

# Executive

## Banbury Museum Trust

3 October 2011

### Report of Strategic Director for Environment and Community

#### PURPOSE OF REPORT

To consider an initial report by the Banbury Museum Trust Project Board into the feasibility and options for the creation of a charitable organisation to deliver museum and visitor information services from 2013/14. The creation of such a Trust would ensure the continued delivery of services alongside savings to the Council.

This report is public
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#### Recommendations

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The Executive is recommended:

- (1) To approve the creation of a charitable organisation to deliver museum and visitor information services at Banbury Museum, subject to the agreement of the National Heritage Lottery Fund and Oxfordshire County Council;
- (2) In relation to the charitable vehicle used for the creation of the trust,
  - a. To endorse the use of a Charitable Incorporated Organisation as the preferred vehicle, adopting the 'Foundation' model constitution, with objects suited to the establishment and maintenance of a museum and the advancement of local arts, culture and heritage; and
  - b. To endorse the use of a Company Limited by Guarantee (having charitable status and pursuing identical aims) as an appropriate alternative legal structure for the trust in the event that the preferred vehicle in Recommendation no. 2(a) is not available.
- (3) To approve the working name of the Trust as 'Banbury Museum Trust', with the final decision on naming to be taken by the Trust itself.
- (4) To approve the establishment of a Board of Trustees comprising at least 5 members and including a Council member (to be nominated by the Executive for this purpose), with the number of Council members rising to two should the size of the Board increase to 10 or larger.
- (5) In relation to the appointment of such Trustees,
  - a. To permit the Project Board to interview suitable candidates for Shadow Chairman, any such appointment to be confirmed by the

Executive;

- b. To permit the Shadow Chairman, in consultation with the Project Board, to select, via advertisement or other effective process, suitable candidates for membership of the Shadow Board (in addition to those Council members nominated to the Board pursuant to Recommendation no. 4 above); and
  - c. To authorise the relevant Head of Service to invite the Shadow Chairman and (non-Council) members of the Shadow Board to undertake those roles permanently upon establishment of the Trust.
- (6) To approve retention by the Council of the freehold of the Museum building and Bridge Gallery, granting, instead, a lease of it to the Trust for a minimum period of 30 years, and to authorise the appropriate Head of Service, in consultation with the Lead Member for the Environment to negotiate suitable terms for such a lease with the Trust on this basis.
- (7) In relation to other arrangements for the letting of the premises in addition to the lease of the Museum and Bridge Gallery referred to in Recommendation no. 6,
- a. To sub-let to the Trust the Visitor Information Centre/LinkPoint (including Tooley's Boatyard) (subject to the consent of the Council's head landlords, Scottish Widows and British Waterways) for a like period of 30 years and the appropriate Head of Service be authorised, in consultation with the Lead Member for the Environment to negotiate suitable terms for such sub-lettings to the Trust; and
  - b. To make provision for the Council to occupy the LinkPoint area under a licence from the Trust, such licence to be determinable by either party on 6 months notice, to avoid granting the Council exclusive possession of the area and, being personal to the Council, the benefit of the licence to be incapable of transfer to any other occupier.
- (8) To approve the Council's retaining responsibility for the maintenance of the exterior, structure and principal plant of the premises let to the Trust (subject to any prohibitions contained in the Scottish Widows and British Waterways leases proposed to be sub-let to the Trust pursuant to Recommendation no. 7) so that the Trust shall only be responsible for interior maintenance and decoration.
- (9) To approve the transfer of the Museum Café contract and ancillary Licence to the Trust, such that the same would henceforth be managed by the Trust either directly or through a trading company set up by the Trust for this purpose, with the future operation of the café upon the termination of that arrangement on 13 January 2013 to be determined wholly by the Trust.
- (10) In relation to the transfer of staff,
- a. To note the need to transfer those staff identified as being affected under TUPE requirements and commence a formal consultation process following the Executive resolution to proceed with the formation of the Museum Trust;

