



Transforming Museums – progress to Trust status

SUMMARY

- 1.1 This report seeks approval from Cabinet of key decisions in the make up and composition of the planned new Derby Museums organisation.

RECOMMENDATION

- 2.1 To approve the objects of the new organisation as set out in paragraph 4.9.
- 2.2 To approve the composition of the board, including representation by the Council as set out in paragraphs 4.13 to 4.15.
- 2.3 To approve the trustee recruitment process and, in particular, the selection panel as set out in paragraph 4.24 – 4.27.
- 2.4 To note the intention to give revenue budget support for 2012/13 and 2013/14 based on the principals stated in Appendix 1 – 1.3.

REASONS FOR RECOMMENDATION

- 3.1 For members to approve the objects of the new organisation which will be established for exclusively charitable purposes to manage and operate Derby Museums.
- 3.2 For members to be assured that local authority representation on the board of the new organisation is enshrined in the governing document.
- 3.3 For members to ensure that the trustees of the new organisation fully understand and share the members' vision and aspirations for the future management and operation of these important facilities. For members therefore to be fully involved in the recruitment, selection and appointment of the new trustees including involvement in the selection panel.
- 3.4 For members to ensure financial provision to the Trust, thereby allowing business planning and establishment of Trust.

SUPPORTING INFORMATION

Context

- 4.1 In September 2012 Cabinet approved a new charitable trust to operate Derby Museums by April 2012. The original timescale for this programme was paused whilst a wider cultural vision was explored for the city. Having done the initial stages of that exercise it was decided, with the Arts Council agreement, to proceed with the Museum trust separately. This has resulted in an on-going, positive dialogue between the City Council and Arts Council over the way in which the new organisation can realise its potential for the city and for culture.
- 4.2 The relationship between Derby Museums and Arts Council is a new one, with the government funded arts body now assuming a strategic responsibility for much of the nationwide museums and libraries sector in place of the previous Museums, Libraries and Arts Council (MLA). The combination of city council support alongside newly secured Arts Council support provides the necessary basis to establish a fit for purpose organisation with long term resilience.

Organisation name

- 4.3 To facilitate communication, especially in the recruitment of trustees, a working title for the new organisation is Derby Museums & Arts Trust. This may be revised through subsequent branding work. However the inclusion of Arts in the working title is intended to indicate the following:
- the importance of the Joseph Wright visual art collection
 - the emerging emphasis at the Silk Mill of combining art with science, technology and engineering – this is being realised through participation with audiences and engagement with new partners
 - the emphasis placed on using collections to inspire new creativity amongst Derby people and visitors to the city.

Development work to establish Derby Museums & Arts

- 4.4 The work programme to establish Derby Museums & Arts is set out in Appendix 2.

Objects

- 4.5 With regards to the establishment of the new organisation, Members will recall that it was recommended that the new organisation be established as a company limited by guarantee and registered charity. The establishment of the new organisation is, therefore, a two stage process. Firstly, incorporation of the company and, secondly, an application to the Charity Commission to register as a charity.

- 4.6 The governing document for a company limited by guarantee is its Memorandum and Articles of Association. One of the key provisions of the Memorandum and Articles of Association is the objects clause. This will set out what the organisation has been established to do. (Note: "Objects" is the correct legal term in this context. It is equivalent to "objectives" or "purposes").
- 4.7 On the basis that the council is seeking charity registration with regards to the new organisation, it is essential that it is established with exclusively charitable objects. The promotion of arts, heritage and culture is a recognised charitable purpose, as set out in the Charities Act 2006.
- 4.8 Charitable purposes are not, however, charitable objects and, therefore, when drafting the objects of the organisation we need to have regard to model objects for such purposes.
- 4.9 We set out below the recommended objects for the new organisation:
- To advance the education of the public at large by the establishment and/or maintenance of a museum and/or art gallery; and/or
 - To advance the education of the public at large by the preservation of buildings of historic or architectural importance; and/or
 - To advance the education of the public at large of Derby's engineering and creative heritage; and/or
 - to provide or assist in the provision of facilities in the interests of social welfare for recreation or other leisure time occupation of individuals who have need of such by reason of their youth, age, infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life; and/or
 - pursue such other charitable purposes consistent with the above as the Trustees in their absolute discretion shall determine (together the "Objects").

