place to enable the Council to "bring the Service back in house" in the event that a new organisation got into financial (or other) difficulties
Council officers	<ul style="list-style-type: none"> • A clear recognition that the City does not currently "exploit" its world class heritage assets for the social, economic, environmental benefit of the City • A recognition that the existing displays/ exhibits are "stagnant" • A clear commitment to facilitating a long term solution to the Silk Mill and maximising the significance of the Silk Mill and the benefits of the World Heritage site • A clear understanding of the linkage between Derby's heritage and its future and a desire to use the heritage assets "as a spring board" for the continued regeneration of Derby • An aspiration to make Derby the destination itself • A recognition that Derby's industrial heritage is its unique selling point and of significant

Stakeholders	Key issues/themes
	<p>regional, national and international interest but is currently totally “undersold”</p> <ul style="list-style-type: none"> • A desire to “sweat Derby’s assets” • An opportunity to “rebrand” Derby based on technology, innovation and application • An aspiration to develop/promote a more comprehensive “cultural offer” – increasing footfall/ extending the stay of visitors/ encouraging return visits • Proven track record in working in partnership and developing innovative models to deliver key Council objectives, e.g. BID initiatives, Marketing Derby and the recent £10 million office investment initiative • A real desire to display the breadth of the current collection – the majority of which is in storage • Concerns raised regarding democratic accountability of an arms length organisation • A commitment to preserve the core values of the Service – inclusiveness, neutrality, accessibility
Arts and Heritage Funding Bodies/ WHS Partners	<ul style="list-style-type: none"> • A clear understanding of the importance of the Silk Mill to the World Heritage Site ; “ground zero of the industrial age”/ “a sense of place, a sense of history”/” the touchstone from which everything happened” • An opportunity to promote all aspects of the World Heritage Site

Stakeholders	Key issues/themes
Businesses	<ul style="list-style-type: none"> • A recognition that the museum and art gallery include some “real gems”. However the building/ displays/ collections are old fashioned and static. • No new exhibitions/ events to attract new visitors/ return visitors • A need to “revamp” the museum service based on Derby’s unique industrial heritage. • An opportunity to promote and celebrate the link between science and the arts. • To promote five or ten “big ideas”/ “key stories about the history of Derby/ its role in revolutionising engineering/ technology/ its continued role in world leading engineering. • Need a dynamic/ interactive offer • Need to attract exhibitions from the Tate for example. • Need to make an impact! • Any new governance model will need the continued support of the City Council.
University/Colleges	<ul style="list-style-type: none"> • A recognition that the museum and art gallery is old fashioned/“last century” but could potentially be the centrepiece of a 21st Century museum experience/visitor attraction • A recognition that to achieve the Council’s vision in the museums Transformation Programme, the new governance model will need “freedom of operation” and be predicated on a culture of enterprise and innovation

Stakeholders	Key issues/themes
	<ul style="list-style-type: none"> • The new organisation will need high calibre trustees who can inspire and lead • An opportunity for collaboration between the new entity and other key stakeholders in terms of marketing, promotions, events and venues

10. EVALUATION OF GOVERNANCE MODELS

We set out in **Appendix 4** an analysis of each of the potential governance models evaluated against the key criteria.

The scores are out of ten for each criterion with the exception of risk where the reverse approach is used.

Recommendation:

Evaluated against the Council's key criteria for a new governance model, the governance model with the highest score and hence match against the Council's priorities, is a new NPDO established to manage the Council's heritage portfolio.

11. FINANCIAL OVERVIEW

We reproduce in Appendix 15 the 2011/2012 Budget of the Museum Service which has been amended by an increase in the Budget from £1,234,000 to £1,236,000. This will form the basis of the new standalone NPDO's core budget and grant application.

11.1 Commentary upon NPDO Budget

In addition to the Core Budget there are the following additional costs attributable to the Service:

- 2011 Uplift – there is currently an uplift to the core budget for the Services relating to the feasibility study and resources required to create an NPDO totalling £216,000. This in turn is part of a total uplift of £521,000 to help drive forward all aspects of the Transforming Derby Museums programme. This is funded by the MLA.
- Central Support Costs – the Council currently provides central support services to the museum services and recharges these costs on an apportionment basis. There is £208,000 attributable to Departmental Support and £79,000 for Capital Charges. The NPDO will need to continue to procure support services, the majority of which will be procured from the Council. (It is noted that some services cannot be procured from the Council, e.g. external audit, financial management). The NPDO will need a fully resourced budget to procure these support services but there is a potential for further savings here.

11.2 Other Savings

The issue of VAT could be a concern in that on the face of the figures the input tax paid by the facilities on goods and services would be greater than the tax charged on sales creating a potential imbalance of £80,000. However, if the transaction was structured in such a way as to permit the NPDO to charge a management fee equating to the deficit this could give rise to a 20% VAT charge on £1 million or £200,000. However, this will depend upon obtaining agreement from HMRC.

In addition, there are gross NNDR savings of £49,000 or £41,000 net, assuming both mandatory relief on 80% and discretionary relief on the remaining 20%.

11.3 **Income Generation**

A sustainable robust business plan will be predicated on fixed core funding over an initial period and increased income generation.

To date, and as stated in Section 7 of this report, the museum service has not fully exploited its income generation opportunities – both in relation to the collections and also the property portfolio.

Whilst strictly the Council could exploit these opportunities, it is suggested that a single purpose, social enterprise will have the commercial expertise and business imperative to fully exploit these opportunities. The business plan for the new NPDO will identify and model these potential opportunities in detail.

Examples of income generation opportunities include:

- retail development
- online retail offer
- catering development
- event and conference space
- charging for special exhibitions / lecture / private events
- lettings and hires
- charging for temporary exhibition space
- commercial development
- charging for education courses / evening courses
- exploitation of intellectual property in the collections – development the Silk Mill as an iconic brand and ensuring full recognition to Derby City Council for the loan of any collections

11.4 **Opportunities for Income Generation and Access Capital Funding**

The Coalition Government has highlighted the importance of the Big Society aspects in the culture, heritage and museum context and, in particular, encouraging philanthropy. A few days ago the Government announced the

creation of Big Society Capital, a new organisation able to provide cost effective funding for charitable entities.

In addition, there is a range of large charitable trusts interested in providing grants for capital projects including the refurbishment or provision of new tourist opportunities.

We provide some examples:

- Challenge Fund – provision of funds for conservation of Heritage at risk buildings
- Manifold Charitable Trust – preservation of culturally important activities and museum buildings
- Townscape Heritage Initiative – support for heritage landscapes
- Heritage Lottery Fund
- Digital Research & Development Fund for Arts and Culture
- Wellcome Trust- Arts Awards
- Paul Hamlyn – Arts Open Grant Scheme
- Arts Council England
- Art Collecting Initiative – creation of new collection
- PRISM Grant Fund 2011 – presentation of industrial and scientific material
- Esmée Fairbairn Collections Fund – support of museum development
- Andrew Lloyd Webber Foundation – promotion of arts, culture and heritage for the public benefit
- The David and Claire Potter Foundation – arts for a stronger, fairer, civil society
- The Peter De Haan Charitable Trust – improve quality of life through the arts
- Steel Charitable Trust – arts and culture
- Clare Duffield – museums, galleries and heritage sites

- Garfield Weston Foundation – museums and heritage
- John Ellerman Foundation – arts
- J Paul Getty Junior Charitable Trust – arts and heritage

11.5 **Conclusion**

As part of the next phase of the project, a full business plan for the NPDO will need to be prepared taking into account both the potential savings of £120,000 on VAT and £41,000 for NNDR. The business plan will need to consider the extent to which repairs and maintenance needs to be enhanced as well as marketing and other costs.

However, it is our view that the opportunities afforded by enhancing Derby City as a tourist centre should significantly increase opportunities for generating income at the three museum and heritage sites.

12. THE NDPO GOVERNANCE MODEL

12.1 What is an NPDO Model?

For short hand this is sometimes referred to as the “Trust” model. An NPDO is a non profit distributing organisation.

This means that the organisation’s profits cannot be distributed (e.g. to shareholders) but must be reinvested by the organisation to further its objects.

A 100% of profits, therefore, are used to improve the Service and thus drive forward the Council’s Transformation Programme.

NPDOs take a number of different legal forms including:

- Unincorporated charitable trust
- Company limited by guarantee (charitable or non-charitable)
- Industrial and provident society (charitable or non-charitable)
- Charitable incorporated organisation
- Community interest company

There are advantages and disadvantages of the different legal models.

However, our recommendation is the charitable company limited by guarantee.

This has the advantage of delivering all of the advantages of the NPDO model together with all of the advantages of a charitable organisation.

It is a modern and fit for purpose legal structure.

Most importantly, it is a flexible legal model which means that it can easily expand to carry out additional activities/services and can enter into all forms of collaborative working to improve service delivery.

The different legal models are summarised in **Appendix 5**.

We also summarise the key advantages and potential disadvantages of charitable status.

12.1.1 Key Advantages of NPDO

Advantage	Comment
100% reinvestment for the benefit of heritage services	As stated above, the key distinguishing feature of an NPDO is that its profits cannot be distributed but must be reinvested back into the organisation in furtherance of its objectives. This is the fundamental difference between the private sector share company and an NPDO. It means that 100% of profits generated by the organisation are reinvested back in the organisation to continuously improve the heritage offer and, most importantly, to drive forward the Transformation Programme.
Exemption from Business Rates	A charitable NPDO can be 100% exempt from business rates. The Council currently pays business rates in relation to the heritage portfolio. Charities are entitled to 80% relief from business rates. This is 100% funded by the National Pool and, therefore, is at no cost to the Council. The Council has the discretion to grant additional relief to charities, thus potentially exempting the charitable NPDO from 100% of the business rates otherwise due in relation to the properties. 25% of the remaining 20% is funded by the National Pool.
Tax Exemption	The charitable NPDO will primarily be tax exempt, including exemption from Corporation Tax. This means that 100% of the profits generated are reinvested in the organisation to achieve the Council's vision for heritage services.

Advantage	Comment
Single purpose organisation	The NPDO would be established with the prime purpose of delivering the Transformation Programme. This means that it has a single focus and purpose and will, therefore, be able to drive forward the Transformation Programme.
Freedom of Operation	The NPDO would be established as a company and would, therefore, have the freedom of operation to deliver the Transformation Programme and will not be “held back” by the Council’s decision making processes.
Business focussed	Whilst the NPDO will have a clear social purpose, it can operate in a more commercial and dynamic way to achieve its social outcomes with a more business focus. It will be able to make decisions as quickly as necessary to meet the “business needs” of the organisation and, thus, maximise funding and other opportunities.
Cultural Change	The transfer of Services to an NPDO will act as a catalyst for a cultural change in the “style” of the organisation, its approach to the Services and its dealings with third parties.
Stakeholder Involvement	A real opportunity to secure stakeholder involvement in the strategic direction of the new organisation as well as fostering community engagement at a more local level.
Regeneration Agenda	The Transformation Programme is at the heart of the Council’s regeneration agenda. The NPDO will be able to drive forward the Transformation Programme and thus assist the Council achieve its wider objectives for the

Advantage	Comment
	economic and social regeneration of the City.
Continuous Investment	The NPDO will be able to continually invest in the facilities and use business rate savings to help lever in additional finance.
New Investment Opportunities	The NPDO will be able to access sources of funding not available to the local authority (or the private sector) such as charitable trust funding and better access to National Lottery funding. It could also raise finance through commercial borrowings and/or through the development of a community interest company to secure philanthropic investment in return for a dividend.
Maximising Gift Aid	A charitable NPDO can maximise gift aid and also offer corporate sponsorship opportunities.
Local Authority Involvement	The Council will retain a significant strategic role in relation to the future deliver of the Services. The Council will continue to provide financial support to the organisation which will be subject to specific terms and conditions. The Council can, therefore, satisfy itself that the funding provided to the new organisation is being used to assist the authority achieve its corporate and strategic objectives for the Services and wider regeneration objectives.
New Strategic Vehicle	The new NPDO can act as a new strategic partner for the Council in relation to a range of cultural and heritage initiatives.
Private Sector Expertise	It is an opportunity to harness private sector expertise in relation to the strategic management and direction of the new organisation by appointing trustees with

Advantage	Comment
	relevant skills and expertise from the private sector as well as the public and voluntary sector.
Grant funding	The charitable NPDO will be able to attract charitable grant funding that can only be gifted to other charitable organisations and thus not available to the local authority or a private sector entity.
Hub Model	The NPDO model is extremely flexible. The new NPDO once established could act as a “hub” for other smaller museums / cultural organisations in the area providing support services to a network of local museums.
Basis for wider Leisure and Culture NPDO	<p>As stated above, the NPDO model is extremely flexible. Once established, the local authority could determine to transfer other leisure, arts and cultural services to the NPDO.</p> <p>A diagrammatic summary of the options is set out at Appendix 6.</p>
Entirely consistent with MLA recommendations	<p>The proposal to transfer the Services to an NPDO is entirely consistent with MLA’s findings which highlighted other advantages of NPDO status for museum services including:</p> <ul style="list-style-type: none"> • The process of change re-energised the service • The option provided stability • The option enhanced a sense of ownership

Advantage	Comment
	<ul style="list-style-type: none"> • Facilitated effective strategic planning • Provided additional resources • The change enabled new connections and partnerships outside local government

12.1.2 Potential Disadvantages of the NPDO option

There are a number of potential disadvantages of the NPDO option, although these can all, in our view and experience, be mitigated:

Disadvantage	Comment
Dual Regulation	<p>If the NPDO is established as a company limited by guarantee (as we recommend) then it will need to be registered with the Charity Commission to achieve charity status. This means the organisation will be regulated by Companies House and the Charity Commission. This does, therefore, require dual regulation and administration.</p> <p>It is our view, however, that registration with the Charity Commission is a positive advantage. The Charity Commission is a well regarded regulatory body whose prime objective is to safeguard charitable assets and ensure that charities operate to the highest standards in terms of corporate governance.</p> <p>It is our position, therefore, that registration with the Charity Commission should be welcomed by all those involved and, in particular, the local authority.</p>
Reversability	<p>Charities have an asset lock. This means that charity assets can only be used for charitable purposes and can only be transferred to other charitable bodies for similar purposes in the event of the charity winding down. It is essential, therefore, that the Council does not transfer to the charity legal title to the collections and other</p>

Disadvantage	Comment
	artefacts.
Independence of the charity	To be registered as a charity, the organisation must have exclusively charitable purposes. It is the Charity Commission's view that it is a "unstated charitable purpose" if the organisation has simply been established to fulfil the wishes of a local authority. It is essential, therefore, when applying for charity registration that we are able to demonstrate that the charity has retained its discretion with regards to the method of delivery of the Services although acknowledging the Service delivery will be within a framework agreed with the local authority.
Trustees	As stated in this report, it is critical to the success of this initiative that we recruit trustees of the highest possible calibre. It is essential that the trustees have a range of skills and expertise and who can contribute to the success of this initiative. Whilst this is a potential risk associated with an initiative of this nature, we are confident having undertaken our stakeholder interviews, our appreciation of the quality of the collections and recognition of the potential links with the World Heritage Site that a high profile and well run trustee campaign will attract first class trustees who can help the Council achieve its vision for its heritage services.
Administration	The new organisation will be both a company and a charity and, therefore, will have additional administrative requirements in relation to annual accounts and filing. These

Disadvantage	Comment
	are not, however, onerous.
Duties and responsibilities	The board of directors of the company limited by guarantee will be directors and also trustees. They will have duties and responsibilities under the Companies Act and under Charities Act. These should be taken seriously but are not onerous. There will be a comprehensive induction for all newly appointed directors/trustees to ensure they are fully familiar and comfortable with their role as director/trustees.
Loss of direct control	Whilst the Council will lose direct control of the Services it nevertheless will retain significant strategic control of the Services. It will establish clear strategic outcomes for the organisation and monitor its performance and delivery of those outcomes as part of a robust monitoring and review regime.