- b. To seek Community Admitted Body status for the pensions of transferred staff, or an equivalent scheme should this not be possible;
  - c. To agreed to continue to pay contributions as at present on past pension liabilities and require the Trust to take out a bond to fund any possible future liabilities should the Trust fail;
  - d. To limit the Council's future liability for redundancies relating to transferred staff to three months after the transfer date, and to establish a bond to fund this liability.
- (11) To approve the provision of ICT services (internet, telephony, email, website) by the Council to the Trust under a stand alone service level agreement between the Council and the Trust, for which the Trust will be charged a service fee, with the following exceptions:
- a. An independent internet connection be established for the Trust;
  - b. A dedicated colour laser printer be procured for the Trust;
  - c. Existing PC equipment be gifted to the Trust; and
  - d. The Trust take out its own licences for the software it will use
- (12) With regard to the financial allocation to the Trust;
- a. To establish a shadow budget for the Trust from 2012/13, based on initial assumptions, and use this as a baseline for negotiation with the Shadow Trust Board in establishing an initial financial allocation;
  - b. To agree that the initial financial allocation should not be any greater than the current budget provision for the Museum and VIC, and should reflect the NNDR savings anticipated and
  - c. Subject to the agreement of the National Heritage Memorial Fund, to enter into a five-year funding agreement with the Trust, with a three-year rolling review period.
- (13) To approve an initial financial allocation of £15,000 to the Project for 2011/12 in order to obtain the specialist advice, relevant consents and approvals and other services needed to create the Trust and transfer assets to it.
- (14) To approve the transfer of the museum undertaking, the VIC service, and, where permissible, the Council's interest in any contracts wholly connected with the same which are not expressly considered elsewhere in this report, to the Trust upon its creation.
- (15) To note the timetable for the transition to Trust status proposed by DCA Consultants.
- (16) To ask the Executive to consider any implications arising from the Local Authority Resource Review that impacts upon the savings potential of this project prior to implementation.

## **Executive Summary**

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### **Introduction**

- 1.1 This report summarises the findings and options available to the Council in establishing a Trust for Banbury Museum and Visitor Information Centre (VIC). It supplements the Interim Chief Executive's report to the Executive on the Value for Money Review of Culture and Heritage of 10 January 2010, wherein the Executive agreed in principle to transfer operation of the Museum and Visitor Information Centre to a bespoke Trust developed for the purpose from 2013/14.
- 1.2 A Project Team and Board, comprising two Executive members, was established in January 2011 to establish if the formation of such a Trust was feasible, if the predicted savings were achievable and to outline any relevant issues or considerations for the Executive in reaching a decision on if to proceed. An Issues and Options report for the Project Board, from which this report's recommendations are taken, is attached as Appendix 1.
- 1.3 The report finds that the Medium Term Financial Strategy savings target of £64,000 from reduced NNDR contributions is feasible providing that the Trust incorporates both the Museum and Visitor Information Centre, with all property leased to the Trust. In order to secure the continued operation of the LinkPoint office on the premises without jeopardising the NNDR savings it will necessary to make provision for the Council to occupy the LinkPoint area under a licence from the Trust.
- 1.4 The report makes proposals for the governance, financing, staffing and operation of the Trust alongside resolving the property issues arising from the separation of the service from the Council.

### **Proposals**

- 1.5 To proceed with the formation of a bespoke Trust to operate Banbury Museum and Banbury Visitor Information Centre to operate from April 2013, subject to the agreement of the National Heritage Lottery Fund and Oxfordshire County Council.
- 1.6 To establish a project budget of £15,000 for 2011/12 to progress the work of the project to establish the Trust.
- 1.7 To commence a formal consultation process with staff affected by the proposal.
- 1.8 To permit the Project Board to interview suitable candidates for Shadow Chairman, with any such appointment to be confirmed by the Executive.

### **Conclusion**

- 1.9 The proposal to form a bespoke charitable Trust to operate Banbury Museum and Visitor Information Centre will provide for greater certainty for the future operation of these services together with greater freedoms and flexibilities.

- 1.10 The creation of a charitable Trust will enable the Council to benefit from reduced expenditure on the provision of these services from reduced NNDR contributions.

## **Background Information**

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- 2.1 This report supplements the Interim Chief Executive's report to the Executive on the Value for Money Review of Culture and Heritage of 10 January 2010, wherein the Executive agreed in principle to transfer operation of the Museum and Visitor Information Centre to a bespoke Trust developed for the purpose from 2013/14.
- 2.2 A Project Team was formed to identify the most suitable structure, governance, financial and operational arrangements for a Trust to ensure future viability while satisfying the Council's needs and to achieve savings of £64,000 to contribute to MTFS targets for 2013/14. This has been overseen by a Project Board comprising two Executive members.
- 2.3 The report makes a series of recommendations based on initial work carried out by the Project Team to form the basis for the project moving forward over the next 17 months in the lead up to the creation and operation of a Museum Trust.