Local Authority Representation

- 4.10 Another key provision of the governing document is the size and composition of the Board. It is essential that the Board is made up of individuals with a range of skills and expertise who can contribute to the success of the new organisation. This is, therefore, a real opportunity to engage with key stakeholders and harness public, private and voluntary sector expertise.
- 4.11 The council will be seeking representation from key sectors including education, business including corporate and/or Small to Medium Enterprise sectors, science, technology and engineering, tourism, visual art and regeneration. In addition, the council will be seeking board members with specialist skills including finance, legal, property, marketing and fund raising.
- 4.12 The key skill sets will be included in the person specification and be used as guidance for those involved in the trustee recruitment and selection process. However, for the purposes of the governing document it is important that we enshrine the representation of the local authority.

- 4.13 It is proposed that the local authority, as a key strategic partner, has representation on the board of the new organisation. It has previously been suggested by our consultants that each of the major political parties be represented on the board and thus that the local authority is able to nominate up to three individuals to the board.
- 4.14 Local authority representation on companies is regulated under local government legislation. If the company is “controlled” or “effectively controlled” by the local authority (as defined in the Local Government and Housing Act 1989), then the company will be treated as a “regulated” company (as defined in the 1989 Act) and will be “grouped” with the local authority for accounting and reporting purposes. To avoid this, it is recommended that the local authority has what, is defined in the 1989 Act, as a “minority” involvement, which, as specified in the 1989 Act, means less than 20%.
- 4.15 If the local authority wishes to nominate 3 nominees to the board, then to ensure that this represents less than 20%, the board must be made up of 16 individuals, 13 of whom are not connected to the local authority. This will give the opportunity to recruit a number of independent board members with the requisite range of skills and expertise, as highlighted above.

4.16 **Dealing with Conflicts of Interest for Council Nominees**

The new organisation will be a company limited by guarantee and registered charity. The board members will be both directors of a company and trustees of a charity. Board members will therefore have duties and responsibilities under both the Companies Acts and the Charity Acts. Whilst not onerous these duties must be taken seriously.

- 4.17 The overriding duty of directors/ trustees is to act in the best interests of the company/ charity whilst acting in the capacity as director/ trustee. This will require the directors/ trustees to set aside personal, professional and/or political views and make decisions that are solely in the interests of the company/ charity.
- 4.18 This overriding duty can lead to potential conflicts of interest. Good governance is critical to the success of this initiative. It is essential, therefore, that any conflicts of interest are avoided or minimised and if, and when they do arise, are managed correctly.
- 4.19 It is recognised that from time to time an elected member may have a conflict of interest between his or her duty as a board member of the Trust and as an elected member of the Council. This may arise, for example, if there is a dispute arose between the parties or during the renegotiation of the funding arrangement.
- 4.20 In such a situation the elected member would need to declare a conflict and absent his or herself from the meeting. The member would need to make a similar declaration at the relevant Council meeting in accordance with the Council’s Code of Conduct.

- 4.21 It is suggested that this conflict of interest becomes more difficult to manage the more senior the elected member. So, for example, a Cabinet Member or indeed the Portfolio Holder would potentially need to declare conflicts of interest and absent themselves from decisions on a more regular basis.
- 4.22 The potential conflict of interest does not exclude elected members being directors/ trustees and indeed it is recommended that the Council has representation on the board. The issue does however need to be carefully considered by the Council when selecting its nominees. It should be noted that similar considerations would apply to an officer appointed as a director/ trustee.
- 4.23 Care should also be taken in appointing “observers” or “cooptees” to attend board meetings. The status of such is not always clear. However, there is a residual risk that such individuals could be treated as “shadow directors” and potentially exposed to liabilities of the company without the protection of limited liability afforded to the directors/ trustees formally appointed as such.

