

**Open Report on behalf of Richard Wills
Executive Director for Environment & Economy**

Report to:	Public Protection and Communities Scrutiny Committee
Date:	25 July 2017
Subject:	Future Governance Models for the Heritage Service

Summary:

The Council has been exploring ways of reducing the costs of its Heritage Service whilst improving and enhancing its public offer. This report describes the initial work streams and timeframe for exploring potential future governance models for the Heritage Service following Executive approval on 04 October 2016 to assess and analyse these options. This report aims to seek the involvement of the Public Protection and Communities Scrutiny in exploring potential future options.

Actions Required:

Members of the Public Protection and Communities Scrutiny Committee are invited to consider and comment on the report and:

- 1) Support the initial work and timeframe of future actions included as part of the report;
- 2) Highlight any additional priorities for officers to consider as part of the development process, and;
- 3) Approve the formation of a Working Group to consider potential future options, bringing recommended options back to this Committee in October 2017.

1. Background

The Heritage Service in Lincolnshire is diverse and varied, with responsibilities for museums, historic sites and attractions.

In October 2016 the Executive;

1. Approved the implementation of a new model of service delivery for Heritage Services as the means for the Service to contribute to Council savings targets by becoming financially self-sustainable;
2. Noted that the ability of the service to become financially self-sustaining by the financial year 2019/20 is dependent on the service retaining the income it generates in the period 1 April 2015 to 31 March 2018; and

3. Approved the carrying out of further work to assess and analyse options for alternative governance structures for the service with a view to a further report being brought to the Executive.

Since the Executive meeting in October 2016, the Heritage Service has implemented a new model of service delivery to fundamentally transform the way in which Heritage Services are developed and delivered within the County, and has made significant progress towards reducing the level of County Council subsidy required to keep the sites available to the public, as well as generating economic and tourism activity.

A whole service re-structure has been completed, with the new staffing structure implemented on 01 July 2017. The focus of the new staff structure is upon public engagement whilst ensuring fundamental priorities of collection care is core. From 1st July 2017 the new staffing structure will deliver a year on year cash reduction in spend in excess of £500,000

2. Options Appraisal

Attention now turns to the third recommendation made by the Executive – to review potential governance structures for the future.

In the papers presented to the Executive, there was a Detailed Business Case which included a 'long list of options' for future models. These options came from an exercise completed by the Heritage Service in 2013/14, where advantages and disadvantages were considered and options placed in order of preference based upon the circumstances and context of that period in time. The options identified and assessments made in 2013/14 can be seen in Appendix A.

For the avoidance of doubt the Service has included the following sites as within scope for each option, unless otherwise specifically stated:

- The Archives
- Battle of Britain Memorial Flight (BBMF)
- The Castle
- The Collection
- Discover Stamford
- Gainsborough Old Hall
- Museum of Lincolnshire Life
- Usher Gallery
- Windmills

The Council will need to make the decision as to whether its preference is to keep control and build business, income and market or cede control of these assets but realise the immediate savings.

The Service has reviewed the 2013/14 options again given the changes in the financial and political climate as well as the changes and progression within legislation and has considered them to fall under one of two main areas; in-house

or external. The external can further be sub-divided into those which in principle would require procurement¹ and those that would not;

- 1) In – house
- 2) External (No procurement)
External (procurement)

The procurement options perhaps need to be considered with some caution. Generally, the ability of procurement to deliver savings from the market depends on the degree of competition and the commerciality of the bidding organisations. It also depends on the ability of the various bidders to fully understand the nature of the risks they are taking on.

The aim of any procurement in circumstances where the Council wishes the service to be self-sustaining will be to receive bids which require no payment by the Council. Given the lack of a fully developed commercial market for heritage services, the risks involved in the delivery of those services and the nature of the potential bidders as generally not-for-profit charitable enterprises whose ability to take risk as organisations is limited, the prospects of receiving such a bid are considered to be limited.

The 2013/14 list has therefore reduced to the following five main options, all of which fall under the two main areas of 'in-house' or 'external'.

For clarity purposes, reference has been included within the table to the 2013/14 options.