Recommendation:

There are significant advantages of the NPDO model with a proven track record in delivering leisure, arts and heritage services. We would recommend that the new organisation be established as a company limited by guarantee and registered charity.

13. RELATIONSHIP BETWEEN THE LOCAL AUTHORITY AND THE NPDO

13.1 Strategic Control

If transferring the Services to an NPDO, then it is acknowledged that the local authority will lose direct control of the Service.

It will, however, retain significant strategic control.

Whilst the new relationship will be at “arms length”, the two organisations will be working closely in partnership to deliver a shared vision for the Services and to ensure that the Services contribute to the Council’s wider regeneration objectives.

The relationship will, therefore, be a “strategic alliance of two partners”.

This alliance will be enshrined in the following key ways:

13.1.1 Contractual Relationship

The arrangements between the parties will be formalised in a series of formal agreements.

These will be legally binding and enforceable and thus give the Council legal remedies in the event of poor or non performance.

This will formalise the relationship between the parties.

Importantly, it will protect the Council’s assets and enable the Council to recover its assets.

Importantly, the Council will not be disposing of the property freehold but rather granting a lease to the new entity. Thus if the new entity got into financial difficulty, the lease would automatically be forfeited and the Council would resume responsibility for the Service. Similarly, the collections would not be transferred to the new entity but “loaned” for the duration of the lease period with legal title remaining at all times with the local authority. The new entity effectively acts as a “managing trust” acting on behalf of the Council, as legal “custodian” of the collections.

A summary of the core contractual documentation is set out in **Appendix 7**.

13.1.2 Service Planning

Whilst the funding will be fixed for an agreed period of time, e.g. three or five years, there will be an annual service planning regime.

The significance of the service planning regime is to enable the parties to refocus/realign the Services on an annual basis to ensure these continue to meet the Council's key priorities for the Services.

This ensures that the Services remain relevant and consistent with the Council's other strategic objectives and fit for purpose in the long term.

13.1.3 Local Authority Representation

It is recommended that the local authority is represented on the board of the new organisation – perhaps seeking one representative from each major political party.

Importantly, the local authority will also be involved in the recruitment, selection and appointment of the other trustees to satisfy themselves that all those appointed to the board have the skills and expertise to contribute to the success of the organisation and, most importantly, share the Council's vision and aspirations for the Service.

13.1.4 Monitoring and Review

The new arrangements will be subject to a robust monitoring and review regime.

This will involve regular meetings at both officer and member level.

The new organisation will be required to provide regular financial and operational reports to the Council to demonstrate how the organisation has delivered the key outcomes.

It is essential that there be ongoing dialogue between the board and the organisation and the elected members and it is suggested, therefore, that the monitoring and review regime includes regular strategic meetings between the parties as well as an annual presentation by the trustees to elected members on achievements during the preceding year and proposals for the forthcoming year.

13.1.5 Wider Strategic Role

The new organisation will have a critical role to play in achieving the Council's wider strategic objectives for the City.

Recommendation:

For the Council to:

- retain significant strategic control over the NPDO;
- to be represented on the board of the NPDO;
- to be involved in the recruitment of the other trustees to be satisfied that all those appointed to the board have the skills and expertise to contribute to the success of the organisation and who share the Council's vision;
- enter into robust legal arrangements with the NPDO;
- to ensure the delivery of the Council's strategic objectives.

14. RELATIONSHIP WITH KEY STAKEHOLDERS

14.1 Relationship with Key Stakeholders

We have been hugely impressed with the genuine passion, enthusiasm and commitment shown by key stakeholders throughout the City and beyond.

It is without question that all key stakeholders recognise the significance of Derby's industrial heritage and its potential to inspire future generations as well as position Derby as a centre for world leading/state of the art technology, engineering and innovation.

Key stakeholders include:

- Derbyshire County Council
- Derbyshire District, Borough and Parish Councils
- Derby College
- Derby University
- Nottingham University
- Rolls Royce plc
- Toyota
- Royal Crown Derby
- Local businesses
- Arts and Museum Regulatory and Funding Bodies
- The Derwent Valley Mills World Heritage Site
- The Arkwright Society
- Arts Council England
- Tate
- British Museum

- The Science Museum
- The Paul Mellon Centre for Studies in British Art (part of Yale University)
- The Duke of Devonshire and the Chatsworth Estate

The establishment of the new NPDO is a real opportunity to engage with these key stakeholders, to harness their commitment to Derby and to maximise the contribution they can make to realising the Council's vision for the Services.

We set out below a number of ways in which these opportunities can be developed:

14.2 Representation on the Board of the NPDO

If establishing a new NPDO then it will be necessary to establish a new legal entity. If the company limited by guarantee model, then the governing body will be a board of directors. It is essential that the board is made up of individuals with a range of skills and expertise and who can contribute to the success of this new organisation.

This is, therefore, a real opportunity to engage with key stakeholders and harness public, private and voluntary sector expertise.

We would strongly recommend, therefore, that the board include representatives from the following key sectors:

- Education
- Business with achievement in corporate and/or SME sectors
- Science, technology and Engineering
- Tourism
- Visual Art
- Regeneration – industry and/or national

Board members should all be committed to the objectives of the new organisation and fully embrace the Council vision for cultural led regeneration.

Ideally, board members should also have key specialisms/professional qualifications including:

- Finance
- Legal
- Property
- Marketing
- Fund raising

Achieving the right balance of skills and expertise will be key to the success of this project.

It is, however, a great opportunity to harness private sector expertise in particular. Clearly, it would not be possible or appropriate for the board to be representative of all businesses in the area.

However, we would expect there to be representation from a number of major businesses with other forums to engage with the wider business sector.

The Council has established a number of strategic forums to inform and help implement different policy initiatives. One of the advantages of establishing the new NPDO as a company limited by guarantee is that board members are directors and have duties and responsibilities under the Companies Acts.

Appointment as a director formalises engagement with key stakeholders.

It also “elevates” the initiative from being a consultative body to a delivery model.

The directors are responsible for the delivery of the company’s business plan and, most importantly, are accountable for its delivery.

We would anticipate, therefore, that if seeking nominations from major businesses, that those nominated will be senior executives with the relevant experience of operating at board level and contributing to strategic decisions.

14.3 Funding for Development Purposes

The role of the new entity will be to deliver the Transformation Programme.

As stated above, considerable progress has been made in this regard to date.

The new entity will, therefore, drive forward the current initiatives, most significantly:

- **The Joseph Wright Campaign**
- **The redevelopment of the Silk Mill**

Both projects will require significant investment from funding partners.

The new entity will be able to access sources of funding that the local authority or the private sector cannot access.

It will be able to maximise its tax efficient structure to attract individual and corporate donations and legacies.

It would be a flexible structure and could enter into partnerships, joint ventures and/or consortiums to secure/lever in funding from a plurality of sources including as appropriate commercial borrowing for capital investment for the development of the heritage portfolio.

It is critical, therefore, that the board is made up of individuals with the experience and expertise to develop and secure innovative funding arrangements and engage with key stakeholders and potential funding partners.

14.4 Philanthropic Investment

The new entity will be established as a company limited by guarantee. It would not have shareholders but members. There would be no distribution of a dividend. This is the appropriate model for a charitable company.

However, the company limited by guarantee model does not allow the organisation to raise capital through equity.

The new entity might, therefore, consider establishing a community interest company ("CIC") to raise capital for investments.

CICs were established in 2004 under the Companies (Audit, Investigations and Enterprise) Act.

They are bespoke vehicles for social enterprise initiatives.

It was recognised that the company limited by guarantee model did not allow organisations established for social purposes to raise capital for investment and growth.

The CIC model comes in two forms:

- Limited by guarantee
- Limited by shares

The CIC limited by shares means that the organisation can issue shares in return for investment and, in the event of any surplus being generated, can pay a dividend in relation to those shares.

The CIC limited by shares model is, therefore, an opportunity for an organisation to raise capital through the issue of shares and to pay a dividend in respect of that investment.

This may, therefore, be an attractive model for key business stakeholders.

A CIC limited by shares is different to a company limited by shares in the following ways:

- It must be established for a “community purpose”
- There is an “asset lock” which means the CIC cannot transfer its assets for less than full value (other than to another CIC)
- There is a cap on the level of dividend (set by Treasury)
- If wound up, any residual assets can only be transferred to another CIC or non distribution organisation with similar purposes and it is regulated by the CIC Regulator at Companies House
- It must file an annual return setting out how it has fulfilled its community purpose during the preceding year. This an “annual community interest company report” is a public record and thus subject to public scrutiny
- It cannot be charitable

It is our view that in Derby, there is a genuine recognition of a need to promote Derby's industrial heritage and a desire to help facilitate that.

The dividend payable in relation to a CIC investment is not as high as other potential investments. An investment of this nature would, however, be seen as part of a portfolio of investments: and investment in Derby's future.

As stated above, the new organisation could fund raise in a number of ways and as a charitable entity will be able to attract funding, donations and sponsorship which the local authority cannot contract.

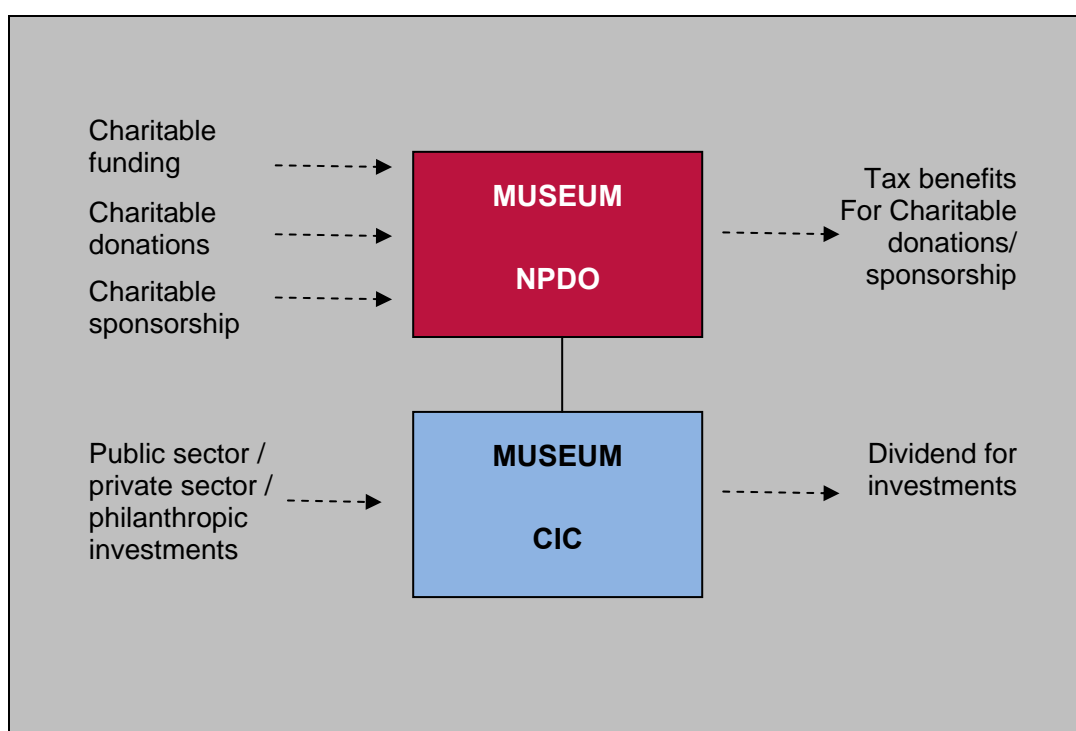
The CIC model is an additional option for raising capital for investment in the portfolio.

The proposition needs further development and consideration.

It is an innovative model.

It is recognised, however, that the Council has recently developed a number of innovative models for investment in Derby, including most recently, the £10 million Investment Scheme for Offices in the City.

The CIC model is therefore an opportunity for the Council and other key stakeholders to invest in Derby's heritage – with a potential return on that investment in relation to a dividend as well as the wider regeneration benefits.



Recommendation:

The Council to:

- encourage representations from key stakeholders on the board of the new organisation including representation from business, technology, education and arts sectors;
- to engage with key stakeholders to harness their commitment to Derby and to maximise the contribution they can make to realising the Council's vision for the services;
- consider developing a community interest company as a subsidiary of the NPDO to attract "philanthropic investment" including potentially from the Council, in return for a dividend.