4.24 **Trustee Recruitment**

One of the key success factors of this project will be the recruitment of high calibre trustees with a range of skills and expertise. The City Council needs to undertake a high profile and professional trustee recruitment campaign. We would fully anticipate elected members being fully involved in this process.

- 4.25 It is proposed that there be an open evening for all those who have expressed an interest in becoming a trustee.
- 4.26 It is proposed that a lead member present at the open evening and members be part of the event. Those individuals wishing to become a trustee will be required to complete a formal application form. Candidates will be shortlisted and then invited for interview.
- 4.27 A selection panel will be established to conduct the interview and invite the successful candidates to form the shadow board. It is recommended that both elected members and senior officers be involved in the short listing and selection process. It is recommended that the elected members are made up of one from each party.

Future Relationship Between the Council and the Trust

4.28 The future relationship between the Council and the Trust will be a “strategic alliance”. The two organisations will work together to achieve common objectives for the service.

The relationship between the parties and this new strategic alliance will be embedded in a suite of legal documents to be entered into including:

- Funding and Management Agreement
- Collections Agreement
- Support Services Agreement
- Leases

Members will be asked to approve the key terms of those legal documents in the next report.

4.29 The legal documents will include a robust monitoring and review regime whereby the Council will monitor the Trust’s delivery of the common objectives measured against key performance outputs.

4.30 It is important to emphasise that board representation is not the means by which the Trust is monitored. This will be done through the regular officer and member meetings and the provision of detailed financial and operational reports.

4.31 It will however be critical for there to be regular dialogue at a strategic level between elected members and the trustees to reinforce the shared vision for the services and the contribution the services can make to the wider economic and social prosperity of the City.

OTHER OPTIONS CONSIDERED

5.1

The process and recommendations outlined above facilitate the establishment of a viable and resilient new Museums organisation within the most appropriate timescale.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Stuart Leslie Michael Kirk Jayne Stutt Claire Davenport
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For more information contact: Background papers: List of appendices:	Name 01332 641907 e-mail stuart.gillis@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Key Tasks and Dates for the establishment of Trust
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IMPLICATIONS

Financial and Value for Money

- 1.1 The costs of transition to the preferred governance model are being accommodated through external funding already secured from the Museums, Libraries and Archives Council and Arts Council England.
- 1.2 The commitment to a three year funding programme will facilitate business planning and the establishment of the Trust.
- 1.3 It is intended that the current £1.218 million 2012/13 controllable revenue budget allocation (which covers the direct costs of the service) to Derby Museums Service is available for the Trust. Any allocation of budget to the Trust in 2012/13 will be net of costs incurred up to the Trust start date.
- 1.4 Funding for the Trust from 2013/14 is intended to be set at £1.218m, subject to agreement on any employer pension shortfall implication and any other technical budget issue arising.
- 1.5 The planned £110,000 savings in 2013/14 from the implementation of the Transforming Museums programme will now be met from alternative savings in the Neighbourhoods Directorate.
- 1.6 Agreements on revenue support from 2014/15 onwards, including any adjustments to the annual management fee will be discussed between the Museums Board and the Council as part of the Councils annual budget setting process.
- 1.7 The service also currently receives indirect budget support for support services. To ensure that the Trust can operate effectively on implementation it is proposed that support services for 2012/13 continue to be provided by the City Council for the remainder of the year. The Trust and the City Council will discuss and negotiate the level of support services from 2013/14 onwards.
- 1.8 This settlement will enable viable business planning for the new organisation and will facilitate Derby Museums in preparing its solicited application for Strategic Revenue Funding to Arts Council England in preparation for the Museums & Arts Trust.

Legal

- 2.1 A representative of the Legal Department is on the project board overseeing the establishment of Derby Museums & Arts Trust.