## **Summary of Project Findings**

- 2.4 Appendix 1 contains the Issues and Options report prepared for the Banbury Museum Trust Project Board. A summary of the key issues is set out below;
- The move to Trust status requires engagement and negotiation with National Heritage Lottery Fund, who provided the substantial grant to construct the museum, and Oxfordshire County Council who provide the collections. As long as a public museum service continues to be maintained on the site, any claim for a total or partial refund of the grant received from NHLF, whilst plausible, is not anticipated. Similarly, the change to the agreement with Oxfordshire County Council is anticipated to be acceptable.
  - A new legal form of charitable status known as a Charitable Incorporated Organisation (CIO) is scheduled for introduction during 2011 which will obviate the need for charities to be both Companies Limited by Guarantee and Charities. The 'Foundation' model of this vehicle would be the most appropriate to use for a Banbury Museum Trust.
  - The Board of Trustees of a CIO is not subject to the same restrictions as some other charitable vehicles and so can determine the size of the Board and how many Council Members it wishes to nominate as trustees. In order to maintain independence while ensuring effective representation an initial Board size of 5 Trustees is proposed, comprising one Council member nomination, rising to two should the overall size of the Board exceed 10. In addition, a senior Council officer would be present at all Board meetings to give an operational view on issues.
  - A Shadow Chairman should be appointed as soon as possible to provide

early leadership and direction and to negotiate with the Council on behalf of the Trust, with other Trustees recruited using external advertising and by approaching candidates directly.

- The Council should retain the freehold of the Museum building and lease this, the Bridge gallery the VIC/LinkPoint office and Tooley's Boatyard to the Trust for a 30 year period both to satisfy the funding agreement with the National Heritage Memorial Fund and to provide security of tenure for the Trust.
- The LinkPoint office should continue to be operated at the site by means of a Licence giving non-exclusive occupancy to the Council in order to avoid it being construed as a tenancy which would risk the mandatory NNDR relief the Trust would otherwise enjoy.
- Responsibility for maintenance of the exterior of the building and its plant should remain with the Council rather than pass to the Trust as tenant in order to ensure the condition of the Council's asset is ensured and prevent the need for the Council to fund and recharge the Trust for this work.
- The Museum café contract should pass across to the Trust to allow it to determine if it wished to continue to run a café operation or use the space for a different purpose on expiry of the contract.
- All staff working at the Museum or the Visitor Information Centre (including casuals) will transfer across to the Trust under TUPE Regulations. A plan has been devised to meet the consultation requirements of the legislation.
- In line with previous externalisations, the Council should seek to accommodate the pensions of transferred staff through the Trust obtaining Admitted Body status. Should admittance not be accepted then an alternative scheme will need to be identified.
- The Council should retain past pensions cost liability and continue to make contributions towards this, with any future liability for redundancies being restricted to a three-month period following transfer.
- Work has been carried out to explore if savings could be achieved through a reduction in the support provided by the Council to the museum, with a resulting reduction in the level of recharges and so a reduced level of financial support for the Trust. However, as the size of the museum support recharge does not represent significant proportions of individual support staff time, it is not possible to reduce these costs (i.e. reduce the level of staffing) in proportion to the loss of the museum. For this reason, it is not proposed that any support service savings be included in the business case for the Trust.
- The Trust would achieve best value for IT provision if it were to continue to use the Council's infrastructure and support, but would require an independent internet connection to bypass the complex compliance regulations that the Council is subject to. Given its low residual value it would be reasonable for existing PC equipment to be 'gifted' to the Trust

on transfer.

- To assist in negotiations with the Shadow Trust, and to reach decisions about how jointly funded expenditure should best be separated, a shadow budget should be created for the Trust from 2012/13 while the services are still within Council control.
- A dedicated budget is required to further key aspects of the project, in particular procuring expert legal advice for both the Council and the Shadow Trust, and for valuation of the pension liability for affected staff. A sum of £15,000 is estimated to cover the requirements in 2011/12. As the Council will benefit from future reduced revenue support to the Museum, it is proposed that this cost be met by the Council from existing budgets and the Corporate Change Reserve.
- As part of the draft proposals the Localism Bill will give local authorities the power to grant a discount in business rates, enabling them to respond locally to the concerns of local businesses. This may have implications on the proposed NNDR savings to the Council. Once the details of any changes are known it would be prudent to ask the Executive to consider any implications arising from the Local Authority Resource Review (Localism Bill) that impacts upon the savings potential of this project prior to implementation.
- A timescale for implementation of the Trust was proposed by DCA consultants as part of the work for the Value for Money review, and it is proposed that this be used as a basis for guiding the second phase of the project. Detailed implementation plans will be drawn up by the project team to achieve this timescale.