15. LEGAL ISSUES

15.1 Local Authority Powers

The Council has both general and specific powers to support an initiative of this nature:

15.1.1 General Powers

The Local Government Act 2000 introduced the “wellbeing powers”.

Section 2 of the 2000 Act provides that a local authority can do anything which it considers will promote the economic, social and environmental wellbeing of their area.

As stated above, these Services are critical to the Council achieving its corporate and strategic objectives for the economic, social and environmental wellbeing of the Derby area.

The Council will be aware of the recent case (R (on the application of Risk Management Partners Ltd) v. Brent London Borough Council also known as Risk Management Partners Ltd v. Brent London Borough Council and Others (2008) All ER (D) 302 (Apr)) (2008 EWHC 692 (Admin)) (the “Brent Case”) which considered the extent and use of the “wellbeing powers”.

Whilst the “wellbeing powers” are widely drawn and intended to facilitate innovative projects, the case helpfully provides guidance on the use of the power and most importantly reinforces the extent of the power. That particular case found the argument that potentially lower insurance premiums for the authority could result in additional resources being available for reinvestment in services, was not sufficient to justify the use of the wellbeing powers.

Section 2 of the Local Government Act 2000 provides that a local authority has the power to do anything which they consider is likely to achieve any one or more of the following objects:

- the promotion or improvement of the economic wellbeing of their area;
- the promotion or improvement of the social wellbeing of their area; and
- the promotion or improvement of the environmental wellbeing of their area.

Of particular relevance here, the power includes the power to:

- enter into arrangements or agreements with any person;
- provide financial assistance to any person; and
- provide staff, goods or services.

Whilst therefore Section 2 of the 2000 Act provides a robust statutory basis for this initiative, it is essential that, having particular regards to the Brent Case:

- the Council considers the objectives set out in its own Corporate Plan to satisfy itself that the use of the wellbeing powers in relation to this initiative are consistent with national, regional and local objectives; and
- the Council is satisfied that the initiative is likely to promote the wellbeing of their area or their inhabitants and specifically that it will promote one or more of the three objects in the 2000 Act; and
- the primary purpose of the initiative is not to raise money and that the action is not explicitly prohibited on the face of other legislation.

Here it is argued that the use of the powers is not to raise money or prohibited by any other legislation but rather to improve the performance of these Services and to improve the economic and social prosperity of Derby.

15.1.2 Specific Powers – Museums

Section 12 of the Public Libraries and Museums Act 1964 provides that a local authority may provide and maintain museums and art galleries within its administrative area (or elsewhere) and may do all things as may be necessary or expedient for or in connection with the provision or maintenance thereof.

Importantly Section 13 of the 1964 Act provides that a local authority may charge for admission to a museum or art gallery but in doing so must take into account the need to ensure that the museum or gallery “plays its full part in the promotion of education in the area and shall have particular regard to the interests of children and students”.

Of particular relevance to this review, Section 14 of the 1964 Act provides that local authority may make contributions towards the expenses incurred by a third party providing or maintaining a museum or art gallery or providing advisory or other services or financial assistance for the benefit of a museum or art gallery in any such place.

Importantly, therefore, a local authority can provide directly or work collaboratively in relation to the provision of museum services.

15.2 Power to Dispose of the Property Portfolio

S123 of the Local Government Act 1972 permits a local authority (“principal council”) to dispose of its property. Disposal for these purposes would include a leasehold disposal.

To the extent that this disposal would be for an undervalue ie a lease at a “peppercorn rent” then the Council can rely on the General Consent Order to authorise such a disposal for less than best disposal on the basis that it is pursuant to the 2000 Act (i.e. wellbeing).

There is a maximum threshold of the undervalue (£2 million pounds). Where appropriate, therefore, the Council may need to obtain a valuation to confirm this threshold is not breached.

15.3 Local Authority Representation on the Board of the NPDO

If establishing a new NPDO we would anticipate, and indeed recommend, that the local authority appoints nominees to the board of the new entity.

The extent and degree to which the local authority could be involved in the new NPDO was, up to 31 December 2007, governed by Part 5 of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995.

This statutory framework identified certain companies in which a local authority had involvement as being either “controlled” by the local authority or “effectively controlled” by the local authority.

The impact of being “controlled” or “effectively controlled” was that the company was regarded as a “regulated company” and as such was subject to a modified form of the capital finance provisions of the Local Government and Housing Act 1989.

This meant certain activities of the company served to reduce the local authority's capital resources as if undertaken by the authority itself.

In effect it meant the local authority and a regulated company were grouped for accounting purposes.

This would potentially impact on the local authority's credit position and importantly impact on its ability to raise finance through borrowing.

In most circumstances, therefore, local authority's sought to avoid this position and thus sought only a "**minority interest**" in such companies.

A minority interest was defined as being less than 20% and was outside the scope of regulation.

However, the position has now radically changed.

The Local Government Act 2003 introduced the concept of prudential borrowing. This abolished the credit approval system. This meant that credit limits were no longer set nationally but rather locally based on affordability and prudence.

Now local authorities calculate the affordability of borrowings by reference to the CIPFA Code. This includes a requirement for local authorities to take into account their involvement in companies.

The Code requires: "the authority to have regard to its financial commitments and obligations to those companies and entities in which it has an interest".

The local authority will, therefore, need to carefully consider the level of its involvement in the new entity. We would, however, recommend it is represented on the board but perhaps seek less than 20% to be cautious.

15.4 **Protecting the Council's Assets**

If the proposed way forward is to transfer the Services to a third party provider, then careful consideration needs to be given to the transfer of the other assets associated with the Service, in particular:

- Collections and archives
- Intellectual property
- Supply contracts
- Operational manuals
- User information

Each asset needs to be identified by reference to a schedule/inventory and the treatment of each asset carefully considered.

If title to the asset is transferred to the new NPDO then ownership passes.

Therefore, the Council would need to consider how it would recover that asset in the event of early termination of the contractual arrangements or insolvency of the third party provider.

To protect the Council's position it is recommended that the Council considers loaning or, as appropriate, licensing assets rather than transferring the legal title.

So, for example and most importantly (as stated above), in relation to the collections and archives, these should be loaned to the NPDO for the duration of the contract period.

It is suggested that a separate agreement be entered into in relation to the management of the collections – Collections Management Agreement.

This will set out the required minimum standards for the care of the collections.

It will also set out the agreed procedure in relation to the disposal, acquisition and loan of items in the collection (and archives).

Other assets e.g. intellectual property rights, operating manuals and the user database can be licensed to the NPDO for the duration of the contract period.

The licence will be for the particular purposes set out in the licence and, thus, limited to providing the Services specified in the project documentation.

Again, at the end of the contract period, the licence will automatically terminate and the NPDO will be under an obligation to deliver up the assets.

In relation to supply contracts, these can be assigned or novated to the NPDO.

Again, at the end of the contract period or in the event of early termination, the NPDO should be under an obligation to arrange for the re - assignment or novation of these contracts.

It is essential that there be a prohibition on the NPDO in entering into any contracts which exceed the contract period without the express prior consent of the Council.

15.5 Property Issues

15.5.1 Lease versus Licence

Liability for business rates (national non domestic rates or “NNDR”) arises from occupation of all or part of the relevant hereditament property.

The Council is currently liable for the business rates.

A lease is a presumption of occupation.

Thus by granting the lease, the lessee (the new NPDO) shall become liable for business rates.

However, if a registered charity is the lessee and thus in occupation, it will be eligible for business rate relief pursuant to Section 43 of the Local Government Finance Act 1988.

Thus to secure maximum rate relief then it is recommended that the Council leases the property portfolio to the new third party provider if this is a charitable NPDO.

Where the Council cannot grant a leasehold interest e.g. where it has no interest itself, then it will be necessary to grant a license which expressly provides that the licensee is in occupation of the facilities and liable to the business rates.

The licensee will then seek relief from those rates as occupier of the facilities.

15.5.2 Exclusions from 1954 Act

The lease (and potentially the licence as well) will be excluded from the Landlord and Tenant Act 1954.

In addition, it will be a “non business lease” for which no consideration is paid by the NPDO (peppercorn).

This will prevent the claw back of VAT input tax claimed by the Council on any works it has done to the premises.

15.5.3 Repair and Maintenance Issues

Repairs and maintenance will be a key issue for discussion. In some circumstances e.g. new build, the NPDO may consider a full repairing and

insuring lease thus taking full responsibility for the repair and maintenance of the building.

However, it is more common in relation to older buildings for there to be a landlord/tenant split on repairs and maintenance whereby the Council retains responsibility for the structure and major plant failure and the NPDO is responsible for ongoing maintenance and internal decoration.

15.5.4 Derby Museum and Art Gallery

It is recognised that the museum and art gallery is in a building shared with the Centre Library. Careful consideration will need to be given to the legal and practical issues of leasing part of the building to the NPDO and dealing with common areas and shared services.

15.6 Staffing and Pensions Issues

15.6.1 Transfer of Undertakings (Protection of Employment) Regulations 1981

A transfer of the Services to a third party provider would include a transfer of staff. The staff transfer would be regulated by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

In such a case all staff who spent a majority of their time providing the Services would transfer on existing terms and conditions and there would be no break in their continuity of service.

The position for staff involved with the Services, but primarily working in other departments, eg finance would depend on their individual circumstances.

Clearly detailed advice can be given on a "case by case" basis if any particular staff fall into this category.

Employees on fixed term contracts that expire prior to the Transfer Date will not automatically TUPE to the new NPDO. Careful consideration needs to be given to any such individuals and the potential impact on the organisation of the loss of their expertise.

15.6.2 Secondments

The Council will be aware of some high profile outsourcing projects that have involved the secondment of staff rather than the TUPE transfer of staff.

This has previously been in the context of an outsourcing of services to a joint venture / “special purpose vehicle”. In those circumstances, the Unions argued that the staff were transferring to a non asset holding entity and therefore were prejudiced and potentially at risk. Long term secondments are potentially at risk of being challenged as a TUPE transfer.

However, secondments can be considered on a short term or interim basis where appropriate. We are not aware that secondments have been used in relation to leisure/ culture transfers other than at the most senior level on an interim basis.

15.6.3 New Posts

It is anticipated that the new organisation will potentially require a number of new posts e.g. business development and finance.

At the next stage of business planning, the cost of any such new posts will be identified and budgeted for. Clearly there is no intention to increase the core costs of the service. Where there is insufficient budget to finance new posts, we will need to look at options for procuring required specialist advice within existing budgets.

15.6.4 Pensions

The *Best Value Authorities Staff Transfers (Pensions) Direction 2007* (“the Direction”) came into force on 1 October 2007.

The Direction was introduced pursuant to sections 101 and 102 of the Local Government Act 2003 (“the Act”) and applies to ‘best value authorities’ as defined in section 1 of the Local Government Act 1999. Sections 101 and 102 confer power on the Secretary of State to require local authorities to deal with matters affecting staff according to directions.

The requirements of the Direction set out what has previously been set out in Codes of Practice and guidance.

The intention behind the introduction of the Direction is to formalise and give statutory force to the previous Codes of Practice and guidance.

The Direction provides that where a local authority is contracting out services previously provided by the local authority, the contract for those services must secure pension protection for all transferring employees and provide that the pension protection is enforceable by the employee.

Pension protection is defined as the right to acquire pension benefits which are the same as or broadly comparable to or better than those rights they had or had a right to acquire as an employee of the authority.

The NPDO would be eligible to become an “admitted body” within the Council’s existing pension scheme. Admission would be on the basis of “a community of interest” and no bond is required.

This means that all transferring staff will continue to enjoy their existing LGPS pension rights.

Other key issues to consider in relation to pensions includes:

- Underfunding at the outset
- Accrued deficit at exit
- Changing contribution rates

Careful consideration needs to be given to the position of new joiners.

If the pension scheme is closed to TUPE staff only then it would be necessary to make arrangements for pension provision for new joiners.

15.6.5 Code of Practice on Workforce Matters

The Code of Practice on Workforce Matters in relation to Public Sector Service Contracts introduced in March 2005 was withdrawn with immediate effect from 13 December 2010 and replaced by a new Code of Practice “Principles of Good Employment Practice”.

The Code of Practice on Workforce Matters in Local Authority Service Contracts introduced in March 2003 was withdrawn with immediate effect from 23 March 2011. The Coalition Government is currently consulting on a replacement Code of Practice but as at today’s date, no such Code is in place.

The significance of the Code was to ensure that new joiners employed to work alongside a TUPE workforce are employed on terms that are, overall, no less favourable than those of the TUPE workforce.

This extended to pension provision.

This meant the new third party provider was required to offer new joiners membership of a “good quality employer pension scheme” (as defined in the Code) or a stakeholder pension scheme to which the employer was required to match employee contribution rates up to 6% of pay.

The aim of the Code was to limit the emergence of a “two tier” workforce as between new recruits and the TUPE workforce.

In announcing the withdrawal of the two tier Code in Public Sector Service Contracts, Francis Maude (Minister for the Cabinet Office) stated that “the Code did little to protect staff whilst deterring responsible employers from delivering public service contracts. We should not be making it more difficult for small businesses and voluntary organisation to succeed in the public service market”.

The Coalition Government is committed to aiming for 25% of government contracts to be awarded to small and medium sized businesses.

The Government has asserted that the removal of the Code will encourage a more diverse range of contractors to carry out public sector contracts which in turn will deliver competitiveness and value for money for the taxpayer.

Removal of the Code will have no impact on the TUPE Regulations and other employment legislation. It does, however, remove a significant mechanism for ensuring parity of terms and conditions between TUPE staff and new joiners following a TUPE transfer.

15.6.6 Consultation

Any organisational change will, of course, be of concern to staff. It is imperative that any future management options prioritise staff concerns.

It would be essential to consult with Unions at the outset and to agree a staff consultation protocol.

This will involve a commitment by the Council to meet regularly with the Unions and to communicate in relation to all aspects of the project.