Personnel

- 3.1 The process of transferring City Council employed Museums staff to the preferred governance model is being carried out in consultation with Trade Unions and staff, and through TUPE arrangements.

Equalities Impact

- 4.1 It is vital that our services are accessible to all and deliver what customers want and need. This will be incorporated into the Trustee recruitment campaign and selection process to help ensure that Derby Museums & Arts Trust is representative of Derby's diverse community

Health and Safety

- 5.1 There are no Health and Safety issues arising from this report.

Environmental Sustainability

- 6.1 There are no environmental sustainability issues arising from this report.

Asset Management

- 7.1 Through its commitment to core funding, together with a strategic approach to the city's museums, the Transforming Museums programme is helping maximise external funding opportunities to support and develop the Council's museums assets.

Risk Management

- 8.1 The Council will satisfy itself that the Derby Museums & Arts Trust has a robust business plan and with continued grant funding is viable and sustainable in the long term. The project documentation will include a robust monitoring and review regime with regular reporting in relation to financial and operational matters. The Council will also retain audit rights. In certain circumstances the Council can step in – for example in the case of major health and safety risks. In certain circumstances the Council can terminate the arrangements and take back responsibility for the service to protect the Council's assets e.g. financial failure.

Corporate objectives and priorities for change

- 9.1 The Transforming Derby Museums programme will enable Derby Museums & Arts Trust to contribute towards:
- A thriving sustainable economy
 - Supporting young people to achieve their learning potential
 - Good health and well being
 - A strong community
 - An active cultural life
 - Good quality services that meet local needs
 - A skilled and motivated workforce.

Key Tasks and Dates for the establishment of Derby Museums & Arts Trust

Key: WS refers to Winckworth Sherwood, lead consultants

Task	Lead	Target Date	✓
Approve governing document	All	20 April 2012	
Agree heads of terms for project documents (Part 1)	All	20 April 2012	
Incorporate company	WS	20 April 2012	
Prepare for opening evening	All	20 April 2012	
Hold opening evening	All	11 May 2012	
Prepare selection panel questions	WS	18 May 2012	
Prepare selection panel evaluation criteria	All	18 May 2012	
Agree heads of terms for project documents (Part 2)	All	18 May 2012	
Prepare first draft of business plan	Trust Team	18 May 2012	
Prepare first draft of project documents	WS	18 May 2012	
Shortlist Trustees	Panel	18 May 2012	
Hold trustee interviews	Panel	w/c 21 May 2012/ w/c 28 May 2012	
Select chair and trustees and invite to form shadow board	Panel	1 June 2012	
Fix date of inaugural trustee meeting and regular shadow board meetings	DCC	1 June 2012	
Prepare draft project documents	WS	8 June 2012	
Review monitoring regime	All	8 June 2012	
Review business plan	All	8 June 2012	
Complete induction of trustees	WS	13 July 2012	
Complete detailed familiarisation programme for trustees	DCC	13 July 2012	

Task	Lead	Target Date	√
Open bank account	Trust Team	13 July 2012	
Obtain trustee indemnity insurance	Trust Team	13 July 2012	
Obtain business related insurance	Trust Team	13 July 2012	
Obtain VAT registration	Trust Team	13 July 2012	
Prepare charity application form and support papers	WS	10 August 2012	
All party negotiations of project documents and business plan	All	10 August 2012	
Lodge charity application	WS	14 September 2012	
Prepare final versions of project documents and business plan	WS	14 September 2012	
Approval of project documents	All	14 September 2012	
Approval of business plan	All	14 September 2012	
Preparation of all schedules	All	14 September 2012	
Approval by Trustees	Trust Team	14 September 2012	
Approval by Council	DCC	14 September 2012	
Signing project documents	All	28 September 2012	
Trust Live	All	1 October 2012	

Note:

Project Board Meetings

- 30 March
- 20 April
- 11 May
- 8 June
- 13 July
- 10 August
- 14 September