- 2.5 A key consideration in determining the scope of a Museum Trust has been if it should include Banbury Visitor Information Centre. A deciding factor in this consideration has been the impact of likely rates revaluation by the Valuation Officer in splitting the premises into Council-operated and Trust-operated parts. A Trust comprising the Museum building and Bridge gallery only would enjoy the benefits of reduced NNDR contributions, but these would be offset by a significantly increased valuation (and therefore NNDR liability for the Council) for the retail unit in Castle Quay which houses the VIC and LinkPoint Office, leading to an increased cost overall of around £6,600. In addition, a Museum that did not have access to the support currently provided by the VIC would need to procure this, either through employing additional staff or using a service level agreement with a Council-operated VIC.
- 2.6 A Trust comprising the Museum and VIC, where all the premises are leased to this body and arrangements are made to accommodate the continued operation of the LinkPoint office by the Council using a Licence to Occupy, would ensure that all the premises continued to be valued as one unit for rateable purposes and would enable the full 80% mandatory NNDR reduction, giving rise to savings of £67,548 and avoiding the need to procure front-of-house support.
- 2.7 A further key consideration has been the value of current pensions liabilities for staff likely to be transferred. It is proposed that the Trust has a fully funded pension on the date of transfer, meaning that the Council will retain past pensions costs liability and continue to pay contributions as at present. This

will involve no additional cost to the Council as future budgets have been built on covering current pension deficit payments.

- 2.8 The creation of this separate organisation, responsible for the delivery of all its own services, would ideally mean that current support service arrangements with the Council would need to change as a result of the Trust providing its own administrative support. However, due to the difficulty in accommodating the financial impact of such a loss in support recharges this is not feasible, and it is proposed that current support arrangements carry on as at present, subject to the agreement of the Trust.
- 2.9 Current management recharges amount to £20,228. These will need to be absorbed by the Council as they cannot legitimately be recharged or be part of a TUPE transfer.

### **Key Issues for Consideration/Reasons for Decision and Options**

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The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One** Implement all the recommendations of the Project Board in creating a bespoke Trust for the Museum, incorporating Banbury VIC.
- Option Two** Retain the VIC within Council control and restrict the scope of the Trust to the operation of a museum only. This would reduce the level of savings that can be achieved (i.e. no NNDR saving) and would require additional staff to operate a front of house service for the Museum.

### **Implications**

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**Financial:** The project has confirmed the initial savings target of £64,000 is achievable from 2013/14 (estimated currently as £67,584). These will be impacted by the cost of a bond to cover future pensions liability.

Comments checked by Karen Curtin, Head of Finance  
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**Legal:** There are a range of legal powers available to the Council to create a CIO and transfer to it the museum and VIC undertakings, including:

- Section 12 of the Public Libraries and Museums Act 1964 and Section 145 of the Local Government Act 1972 (power to provide museums);
- Section 111 of the Local Government Act 1972 (power to do any thing which is calculated to facilitate, or is conducive or incidental to, the discharge of a function);
- Section 2 of the Local Government Act 2000 (power to promote or improve economic, social or

environmental wellbeing; and

- Section 69 of the Charities Act 1993 as amended by the Charities Act 2006 (for the basic structure and arrangements for forming a CIO) supplemented by the Charitable Incorporated Organisations (General) Regulations (which is currently in draft form) which aims to establish model constitutions for CIOs (expected to be enacted early summer 2011).

Other legal implications and considerations are addressed throughout the background papers to this report.

Attention is drawn in particular, however, to section 5.3 of the report which emphasises both the need and desire to obtain specialist external advice to verify some aspects of this project

Comments checked by Kevin Lane, Interim Head of Legal and Democratic Services 01295 221686

### **Wards Affected**

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All

### **Corporate Plan Themes**

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An Accessible, Value for Money Council

### **Executive Portfolio**

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**Councillor James Macnamara**  
Lead Member for Environment

### **Document Information**

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<b>Appendix No</b>	<b>Title</b>
Appendix 1	Issues and Options Report for the Project Board
<b>Background Papers</b>	
None	
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