15.7 Support Services

The Council currently provides a range of Support Services to the Service including:

- Payroll
- HR (ideally with a dedicated HR advisor for consistency)
- Finance
- Repair and Maintenance
- ICT

Going forwards the new NPDO will need to identify its support requirements and determine whether to provide these “in house”, continue to buy back from the local authority or to procure from a third party provider.

The key determining factors will be ensuring the services provided are “fit for purpose” and represent value for money.

We would suggest that at least initially the new organisation continues to buy back the majority of its services from the Council. Each service can be reviewed over time. It is suggested that an initial buy back period of at least, say 2-3 years, be agreed.

The arrangements should be formalised with a service specification drawn up for each service and an agreed payment arrangement.

It should be noted that the NPDO will need to procure its own external audit advice and potentially legal advice (when the Council cannot act due to a conflict of interest). Going forwards, the NPDO will wish to procure finance, marketing and business development advice/expertise.

Recommendation:

The Council has sufficient legal powers to enter into the proposed arrangements including:

- promotion of the new NPDO;
- lease of the properties to the NPDO for nil consideration;
- loan of the collections to the NPDO;

- provision of support services to the NPDO;
- provision of ongoing core funding.

The Council will not transfer a legal title to the collections and thus will ensure that the collections are safeguarded in perpetuity.

Staff will transfer pursuant to TUPE and staff terms and conditions including pensions will be protected.

It is recognised however this will be a period of great uncertainty for staff and thus the project team will establish and implement a staff consultation programme to provide for both formal and informal staff consultation.

16. TAX AND TRADING ISSUES

16.1 Tax and Trading

Profits made by a charity are exempt from Corporation Tax where the profits are applied solely for the purposes of the charity.

Charities can undertake trading activities which are exempt from Corporation Tax.

Permitted trading activities are as follows:

- Primary purpose trading
- Ancillary trading
- Trading within the terms of the small scale exemption

Primary purpose trading is trading which contributes directly to one or more of the objects of a charity as set out in its governing document.

An example here would be admission fees for the holding of an art exhibition.

Profits from primary purpose trading are exempt from Corporation Tax on the basis that the profits are applied solely for the purposes of the charity.

Ancillary trading is trading that contributes indirectly to the successful furtherance of the purposes of the charity.

An example here of ancillary trading would be the sale of food or drink in a cafe to those who visited the museum.

The small scale exemption is an exemption from Corporation Tax on the profits from small scale non primary purpose trading.

An example would be conferencing events.

The current level of small scale trading exemption is as follows:

Total of all incoming resources in a particular chargeable period of the charity	Maximum permitted annual turnover of the relevant trading in that chargeable period
Under £20,000	£5,000
£20,000 - £200,000	20% of charity's total incoming resources
Over £200,000	£50,000

For the avoidance of doubt, therefore, the relevant threshold for non primary purpose trading is £50,000.

In addition to the above there are tax exemptions for certain fund raising events e.g. fetes, fairs and festivals, exhibitions, jumble sales, dances or concerts.

In the event that the NPDO wishes to carry out significant non primary purpose trading or trading activities which are regarded high risk, then it is recommended that the organisation establishes a trading subsidiary.

The trading subsidiary would be wholly owned by the charity and established as a company limited by shares.

Any profits generated by the trading subsidiary would be subject to Corporation Tax in the normal way.

To mitigate the Corporation Tax liability the trading subsidiary would gift aid all or part of its profits to the charity.

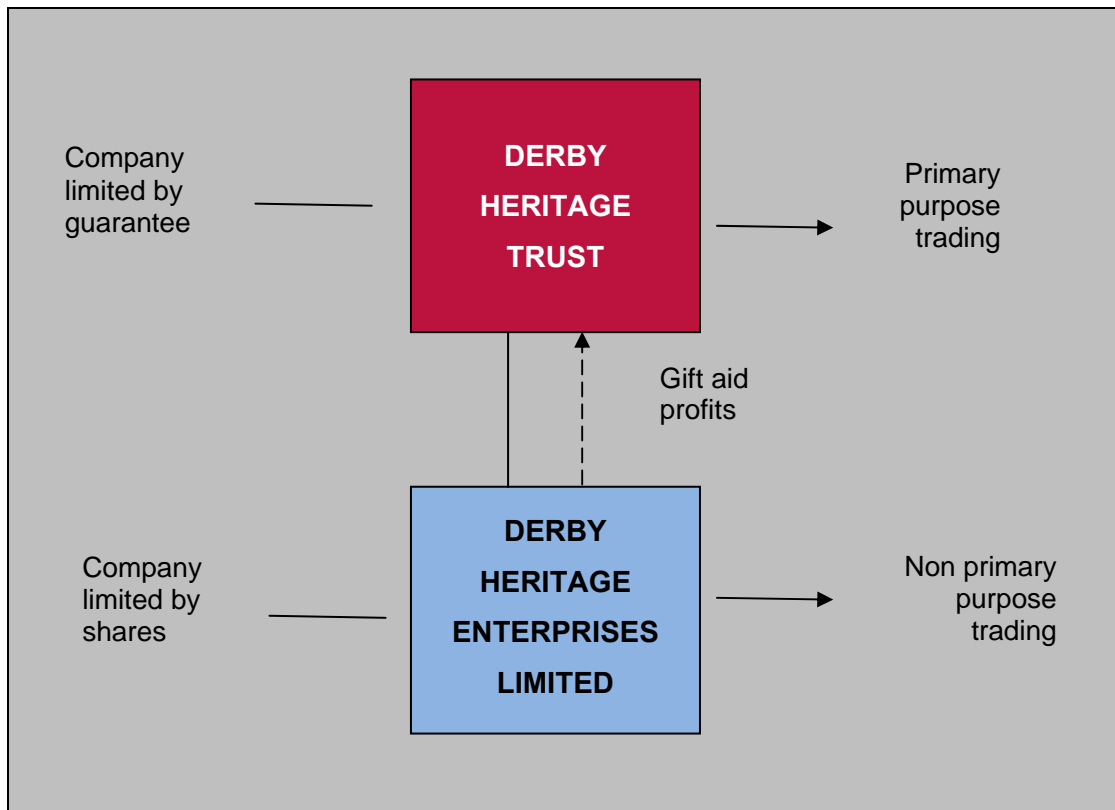
In the hands of the charity the profits will be tax exempt as the profits will be applied for its charitable purposes.

This is, therefore, a tax efficient structure.

Whilst in the short term the museum's trading activities will be either primary purpose or ancillary or, in any event, de minimus, it is recommended that a trading subsidiary be established at the outset.

The clear intention of the parties is to establish an entrepreneurial organisation that can maximise funding and business opportunities. By establishing a trading

subsidiary at the outset, it means the legal structure is “fit for purpose” going forwards.



Recommendation:

Whilst in the short term, the museum’s trading activities will be either primary purpose or ancillary or in any event, de minimus, it is recommended that a trading subsidiary be established at the outset.

The clear intention of the parties is to establish an entrepreneurial organisation that can maximise funding and business opportunities. By establishing a trading subsidiary at the outset it means the legal structure is fit for purpose going forward.

17. RECRUITMENT OF DIRECTORS/TRUSTEES

17.1 Director/Trustee Recruitment

The recruitment, selection and appointment of trustees is one of the key success factors for an initiative of this nature. It is essential that trustee recruitment is approached in a professional way with full commitment from members and officers.

We have successfully recruited over 500 directors/trustees in relation to initiatives of this nature. We have every confidence that an important and high profile project of this nature, will attract high calibre trustees.

It is imperative that we achieve a balance of skills and expertise and, most importantly, the board fully understands and shares the Council's vision for Derby.

We would recommend a board of around sixteen trustees including three local authority nominees – one from each major political party.

We set out below a summary of the key steps for trustee recruitment:

- Prepare Trustee recruitment pack including a person specification (An example person specification is set out at Appendix 8)
- Prepare draft advert to be placed in local, national and specialist press
- Contact local press to get some editorial alongside advert
- Place advert and send advert direct to known potential candidates
- Fix deadline for expressions of interest
- Fix date for an open evening
- Hold open evening
- Fix deadline for submissions of CVs and formal application to be a Trustee
- Confirm make up of Trustee selection panel
- Fix date for Trustee interviews (ideally on one day)
- Selection panel to conduct interviews and shortlist shadow board members

- Inform short-listed candidates
- Fix date for first Trustee meeting
- Second phase recruitment campaign/interviews if required.

Recommendation:

The recruitment selection and appointment of trustees is on the key success factors for an initiative of this nature. It is essential that the trustee recruitment process is approached in a professional way with full commitment and involvement from members and officers. The board should be made up of individuals with a balance of skills and expertise but who most importantly understand and share the Council's vision for Derby.

We recommend a board of around 16 trustees including three local authority nominees, one from each major political party.

18. METHODOLOGY TO ACHIEVE IMPLEMENTATION

18.1 Implementation of the NPDO Option

If the preferred way forward is to establish a new NPDO model for the Services, then the next key stages are set out below:

Stage	Key Focus	Key outcomes
Stage 1:	Project Planning/Consultation	<ul style="list-style-type: none"> Establish project team Establish the reporting regime to lead members and officers Prepare project plan Prepare staff consultation plan Confirm key posts
Stage 2:	Preparation of Project Documents/Trustee Recruitment/Company Formation	<ul style="list-style-type: none"> Confirm legal model Prepare governing documents Recruitment of Trustees Incorporate company
Stage 2A:	Preparation of Project Documents and Business Plan	<ul style="list-style-type: none"> Prepare business plan Prepare project documents
Stage 3:	Negotiation /Finalisation/Approval of Project Documents	<ul style="list-style-type: none"> Appoint Trustees Approve business plan Approve project documents
Stage 4:	Preparation of Transfer	<ul style="list-style-type: none"> Prepare for service transfer Business set up issues Project Live

18.2 Indicative timescales

Subject to Council approval on 6 September 2011, an NPDO for museum services could be established by **April 2012**.

This will require the establishment of a dedicated project team.

It is recommended that the project team report on a regular (monthly) basis to the **Strategic Team** which we understand is made up of lead members and officers (ideally with representation from all three major parties).

As stated at the outset of this report, it is essential that the Council retains “**ownership**” of this important project and it is vital, therefore, the lead members and officers remain fully involved in/engaged in this project.

A more detailed project time table identifying key tasks for the project team is set out at **Appendix 11**.

18.3 Key Decisions for Elected Members

There will be **critical decisions** for elected members to make at each key stage of the implementation plan. These are summarised in **Appendix 12**.

Recommendation:

Subject to Council approval on 6 September 2011, an NPDO for museum services could be established by 1 April 2012.

This will require the establishment of the dedicated project team to report on a regular basis to a strategic team made up of lead members and officers including finance, legal and HR.

There will be a number of critical decisions for elected members at each key stage of the implementation programme. These are set out in the Appendix to the report.

19. CRITICAL SUCCESS FACTORS

Transferring services to an NPDO will not in itself transform the services.

It can, however, act as a catalyst for change.

Long term success will depend on the following critical success factors:

Key success factors

- Elected member and senior officer support;
- A well resourced dedicated project team;
- A high profile and professionally run trustee recruitment and induction process;
- A comprehensive staff consultation plan;
- A shared vision for the new arrangements;
- An experienced management team with the right balance of specialist and commercial skills;
- Appointment of external legal and business specialists with proven track record in relation to similar projects;
- A robust and properly resourced business plan; and
- A best fit alignment of responsibilities of other heritage assets.

The NPDO option has a proven track record in delivering heritage services.

It is our view that the NPDO option is a real opportunity to transform service delivery and to ensure the long term viability and sustainability of Derby's museum services.

Working in partnership with the local authority and other key stakeholders the NPDO option can act as a catalyst for wider economic, social and

environmental initiatives thus placing at the heart of the Council's corporate and strategic aspirations for the City.

We are delighted to say that the NPDOs that we have established have gone from strength to strength.

As stated above, transferring services to an NPDO will not, however, in itself transform the services.

It is essential that the key critical success factors highlighted above are put in place.

Whilst recognising the challenges for all local authorities, it is our view that the NPDO option has proven to be the right option for many authorities and has, without question, safeguarded vital services.

Case studies of successful museum trusts are set out in **Appendix 13**.

Recommendation:

It is recommended that members and officers meet with members and officers from these and other authorities to discuss their experience of the NPDO option – the challenges as well as the opportunities.

"Transferring to an independent charity has given Luton Culture the freedom and flexibility to find a model where we can be more responsive to change and are therefore better placed to rise to the challenge of the current financial landscape. That does not mean to say that the Trust model is a panacea for the difficulties we face, but it does allow us to move forward in a more positive and creative way. Organisations considering that change of Governance need to work carefully through the details and negotiate robustly to ensure that the Trust is sustainable over the long term."

Maggie Appleton
Chief Executive - Luton Culture

20. NEXT STEPS

As stated at the outset, the review is ongoing.

Subject to member and officer comments on this report, the next key stages will be:

- ongoing dialogue with members, officers and key stakeholders
- detailed business planning to develop an initial business plan for the new governance arrangements;
- further reports to members and officers seeking decisions in relation to key aspects of the new governance arrangement as the project progresses.

APPENDIX 1: PROGRESS TO DATE: JOSEPH WRIGHT / SILK MILL DEVELOPMENT

The Joseph Wright of Derby Campaign – progress to date

This 10 year campaign has been prepared and will be launched in the autumn. The campaign will be led by Derby Museums and is guided by partners including Tate, the British Museum and the Paul Mellon Centre for Studies in British Art (part of Yale University). The objectives for this campaign will be:

1. Establish the partnership to stage a major Wright of Derby exhibition

In 2015 it will be 25 years since the only previous major international Joseph Wright retrospective. This was curated by the Tate, and exhibited in London, Paris and New York. Wright's contribution to the history of art, science and ideas has continued to advance in the intervening generation. The intention is to re-visit the significance of Wright's artistic and Enlightenment legacy and ensure there is wider understanding of Wright's place in the shaping of the modern world. Our ambition is to curate, stage and tour the definitive Wright exhibition of this generation.

2. Establish an organisation to manage Derby's Joseph Wright collection, and lead a coordinated approach to promote the artist

The City of Derby owns an unrivalled collection of Wright's work. A new organisation is being set up to oversee the City's world class heritage. This organisation will manage the City's museums, including the Designated collection of Wright's work. The intention is to provide a new level of leadership from this base and bring together an international partnership to manage Wright's legacy. This includes:

- developing Derby's own major collection of Wrights
- enhancing the collection through the careful assemblage of other outstanding works – helping draw out further appreciation of Wright's significance in the context of wider movements
- realising a coordinated, collaborative approach to the collecting, sharing, researching and programming of Wright's work and associated themes
- collaborating with other institutions in developing Wright's reputation
- promoting Wright's legacy within new and existing markets

3. Providing a venue worthy of the artist

We are already half way to a £120,000 fundraising target to open a refurbished Joseph Wright Gallery within Derby's Museum and Art Gallery by February 2012. This is an interim solution with an anticipated lifespan of 7-10 years.

With the support of Derby City Council, we have the opportunity to develop a significant 18th century building (currently Pickford's House Museum), as the headquarters of a Wright partnership to oversee the campaign and movement.

As we develop the Wright campaign, we want to explore the viability of a dedicated, stand alone Joseph Wright Gallery – located within Derby and capable of sharing major loans with the top tier of international visual art organisations.

Silk Mill redevelopment plan – progress to date.

The Transforming Derby Museums programme set out the future development remit for the Silk Mill – a major visitor attraction with the focus on creativity through engineering. Through external funding from the Museums, Libraries and Archives Council, Derby Museums has been able to recruit project support to develop this concept during 2011/12.

Shaping the Vision Days have been held in June, through which 847 people visited the Silk Mill. These visitors were engaged in events, activities and asked to contribute their own suggestions over how the Silk Mill vision could be realised. More than 900 school children have taken part in similar events at the Silk Mill since April, and a consultation evening has also taken place with Derby businesses through the support of Marketing Derby.

The concept paper arising from these and other consultations is now in preparation. The emerging concept is inspired by the author Daniel Defoe's eighteenth century description of the original building as 'this engine'. The concept will seek to develop the site of the world's first factory as the hub for the constant renewal of Derby's living heritage of world class creativity. The emerging concept envisages sustainable revenue funding stream and blend of services based around technology, creativity and enterprise. The concept is aligned to Derby's Economic Strategy (2011-2016), and is being developed in line with the Transforming Derby Museums remit to achieve the following:

- provide high quality public access to the building
- realise an innovative, thriving, financially viable social enterprise
- ensure relevance to the general public as well as to specialist users
- engage and inspire people through creativity in science, technology, engineering and maths
- help create a culture within Derby where enterprise thrives
- grow services in partnership with Derby's people and businesses
- demonstrate high quality ways of showcasing Derby's creative heritage against today's equivalents and future concepts
- allow phased development and growth – including bringing high quality programming, activity and services to Cathedral Green
- provide the southern hub gateway to the Derwent Valley Mills World Heritage Site

The concept paper will be developed in consultation with potential partners and brought before Cabinet during 2011/12.

APPENDIX 2: “BIG SOCIETY” DELIVERY OPTIONS

Option	Description	Applicability to Derby
In-house	This would involve the continuation of Services in-house with no change to the scope of the service or means of delivery. This is equivalent to status quo.	The Council provides the Service in-house. It has, however, identified that to achieve its Transformation Agenda, it needs to explore alternative governance models.
Rationalisation and retention in-house	This would involve the retention of Services in-house and potentially a rationalisation of Services and/or a change in the way the Services are delivered to ensure that, whilst retained in-house, these continue to represent best value.	The Council has in fact radically transformed the way the Services are delivered in the short term. This has involved the temporary closure of the Silk Mill Industrial Museum, redevelopment of the City Museum and Art Gallery, the launch of the “Community Museum Programme” and the restructuring of the workforce. To achieve the Council’s Transformation Agenda, it is recognised that the Council needs to explore alternative governance models.
Outsource to a private sector operator	This would involve the transfer of the Services to a private sector operator and entering into contractual arrangements for the delivery of agreed service outputs.	Whilst an option to explore, there is no private sector market for heritage services. Notwithstanding, query whether a private sector operator would share the Council’s aspirations for

Option	Description	Applicability to Derby
		the Services and be capable of the role of “keeper of the story”.
Partnership with an existing non-profit distributing organisation (NPDO)	This would involve working in partnership with an existing NPDO and entering into contractual arrangements for the delivery of agreed service outputs.	<p>There are a number of existing NPDOs managing and operating heritage services in partnership with local authorities. There are none, however, in Derbyshire or, indeed, the East Midlands.</p> <p>There are NPDOs providing heritage services in Coventry (Herbert Art Gallery Trust); Sheffield (Sheffield Museum Trust); Luton (Luton Arts); and Peterborough (VivaCity). We set out in detail in this report the advantages and disadvantages of an arrangement with an existing NPDO.</p>
Partnership with a newly established NPDO	This would involve working in partnership with a newly established NPDO. The new NPDO would be locally based and would involve local community representation on the board of the organisation. This would, therefore, represent local management of local assets.	There are significant advantages of establishing a new NPDO to manage this particular portfolio of Services. These advantages are explored in detail in this report.
Public sector co-operative	This would involve the current in-house team establishing a co-operative and arranging for the transfer of the Services to the co-	The public sector cooperative model would not deliver the potential financial benefits of the

Option	Description	Applicability to Derby
	operative to be managed by the staff previously employed by the local authority. Whilst alternative co-operative models can be used in relation to initiatives of this nature, it is most likely to be an industrial and provident society which would be wholly owned by the staff. The parties would enter into contractual arrangements for the delivery of agreed service outputs.	charitable NPDO model. Nor would it have the “buy in” of other key stakeholders. Query therefore if an employee owned entity can deliver the Council’s vision for the Services?
Mixed economy	This would involve the diversification of delivery of Services by different delivery models whether public, private or voluntary sector and/or in-house.	It is suggested that there are no significant advantages of disaggregating the Service. It is argued that each element of Service is critical to the heritage of Derby and the Transformation Programme.
Community hub	This would involve the co-location of community assets and Services with joint management arrangements, e.g. the co-location of a health facility, library and leisure centre. The parties involved would then enter into contractual arrangements for the delivery of agreed service outputs.	Not directly applicable to these Services although the option of locating the local history library within the museum is explored as part of this report.
Freehold transfer of assets to a local community organisation with on-going	This would involve the freehold transfer of assets to a locally based community organisation with on-going grant funding to assist in the delivery of certain Services with minimum service outputs required.	We do not recommend a freehold disposal of the property portfolio or transfer of the title to all or any

Option	Description	Applicability to Derby
grant funding/community outputs	This would, therefore, involve an on-going relationship between the local authority and the community organisation.	of the collections.
Freehold transfer with no grant funding/community outputs	This would involve the freehold transfer of the assets to a local community organisation or a private sector organisation with no community funding and no community outputs. This could be at less than best consideration if to a charity or community organisation or for value if to a private sector entity thus creating a capital receipt.	We do not recommend a freehold disposal of the property portfolio or transfer of the title to all or any of the collections.
Joint delivery with another local authority	<p>This would involve the joint delivery of Services with another local authority. This could be achieved in a number of ways including:</p> <ul style="list-style-type: none"> • The transfer of the Services from local authority A to local authority B including the transfer of staff and assets; or • The establishment of a joint committee to oversee the delivery of the Services without a transfer of staff and assets from one authority to the other; or • The creation of a special purpose vehicle owned jointly by the two authorities and to which staff and assets are transferred. 	A potential opportunity to be explored further, but not precluded by establishing an NPDO for the Services.
Joint delivery with a consortium of public sector	This would involve joint delivery by a consortium of public sector bodies including, for example, health, or police authorities. This could	Not directly applicable to these Services.

Option	Description	Applicability to Derby
bodies	<p>be achieved in a number of ways including:</p> <ul style="list-style-type: none"> • The creation of a special purpose vehicle jointly owned by each public sector partner and to which staff and assets are transferred; or • A more informal committee established to oversee and co-ordinate delivery. 	
Regional delivery	<p>This would involve public sector bodies within the region including but not limited to local authorities delivering Services on a regional basis.</p> <p>Again this could be achieved through a joint committee, an SPV or one public sector partner acting as the lead partner.</p>	A potential opportunity to be explored further but not precluded by establishing an NPDO for these Services.
Cease to provide	The Council could determine that it should no longer provide these types of Services.	The Council is fully committed to the continued provision of heritage services. It recognises its potential to transform the economic, social and environmental prosperity of the City. The Council wishes to explore options for the governance of the Services, not only to safeguard the existing Services but to maximise the potential impact of the Services in the regeneration of Derby.

APPENDIX 3: STAKEHOLDER CONSULTATION

Name	Organisation	Contact made/ to be made
Arts and heritage funding bodies and existing Museums		
Keith Jeffrey	Director of QUAD	Contact to be made
John Rivers	Member of WHS Board, Vice Chair Arkwright Society, Chairman of Derby Hospital Trust	Email sent – response awaited
Bob Fairthorn	Chairman of the Arkwright Society	Email sent – response awaited
Sarah McLeod	Director of the Arkwright Society	✓
Emma Sayer	East Midlands lead officer for HLF	✓
Hannah Fox	Director of Fox Create	✓
James Beresford	Chief Executive of Visit England	Email sent – response awaited
David James	Chief Executive of Visit Peak District & Derbyshire	✓
Sam Bestwick	MLA	✓
Peter Knott / Laura Dyer	Regional Director of the Arts Council / Executive Director for Midlands and South West	✓
Brian Allen	Mellon Centre	✓
Caroline Collier	Tate	✓

Name	Organisation	Contact made/ to be made
Local authority members and officers		
Cllr Philip Hickson	Leader	✓
Cllr Hilary Jones	Deputy leader	✓
Cllr Martin Repton	Labour leader	✓
Adam Wilkinson	Chief Executive	✓
Paul Robinson	Director of Neighbourhoods	✓
Richard Williams	Director of Regeneration	✓
Martin Malloy	Director of Culture Derbyshire	✓
Andrew Lewer	Leader, Derbyshire	
Adrian Farmer/Sukie Khaird	DVMWHS	✓
Business and the arts		
Sir Neil Cossons	English Heritage	✓
Matthew Taylor	Royal Society of Arts	✓
Helen Bishop	Rolls Royce	✓
John Rivers	Chairman of Derby Hospital Trust	Email sent – response awaited
Paul Glowacki	Head of Design (Architects)	Email sent – response awaited
John Forkin	Marketing Derby	Email sent – response awaited
Bob Betts	Smith of Derby	Email sent – response awaited

Name	Organisation	Contact made/ to be made
The Duke of Devonshire	Patron	Contact to be made
University/colleges/education		
David Croll	Derby College	√
Professor John Coyne	Derby University	Email sent – response awaited

APPENDIX 4: EVALUATION OF ALTERNATIVE GOVERNANCE MODELS

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
Allows for legal title of the collections to be retained, thereby ensuring their safeguarding	Yes. All collections remain with the Council and are safeguarded.	10	Title to the collections will be retained by the authority. The parties would enter into a Collections Agreement dealing with the acquisition and disposal of equipment. Clearly the Derby City collections will not be the only collections managed by the museum.	7	Title to the collections will be retained by the authority. The parties would enter into a Collections Agreement dealing with the acquisition and disposal of equipment. The new entity would be responsible for managing the City and the County collections.	7	Title to the collections will be retained by the authority. The parties would enter into a Collections Agreement dealing with the acquisition and disposal of equipment.	8	Title to the collections is retained by the Council. In addition, the trustees will have statutory duties and responsibilities and contractual obligations to safeguard the assets.	9	Title to the collections will be retained by the authority. The parties would enter into a Collections Agreement dealing with the acquisition and disposal of equipment. The private sector however have no proven track record in managing museum collections and would need to buy in specific expertise.	5
Retaining a commitment from the Council to	Yes. The Council will retain full responsibility for the repair and	9	Yes, repair and maintenance obligations to be agreed between the	10	Yes, repair and maintenance obligations to be agreed between the	10	Yes, repair and maintenance obligations to be agreed between the parties and set out in the	10	Yes, repair and maintenance obligations to be agreed between the	10	The Council will retain the freehold title and residual repair and	9

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
repair and maintain buildings over the long term	maintenance of the buildings. This liability may impact on the long term viability of the Service.		parties and set out in the Lease		parties and set out in the Lease		Lease		parties and set out in the Lease		maintenance responsibility will be transferred to the private sector operator.	
Retaining a commitment from the Council to grant on-going core funding	Yes. It is, however, acknowledged that museum services are discretionary services and the severe financial pressures on all local authorities means that continued funding cannot be guaranteed.	5	Yes, but issues surround operation of budgets/hypothecation / cross subsidisation which is a sensitive issue	6	Yes, but issues surround operation of budgets/ hypothecation/ cross subsidisation although potentially less sensitive in terms of cross subsidisation between public sector museums as compared to the risk of subsidising a private museum.	7	Yes, but issues surround separation of budgets and hypothecation although less sensitive between two City services .	8	A single focused organisation. 100% of Council funding will be invested in the development of the Services.	10	Subject to negotiation.	5
Facilitate a City partnership that can fully	The Council acknowledges that status quo will not realise the Council's	3	This will require the "merger" partner to share the Council's	5	A Derbyshire wide NPDO can have a significant impact on realising Derby's	8	The Council will retain significant strategic influence over the leisure / culture NPDO which will	9	The Council will retain significant strategic influence over the museum NPDO which	10	The relationship between the parties will be a contractual one. It is unlikely	3

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
realise Derby Museums' potential across social, tourism, business, cultural and community sectors.	vision for the Services and most importantly will not realise the museum's potential and contribution to the Council's wide regeneration objectives.		aspirations.		Museums across social, tourism business and cultural sectors although it will not be limited to Derby museums.		work in partnership with the Council to achieve its aspirations.		will be delivering the Council's strategic objectives for culture on behalf of the Council.		the private sector operator will be committed to wider social outcomes.	
Anticipated operational efficiency and affordability	The Service has already implemented a number of significant operational changes including a radical staff restructure to deliver short and medium term savings. It is unlikely that status quo will deliver any further efficiency savings.	3	Potential economies of scale	7	Potential economies of scale	7	Potential economies of scale	7	Potentially more expensive with stand alone functions like finance and HR. Though these can be contracted out and/or bought back from the local authority	6	Potentially – particularly at the outset.	6

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
New or enhanced income generating opportunities	The Council is continually exploring options for income generation. It is suggested that as currently structured, income generation is limited.	3	For income generation this is a theoretically an attractive option. Especially if a Museum partner could be found which already had considerable commercial expertise.	6	Opportunity for Derbyshire wide initiatives	7	An opportunity to develop sources of commercial income. It is recognised that the existing team would need additional advice/support to develop these opportunities. However the NPDO model itself can easily facilitate the expansion of commercial opportunities.	8	An opportunity to develop sources of commercial income. It is recognised that the existing team would need additional advice/support to develop these opportunities. However the NPDO model itself can easily facilitate the expansion of commercial opportunities.	9	The private sector have expertise in developing income generating opportunities – although no track record in relation to museum services.	6
Savings opportunities	As stated above, the Service has already implemented a number of significant operational changes including a radical staff restructure to deliver short and medium term	3	It is assumed a merger would generate significant savings through reduced overheads/ economies of scale.	7	Assuming the new delivery model is a charitable NPDO, then there would be 100% relief from NNDR together with significant tax benefits. The NNDR savings on a Derbyshire wide	8	Assuming the new delivery model is a charitable NPDO, then there would be 100% relief from NNDR together with significant tax benefits. The NNDR savings on a combined leisure/culture NPDO together with the	9	Assuming the new delivery model is a charitable NPDO, then there would be 100% relief from NNDR together with significant tax benefits. The NNDR savings are approx £49K per	8	The private sector operator will not be eligible to any NNDR/VAT/tax benefits. Therefore any savings would have to be generated through	5

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
	savings. It is unlikely that status quo will deliver any further efficiency savings.				museum NPDO together with economies of scale could be significant.		economies of scale could be significant.		annum based on the current portfolio. Whilst not a significant sum in itself – if reinvested back in the service and/ or allowed to accumulate this could provide invaluable support for service developments.		efficiency earnings.	
Maximising Linkages with the World Heritage Site	Opportunities for continued linkages with World Heritage Site on an informal basis.	5	It is suggested it is unlikely for the authority to transfer its heritage assets to an existing charity involved in the World Heritage Site e.g. the Arkwright Society.	2	Significant opportunities to maximise linkages with World Heritage Site.	8	Potentially less focus on the World Heritage Site and more focus on the leisure and other culture opportunities within Derby City.	5	Significant opportunities for developing linkages with the World Heritage Site and indeed an opportunity for the Heritage Trust to take more responsibility for the operation and management of the World Heritage Site assets.	10	It is unlikely that the private sector operator would engage with the World Heritage Site.	1

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
Anticipated operational effectiveness	As stated above, the Services has already implemented a number of significant operational changes including a radical staff restructure to deliver short and medium term savings. It is unlikely that status quo will deliver any further efficiency savings.	3	If the right Museum could be found this is an attractive option.	5	A Derbyshire wide operation presents significant opportunities for operational efficiencies / effectiveness.	7	The challenge of a combined service is clearly to ensure that all aspects of the business are treated with equal importance and relevant expertise retained.	7	A new organisation potentially has significant opportunities for operational effectiveness.	8	Potentially.	6
Initial setup achievability - within timeframe and available budgets	Not applicable		A potential merger partner has not been identified at this stage. Subject to that, a merger could be achieved in 6 months. This would require almost immediate agreement on the	7	A Derbyshire wide initiative would require a close alignment of corporate and strategic objectives across all authorities in Derbyshire. Most importantly it would require each authority	7	In theory this is achievable but in practice unlikely to be implemented by April 2012. Whilst it is understood that the leisure service is reviewing its options, no decision has been made to date to transfer to a leisure NPDO	8	A new NPDO could be established by April 2012.	9	Potentially	6

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
			commercial and operational aspects of the merger .		to agree to make the required decisions within the agreed timeframe. It is unlikely that this could be achieved by April 2012		or a combined leisure/ culture NPDO.					
Attractiveness to existing or potential stakeholders	Significant effort has been made to engage with stakeholders. It is suggested that there are limited opportunities for meaningful engagement with stakeholders as currently structured.	3	Limited opportunities for key stakeholders to be involved	5	A real opportunity for key stakeholders to be involved in a pan regional initiative.	10	A real opportunity for key stakeholders to be involved and can add real value to an initiative of this nature.	10	A real opportunity for key stakeholders to be involved and can add real value to an initiative of this nature.	10	Unlikely	1
Potential partnership opportunities	Significant effort has been made to establish partnerships. It is suggested that there	5	Query whether an independent museum would establish effective partnerships across the public,	4	A real opportunity to create / develop partnerships	9	A real opportunity to create/ develop partnerships	8	Arguably critical to the success of an initiative of this nature.	9	Unlikely	1

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
	are limited opportunities for further partnership working as currently structured.		private and voluntary sectors.									
Impact on local cultural and regeneration sectors	The Council fully recognises the potential contribution that museum services can make on the regeneration of the City. The Council also recognises that to maximise this impact, the Council must explore alternative governance models.	3	Minimal impact save to the extent a contractual obligation as part of any funding arrangement.	2	A Derbyshire wide museum service could have a significant impact on the social, economic and environmental wellbeing of the region.	8	A combined/leisure NPDO could have a significant impact on the health and wellbeing of the area.	8	An NPDO could have a significant impact on the social and cultural prosperity of the City.	9	Minimal/ incidental	2
Future organisational development	As stated above, the Services has already implemented a	3	Limited development opportunities	4	An organisation of this nature and size has a real opportunity to maximise	7	An organisation of this nature and size has a real opportunity to maximise	8	The significance of a single focused NPDO is that its sole purpose will be the continued	9	Potentially	6

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
opportunities	number of significant operational changes including a radical staff restructure to deliver short and medium term savings. It is unlikely that status quo will deliver any further efficiency savings.				development opportunities		development opportunities		development of the museum services to ensure they reach their maximum potential and contribution to the health of the City			
Inherent risks, potential future risks. A high risk attracts high	The status quo or “do nothing” option presents significant risks to the Council. Arguable with no changes to the way the service is currently structured, funded and resourced that the long term future of the Museum Services is in	High 2	A list of potential partner individuals and organisations is given in the appendix. Potential partners might well see a new Museum Service is a risky venture given the low level of its development, and its poor track record of fundraising and	High 2	Query desire of other Derbyshire authorities to develop a Derbyshire wide solution.	Medium 4	A new organisation with a robust business plan does not present a significant risk. Query if all elements of the service will be operated to the same high level. Leadership will be critical.	Low 7	A new organisation with a robust business plan does not present a significant risk.	Very low 9	Risk can be transferred but at a cost. The major risk here is proven track record of private sector operating heritage facilities.	High 1

Criterion	Option 1 Status Quo		Option 2 Potential merger with another museum		Option 3 New City and County Wide Trust		Option 4 New combined Leisure and Culture Trust		Option 5 New Heritage Trust for Derby		Option 6 Arrangements with private sector	
	jeopardy.		capitalisation.									
Totals		60		79		110		120		135		62

APPENDIX 5: SUMMARY OF ALTERNATIVE TRUST VEHICLES

LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
UNINCORPORATED ASSOCIATION	<p>Informal structure</p> <p>No statutory regulation of this structure.</p> <p>Governed by own rules.</p> <p>No legal personality.</p>	<p>Nobody owns an unincorporated association</p> <p>Run entirely according to own rules.</p>	<p>No: it is an unincorporated entity and, as such, has no separate legal personality.</p> <p>Those running it will have to enter into all contracts and hold all property in their own name.</p> <p>Unlimited liability for those running the association who could be personally liable</p>	<p>Depends on own rules.</p> <p>If the association is to be charitable, restrictions on some personal benefits will apply.</p>	<p>The rules of the association could provide for this but do not necessarily have to unless charitable status is being sought.</p>	<p>Yes: if it meets the criteria for being a charity.</p>
TRUST	<p>Set up by way of trust deed.</p> <p>Deed will set out</p>	<p>Legal title in all assets is held by the trustees.</p>	<p>No: it is an unincorporated entity and, as such, has no</p>	<p>If the trust is not charitable, then trustees can benefit</p>	<p>Not necessarily.</p> <p>For social enterprises and</p>	<p>Yes: if it meets the criteria for being a charity.</p>

LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
	the terms of the trust including the purposes for which assets are held and for whom. Legal ownership is separated from beneficial ownership.	Beneficial ownership of the assets is with the beneficiaries of the Trust. The trustees administer and manage assets for the benefit of the beneficiaries in accordance with the terms of the trust.	separate legal personality. Trustees will have to enter into all contracts and all hold property in their own name. Unlimited liability for trustees who could be personally liable.	from the trust. If the trust is charitable, then the general rule is that trustees cannot personally benefit unless the governing document, the Charity Commission or a court has sanctioned such benefits. .	charities, assets would need to be locked in for community/public benefit.	
COMPANY LIMITED BY GUARANTEE	Incorporated vehicle. Board of directors and a membership. Flexible and	Directors manage business on behalf of members. Some governance requirements are imposed by statute	Yes: it is an incorporated entity and, as such, has a separate legal personality. The company itself enters into contracts and	If not charitable, then yes, benefits can be paid. If charitable, directors and members cannot benefit unless the	For a social enterprise or a charity, assets can only be applied in furtherance of the	Yes: if it meets the criteria for being a charity.

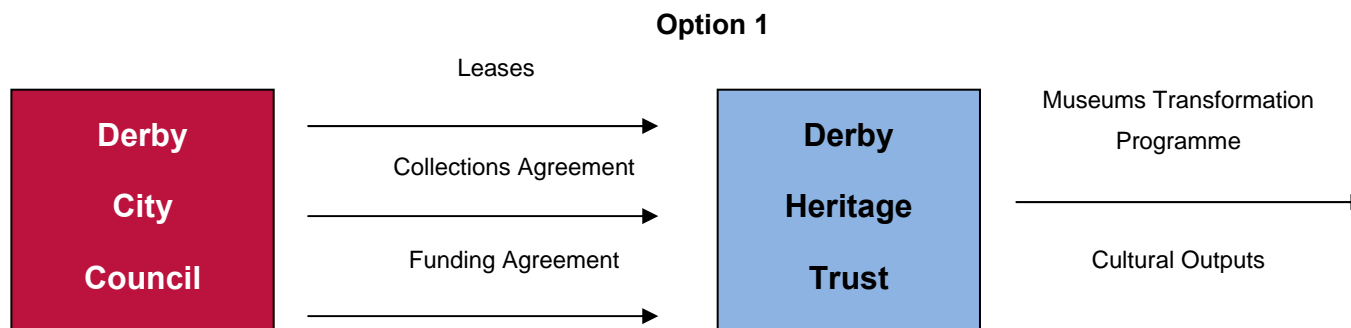
LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
	familiar vehicle. Most commonly used corporate legal structure.	but, within those restrictions, there is considerable flexibility over internal rules.	holds all assets. Members' liability limited to amount of the guarantee, Liabilities of the company sit with the company itself although directors may be personally liable in limited circumstances	governing document, the Charity Commission or a court has sanctioned such benefits.	company's objects (which would state that they were for public benefit) In addition, there would be a 'non distribution' clause ensuring that all surpluses were reinvested into the stated objects of the company	
COMMUNITY INTEREST COMPANY (CIC)	Limited company structure specifically for social enterprise.	As for a company limited by guarantee above but subject to	Yes: it is an incorporated entity and, as such, has a separate legal personality.	Yes: but must benefit wider community as well. Can pay limited	Yes: through standard provisions which all CICs must	No: a CIC cannot be a charity and a CIC does not benefit from any

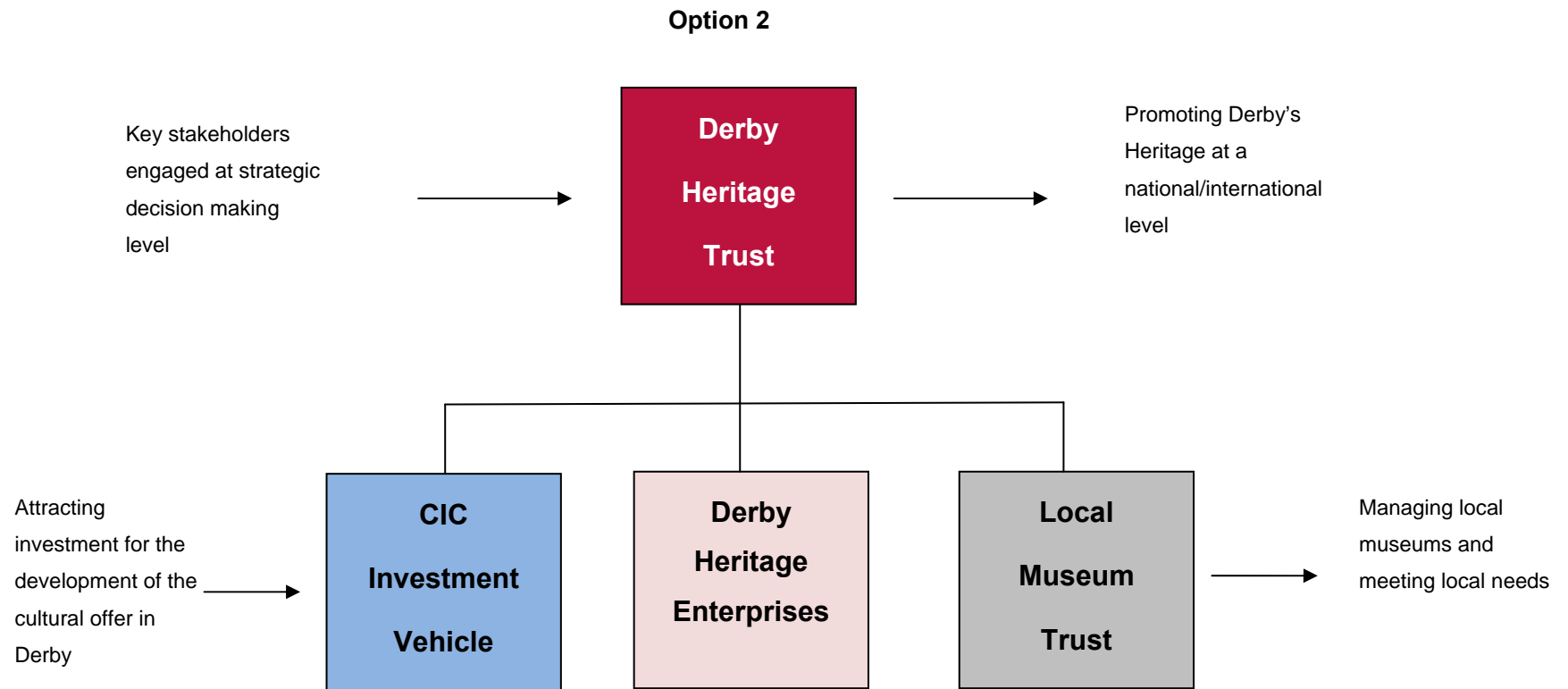
LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
	Secure "asset lock" and a focus on community benefit. The asset lock means that all assets of the CIC and any surpluses generated by them are used for the benefit of the community. CIC 'branded' Can be a guarantee or a share company. If a share company, can	additional regulation to ensure community benefits.	The company itself enters into contracts and holds all assets. Members' liability is limited to amount of the guarantee or the amount unpaid on shares. Liabilities of the company sit with the company itself although directors may be personally liable in limited circumstances	dividends to private investors. There is a statutory cap on the amount of dividends payable which is set by the Secretary of State. The current maximum dividend per share is 5% above the base lending rate of the Bank of England. The other cap is on the amount of profits capable of distribution (currently, the aggregate cap is 35% of distributable profits).	include in their constitutions.	tax advantages.

LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
	issue dividends to investors subject to a cap					
INDUSTRIAL & PROVIDENT SOCIETY (IPS) (COMMUNITY BENEFIT SOCIETY (BENCOMM))	Incorporated entity. For the benefit of the community generally i.e. not its own members. Board members and shareholders. Common model in housing sector. Governed by the Industrial and Provident Societies Acts	Board members manage on behalf of the members. One member / one vote irrespective of the size of shareholdings	Yes: it is an incorporated entity and, as such, has a separate legal personality. The Society itself enters into contracts and holds all assets. Members' liability is limited to amount unpaid on shareholdings. Liabilities of the Society sit with the Society itself although board members may be personally liable in	Must primarily benefit non-members Asset lock applies.	Yes .	Yes: if it meets the criteria for being a charity. Depending on the particular circumstances, it would either be a registered charity or an exempt charity.

LEGAL STRUCTURE	Key features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets "locked in" for community benefit?	Can it be a charity and get charitable status tax benefits?
			limited circumstances			
CHARITABLE INCORPORATED ORGANISATION (CIO)	<p>Bespoke vehicle specifically for charities.</p> <p>Created by the Charities Act 2006.</p> <p>Expected to be available in early 2008.</p> <p>Will have a board and members.</p> <p>Two models available – either members as trustees or a wider membership.</p>	<p>Similar to a company</p> <p>Expected to have different terminology to a company (e.g. there is likely to be no concept of 'directors' – instead, 'charity trustees').</p>	<p>Yes: it will be an incorporated entity and have a separate legal personality.</p> <p>The CIO itself will enter into contracts and hold all assets.</p> <p>Members will have either no liability or limited liability</p> <p>Liabilities of the CIO will sit with the CIO itself although trustees may be personally liable in limited circumstances.</p>	<p>Charity trustees can only benefit personally if the constitution, court or Charity Commission permit it.</p>	<p>Yes.</p>	<p>Cannot be anything but a charity, and must meet the criteria for being a charity.</p>

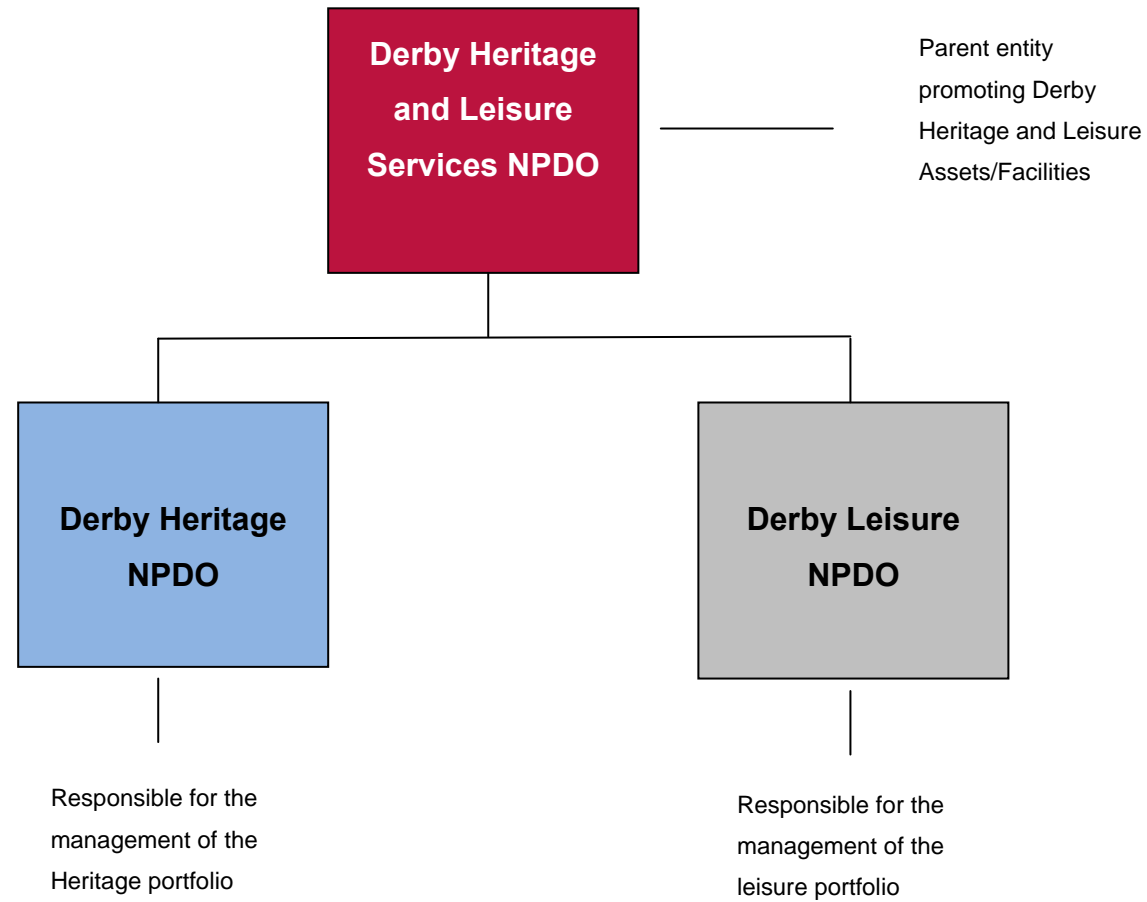
APPENDIX 6: NPDO MODEL





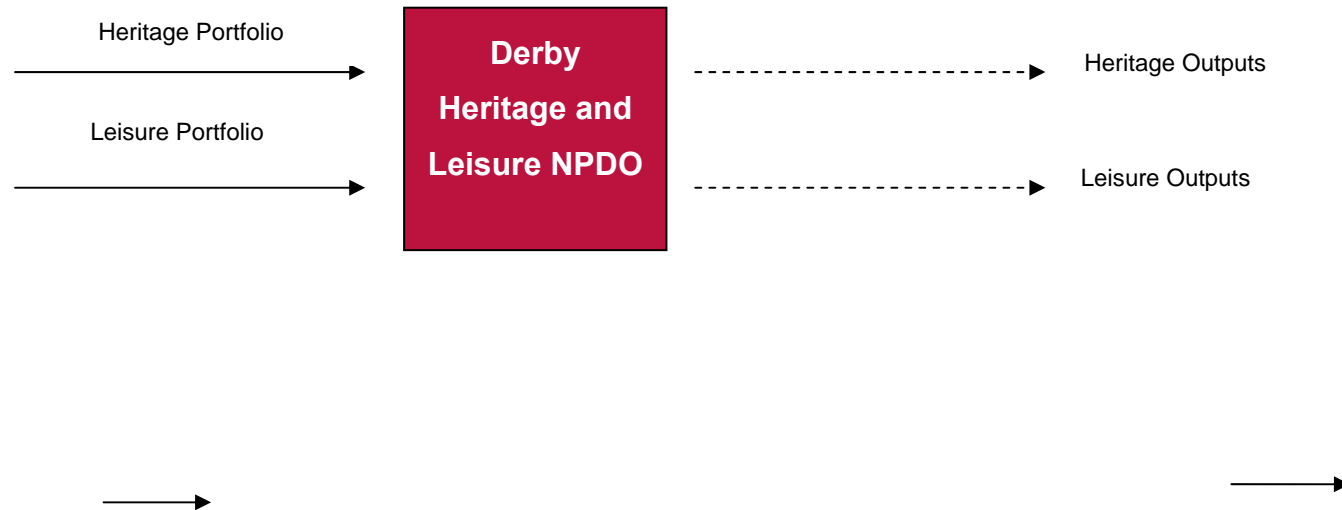
Option 3

Group Structure for Heritage and Leisure



OPTION 4

Combined Heritage and Leisure NPDO



APPENDIX 7: SCHEDULE OF LEGAL DOCUMENTS

We set out below a summary of the likely key documentation which will be required for a museums transfer.

Document	Parties	Key provisions
Memorandum & Articles of Association		The Trust's governing document setting out the objects, powers, liability, and dissolution provisions, and the provision for the calling and conduct of board and member meetings, the appointment, removal and disqualification of directors.
Transfer Agreement	(1) Council (2) Trust	This agreement will identify the components of the service to be transferred from the Council to the Trust and then, in relation to each aspect of the service, the agreement will set out the terms of the transfer arrangements.
Funding and Management Agreement	(1) Council (2) Trust	<p>This agreement will set out the terms and conditions of the funding arrangements between the parties. It will identify the key performance outputs required by the Council (by reference to an output specification to be scheduled to the agreement) and the funding to be provided by the Council to assist the Trust to deliver the required outputs.</p> <p>The agreement will set out in detail the monitoring and review arrangements, an escalation procedure for managing poor performance, termination and, importantly, exit and handover arrangements.</p>
Support Services Agreement	(1) Council (2) Trust	It is anticipated that the Trust may contract back certain support services from the Council. This agreement will formalise these arrangements. It will set out the terms on which the services will be provided and the payment arrangements.
Leases	(1) Council	The parties will enter into a lease in relation to

Document	Parties	Key provisions
	(2) Trust	each of the museum/heritage facilities. The lease will set out the lease term, the user clause, repair and maintenance and any early termination provisions e.g. a break clause for redevelopment.
Admission Agreement	(1) Pension Fund Trustees (2) Council (3) Trust	The Trust will be eligible to be admitted to the Superannuation Scheme. Thus all existing employees' pension position will be protected. New employees will be eligible to join subject to the terms of the Scheme.
Collections Agreement	(1) Council (2) Trust	The museum collections themselves will be loaned to the Trust (not transferred) and the terms of such loan will be set out in this Agreement.

APPENDIX 8: PERSON SPECIFICATION

When establishing a new Trust, one of the most important things will be selecting Trustees of the highest calibre. The Trust will need the correct skills and experience at board level to ensure that the Trust is successful and competently run.

The Charity Commission issues best practice guidance on recruiting Trustees which we would recommend is followed including the preparation of a “person specification” setting out the skills and experience sought in a Trustee and also that the recruitment process follows an open advert procedure.

Category	Criteria
Experience	<ul style="list-style-type: none">• Proven track record in business or a relevant profession• Involvement in community service (paid or voluntary)
Skills and abilities	<ul style="list-style-type: none">• Specialist skill, e.g. financial, legal, corporate, or Trust management• Commitment to objectives of new organisation and a particular interest in museums and culture• Communication skills• Analytical skills
Other requirements	<ul style="list-style-type: none">• Availability for evening meetings and possibly some daytime meetings• Awareness of local issues and/or awareness and interest in the principal cause of the organisation• Appreciation of status and functioning of charitable organisation
Additional skills for chair	<ul style="list-style-type: none">• Ambassador for the initiative• Experience of planning and conducting board meetings

Category	Criteria
	<ul style="list-style-type: none"> • Establishing a constructive working relation with and providing support for Chief executive • Impartiality, fairness and ability to respect confidences

APPENDIX 9: VAT ISSUES

Cultural exemption

Following a Government consultation paper, regulations have been introduced for VAT exemption for certain cultural services. The basis of the Government consultation paper is Article 13A(1) of the EC Sixth Directive; subsection (n) which states that “certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by other cultural bodies recognised by the member state concerned” should be exempt from VAT in the public interest.

In the public sector VAT exemptions may apply to admissions to museums, art galleries or theatrical and musical performances provided there is no ‘distortion of competition’ to place commercial enterprises at a disadvantage.

There is no such proviso for not-for-profit bodies or those managed on a voluntary basis by persons having no direct or indirect financial interest.

The recent HMRC Brief 27/07 has helpfully clarified the definition of ‘direct or indirect financial interest’ which makes it clear that the involvement of staff on the board of Trustees of an arts or cultural Trust will not affect the Trust’s eligibility for this VAT relief provided that:

- their involvement at board level is permitted in the governing document
- the employee board member is excluded from any decisions relating to remuneration
- the payments are not above market rates and
- the payments are not linked to profits.

APPENDIX10: BUSINESS RATES

Mandatory rate relief

Section 43 of the Local Government Finance Act 1988 provides that charities pay only one-fifth of the rates that would otherwise be due, if the rate payer in occupation:

- is a charity or Trustee for a charity; and
- the property liable to be rated is wholly or mainly used for charitable purposes.

Where the rate payer is a registered charity under the Charities Act 1960 (as amended) it will be entitled to mandatory rate relief automatically. However, non-registration under the Act is not conclusive as to the non-charitable status of the rate payer and the charging authority has to determine whether the rate payer qualifies for the relief, applying appropriate case law and statutes.

If the new NPDO is a registered charity, it would therefore be entitled to 80% relief from the business rates levied on the premises.

Discretionary rate relief

A charitable NPDO would also be entitled to further relief from rates if the Council decides to exercise its discretion under Section 47 of the Local Government Finance Act 1988. There are three instances where discretionary rate relief is available:

- where the rate payer is a charity or Trustee for a charity and the hereditament (the property liable to be rated) is wholly or mainly used for charitable purposes. If granted, relief may be given beyond the mandatory 80% rate relief;
- where the rateable property is occupied for the purposes of one or more institutions or organisations, none of which is conducted for profit and each of whose main objects are charitable or otherwise philanthropic, religious, or concerned with education, social welfare, science, literature or the fine arts;
- where the rateable property is wholly or mainly used for purposes of recreation and all or part is occupied for the purposes of a club, society or other organisation, not established or conducted for profit.

This will be determined by reference to the Council's discretionary policy.

The crucial issue, however, is whether or not the property can be regarded as being

“occupied” by the NPDO for the purposes of the rate relief. The issue of occupation applies to both mandatory and discretionary rate relief.

A summary of reliefs is set out below:

Property eligible for rate relief	Type of relief	Amount of relief	Financial implications	
			Proportion offset against payments into NNDR Pool	Proportion borne locally by community taxpayers
1. Property wholly or mainly used for charitable purposes which is occupied by a registered charity.	Mandatory	80%	100%	-
	Discretionary	Up to a further 20%	25%	75%
2. Property, all or part of which is occupied for the purposes of a non-profit making: a) Institution or other organisation whose main objects are philanthropic or religious or concerned with social welfare, science, literature or the fine arts; or b) Club, society or other organisation and is used for the purposes of recreation	Discretionary	Up to 100%	75%	25%

APPENDIX 11 : PROJECT PLAN FOR ESTABLISHING AN NPDO

Task	LEAD	Target Date	✓
Agree timetable	ALL	6 September 2011	
Agree staff consultation process	COUNCIL	6 September 2011	
Fix staff consultation dates	COUNCIL	6 September 2011	
Arrange condition surveys of facilities (if required)	COUNCIL	6 September 2011	
Prepare key provisions of the governing document.	WS	6 September 2011	
Confirm approach to trustee recruitment	WS	6 September 2011	
Prepare draft advert for trustees	WS	6 September 2011	
Prepare person specification for trustees	WS	6 September 2011	
Confirm date and venue for open evening for trustees	COUNCIL	16 September 2011	
Place advert for trustees and open evening	COUNCIL	16 September 2011	
Prepare trustee induction pack	WS	16 September 2011	
Prepare first draft of governing document	WS	16 September 2011	
Prepare heads of terms for project documents	WS	16 September 2011	
Approve governing document	ALL	30 September 2011	
Incorporate company	WS	30 September 2011	
Hold opening evening	ALL	30 September 2011	

Task	LEAD	Target Date	√
Prepare selection panel questions	WS	30 September 2011	
Prepare selection panel evaluation criteria	ALL	30 September 2011	
Prepare for opening evening	ALL	3 October 2011	
Agree heads of terms of project documents	ALL	7 October 2011	
Prepare first draft of business plan	TRUST TEAM	7 October 2011	
Prepare first draft of project documents	WS	21 October 2011	
Shortlist trustees	PANEL	21 October 2011	
Hold trustee interviews	PANEL	4 November 2011	
Select chair and trustees and invite to form shadow board	PANEL	4 November 2011	
Fix date of inaugural trustee meeting and regular shadow board meetings	COUNCIL	4 November 2011	
Prepare draft project documents	WS	18 November 2011	
Review monitoring regime	ALL	18 November 2011	
Complete induction of trustees	WS	2 December 2011	
Complete detailed familiarisation programme for trustees	COUNCIL	2 December 2011	
Open bank account	TRUST TEAM	6 January 2012	
Obtain trustee indemnity insurance	TRUST TEAM	6 January 2012	
Obtain business related insurance	TRUST TEAM	20 January 2012	

Task	LEAD	Target Date	√
Obtain vat registration	TRUST TEAM	20 January 2012	
Prepare charity application form and support papers	WS	3 February 2012	
Lodge charity application	WS	3 February 2012	
All party negotiations of project documents and business plan	ALL	17 February 2012	
Prepare final versions of project documents and business plan	WS	17 February 2012	
Approval of project documents	ALL	2 March 2012	
Approval of business plan	ALL	2 March 2012	
Preparation of all schedules	ALL	16 March 2012	
Approval by trustees	TRUST TEAM	23 March 2012	
Approval by Council	COUNCIL	23 March 2012	
Signing project agreements	ALL	30 March 2012	
Trust live	ALL	1 April 2012	

APPENDIX 12 : KEY DECISIONS FOR COUNCIL

Topic	Key matters for approval in October 2011	Key matters for approval in December 2011	Key matters for approval in March 2012
Delivery vehicle	<ul style="list-style-type: none"> • Legal model • Objects (scope) • Composition of board • Representation of key stakeholders 	<ul style="list-style-type: none"> • Memorandum and Articles of Association 	
Trustees recruitment campaign	<ul style="list-style-type: none"> • Advert for trustees • Person specification • Key skills • Attendance at open evening • Members of selection panel 	<ul style="list-style-type: none"> • Selection of shadow board • Selection of chair 	
Funding arrangements	<ul style="list-style-type: none"> • Outline business plan • Length of fixed funding • Service objectives • Key objectives/outcomes 	<ul style="list-style-type: none"> • Detailed business plan • Heads of terms for Funding and Management Agreement 	<ul style="list-style-type: none"> • Final business plan • Level of funding • Funding and Management Agreement including monitoring and review regime
Property arrangements	<ul style="list-style-type: none"> • Lease of facilities to NPDO • Length of lease 	<ul style="list-style-type: none"> • Heads of terms for lease 	<ul style="list-style-type: none"> • Leases and any licences required
Collections	<ul style="list-style-type: none"> • Loan of collections to NPDO • Any exclusions • Council's right to 	<ul style="list-style-type: none"> • Heads of terms for Collection Agreement 	<ul style="list-style-type: none"> • Collections Agreement • Acquisition/disposal/loan policies

Topic	Key matters for approval in October 2011	Key matters for approval in December 2011	Key matters for approval in March 2012
	<p>request an item from the collection</p> <ul style="list-style-type: none"> Any third party arrangements 		
Service Services	<ul style="list-style-type: none"> Agree in principle to continue to provide certain report Services 	<ul style="list-style-type: none"> Heads of terms for Support Services Agreement 	<ul style="list-style-type: none"> Support Services Agreement
Staff	<ul style="list-style-type: none"> Confirmation that TUPE will apply Staff consultation programme Confirm position in relation to pensions 	<ul style="list-style-type: none"> Heads of terms for Transfer Agreement 	<ul style="list-style-type: none"> Transfer Agreement Pensions Agreement

APPENDIX 13: CASE STUDIES

Coventry City Council	
Herbert Art Gallery and Museum	<p>Coventry Heritage and Arts Trust was established in 2008.</p> <p>It manages the Herbert Art Gallery and Museum, Lunt Roman Fort and Priory Visitor Centre and Undercrofts in partnership with Coventry City Council.</p> <p>The charity was established following the redevelopment of the Herbert Art Gallery and Museum which was jointly funded by Coventry City Council, the European Regional Development Fund, the Heritage Lottery Fund, Renaissance West Midlands, The Department of Culture, Media and Sport, and English Heritage.</p> <p>It is established as a company limited by guarantee and registered charity.</p> <p>The Trust has gone from strength to strength and plays a significant role in the renaissance of the West Midlands.</p>

Wigan Metropolitan Borough Council	
Wigan Leisure and Culture Trust	<p>Wigan Leisure and Culture Trust was established in 2003.</p> <p>It is established as a company limited by guarantee and registered charity.</p> <p>It manages and operates Wigan Metropolitan Borough Council's entire</p>

	<p>leisure and cultural portfolio including:</p> <ul style="list-style-type: none"> • Libraries; • Lifelong learning; • Active reading initiatives; • Sports Development and Leisure centres; • Parks and countryside; • Play parks; • Haigh Hall and Country Park; • Allotments; • Cemeteries and crematorium; • Heritage services; and • Wigan Jazz Festival. <p>Wigan Leisure and Culture Trust was one of the first pan leisure and culture trusts and has continued to go from strength to strength.</p> <p>It has made significant service improvements in all areas and secured major additional investment.</p> <p>It has recently been applauded by the Charity Commission for delivering significant public benefit.</p> <p>WLCT also now manages Selby District Council's Leisure Services.</p>
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“Wigan Leisure and Culture Trust has been a great success story. Becoming a charitable trust enabled a step change for improving services, particularly the library service. Establishing a trust should not just be about saving money but be part of a wide strategic vision on how you intend to develop and improve services for and with the community. I think that has been at the heart of our success”.

Rodney Hill, Chief Executive, WLCT 2003-2011

York City Council	
<p>York Museums Trust</p>	<p>The York Museums and Gallery Trust was established in 2005.</p> <p>It has been established as a company limited by guarantee and registered charity.</p> <p>It manages and operates the following portfolio:</p> <ul style="list-style-type: none"> • York Art Gallery; • Yorkshire Museum; • York Castle Museum; and • York St Mary's. <p>It also has a trading subsidiary which manages and operates the museum shop.</p> <p>York Museum and Art Gallery Trust works closely with the Friends Groups and also has a representative of the Yorkshire Philanthropic Society on the Board of the organisation.</p> <p>The Trust has gone from strength to strength and was recently involved in the following initiatives:</p>

	<ul style="list-style-type: none"> • David Hockney exhibition; • Art Fund Prize 2011 for a [£2.2] refurbishment capital project for the Yorkshire Museum; and • New 'York Castle Prison' attraction at York Castle Museum.
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Luton Borough Council	
Luton Arts and Culture	<p>Luton Trust was established in 2008.</p> <p>It is a company limited by guarantee and registered charity.</p> <p>It operates the following facilities:</p> <ul style="list-style-type: none"> • The Hat Factory; • Luton Central Library; • Wardown Park Museum; • Stockwood Discovery Centre; • John Dory Field Centre; • Outdoor events; and • Arts development. <p>The Board is made up of individuals with particular experience and expertise in arts and culture.</p> <p>Importantly, Luton Culture also includes library services and thus offers a long term and viable solution for such services.</p>

Peterborough City Council	
VivaCity	<p>VivaCity was established in 2010.</p> <p>It is established as a company limited by guarantee and registered charity.</p> <p>It operates the City Council's leisure and cultural portfolio including:</p> <ul style="list-style-type: none"> • Peterborough Museum and Art Gallery; • Key Theatre; • Leisure and swimming facilities; and • Library services. <p>It is one of the largest trusts in the UK and will make a significant impact on the quality of life for all those who live in or visit Peterborough.</p>

“It was incredibly hard work creating VivaCity, however the outcome has been worth every penny of investment and every drop of midnight oil. In our first year we have outperformed the financial projections within our business plan and the quality of service, while harder to quantify, has in my view undoubtedly improved. The most noteworthy change is our ability to be agile – I always knew it would be important – but I never dreamt it would be such a vital component of our success.”

Kevin Tighe, Chief Executive, VivaCity

The Council of the City of Wakefield	
The Hepworth Wakefield	The Hepworth Wakefield was established in 2010 as a company limited by guarantee

	<p>and registered charity.</p> <p>It manages and operates the new Hepworth Wakefield gallery in Wakefield.</p> <p>The gallery opened to the public in May 2011.</p> <p>It hosts the permanent collection of The Barbara Hepworth Sculptures as well as other national collections.</p> <p>It is very much hoped that the Hepworth Wakefield will act as a catalyst for wider regeneration initiatives in the City and beyond.</p>
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APPENDIX 14: EXAMPLES OF ALTERNATIVE DELIVERY OPTIONS

Set out below is a summary of examples of alternative delivery models for heritage services developed by other local authorities developed by other local authorities. These options are described in more detail in Section 6:

Options	Examples
Joint working between two local authorities	<ul style="list-style-type: none"> • Ipswich Borough Council/Colchester Borough Council – these two authorities currently deliver museum services through a joint committee.
Establishment of a museums / arts / heritage NPDO	<ul style="list-style-type: none"> • York City Council – York City Council transferred management of the Council's museum and art gallery portfolio to a newly established charitable entity, York Museums Trust. • Coventry City Council - Coventry City Council transferred its heritage portfolio to the Herbert Art Gallery and Museum. • Wakefield MBC – Wakefield MBC established The Hepworth Wakefield which is responsible for the management and operation of the new Hepworth Wakefield art gallery.
Establishment of a wider cultural NPDO	<ul style="list-style-type: none"> • Luton Borough Council – Luton Borough Council transferred its arts, heritage and library services to Luton Arts which is responsible for managing the Council's arts, heritage and library portfolio. • Peterborough City Council - Peterborough City Council transferred its cultural portfolio to VivaCity a combined leisure, arts and culture trust which is responsible for managing and operating the Council's entire cultural portfolio.
Arrangements with an existing NPDO	<ul style="list-style-type: none"> • Selby Borough Council - Wigan Leisure and Culture Trust was established to manage Wigan MBC leisure and culture portfolio which has been successful in tendering for other local authority contracts, most

Options	Examples
	recently Selby Borough Council.
Arrangements with the private sector	<ul style="list-style-type: none"> • There are limited examples of the private sector operating arts and heritage portfolios. The London Borough of Hounslow appointed John Laing to manage its library services. This is at an early stage. Feedback to date has not been entirely positive.

APPENDIX 15: DERBY MUSEUM 2011/12 BUDGET