¹ In principle because they involve the awarding of a contract to an external entity not controlled by the Council. Whether a procurement is in fact required will depend on a detailed analysis of the nature and value of the proposed contracts

Area		Option	Description
In - house		Do Nothing (Former Option A)	<p>Remain part of LCC but financially independent of the Council, receiving no budgetary subsidy. However, there may be limitations and constraints to distribution of income and profit.</p> <p>This would see the Service continue to make efficiency savings and drive income generation to eventually be in profit, estimated to be 2020/21. Whilst retaining the Heritage offer to the public and removing the threat of closures of sites.</p>
External	No Procurement	Set up an LCC controlled Teckal company (Former Option C or D – if a member of the company)	<p>This would not require a procurement exercise.</p> <p>This is a company in which the local authority must control all of the shares in the company and must also exercise effective day-to-day control over its affairs; mirroring the relationship between the council and one of its internal directorates. This can be achieved through the governance structure.</p> <p>The company must be “inwardly and not outwardly focused”. The directive requires that at least 80% of the activity of the Teckal company – that is, over 80% of its turnover – must be for its public sector owners. This limits its usefulness if the intention is to trade more widely in order to generate income.</p> <p>Changes to the EU procurement regulations in 2015 mean that local authorities can now undertake 20% trading with third parties outside of their ‘Teckal’ contract. This is calculated based on three years’ turnover – so allows for some smoothing over these years.</p> <p>It should be noted that for the company to be Teckal compliant the courts always turn to the detail of the company structure and constitutional documents. Any Local Authority Teckal Company therefore needs to ensure that the council still has the power to issue directions and that the autonomy of the board does not supersede council powers. Please see http://www.cipfa.org/policy-and-guidance/articles/teckal-the-basics-explained</p>

Area		Option	Description
External	Procurement	<p>Set up a separate legal entity which is controlled by LCC but which is not a Teckal company</p> <p>(Former Option F, G, H, I, J)</p>	<p>This is likely to require a procurement exercise.</p> <p>The entity created could, however, trade more widely outside the County Council services it provides to the County Council because it is not limited to the 20% of turnover that applies to a Teckal company.</p>
		<p>Award a contract to an existing entity which is not controlled by LCC</p> <p>(Former Option L)</p>	<p>This is likely to require a procurement and would amount in essence to an outsourcing of the service.</p>
External	Procurement but with the potential of no procurement	<p>Collaboration or Joint Venture with the Universities in Lincolnshire</p> <p>(Former Option E)</p>	<p>A collaboration with either/both Universities within Lincolnshire to deliver the Heritage Service.</p> <p>This would result within a partnership approach to the delivery of the services; either on a financial or non-financial level.</p> <p>The Universities could offer support, guidance and storage of collections; students could be utilised to deliver projects such as undertaking research, developing digital collections or cataloguing items. They may be able to offer shadowing opportunities around marketing and promotion, to further develop the team without the need for additional recruitment. It is likely that this would primarily focus upon Archive Service and likely not address the public engagement / public attraction side of the Heritage offer.</p> <p>This may well itself require a procurement exercise unless the arrangement can legitimately be brought within a procurement exception governing collaboration between public bodies in the exercise of public functions.</p>

3. Legal Considerations

For those options where the Council may choose to form a separate entity, there are a number of different legal forms that such an entity may take some of which are listed in the table below. Please note this list is not exhaustive. Again, for clarity purposes, reference has been made to the 2013/14 options within this table.

Each of these different types of entity have different advantages and disadvantages in terms of their regulation, tax treatment, legal requirements, ability to distribute profit or attract external funding.

In addition, consideration needs to be given, regardless of the nature of the entity, to whether it is able to attract charitable status which has its own implications in terms of requirements, regulations and tax treatment.

The relationships between these considerations also need to be more fully explored and understood. It is a requirement of charity law, for instance that a charity be independent of the state. This has implications for the extent to which a local authority can control an entity and for it still to qualify for charitable status. This may make charitable status incompatible for instance with the creation of a Teckal company given the level of control required if the Teckal requirements are to be met.

<p>Community Benefit Society (CBS) with Charitable Status (Former Option G)</p>	<p>CBS is an incorporated industrial and provident society (IPS) that conducts business for the benefit of their community. Profits are not distributed among members, or external shareholders, but returned to the community.</p> <p>They;</p> <ul style="list-style-type: none"> - are set up with social objectives to conduct a business or trade - are run and managed by their members - must submit annual accounts - can raise funds by issuing shares to the public - can be established as charities <p>Charitable community benefit societies are currently classed as exempt charities. This means that they enjoy charitable tax breaks such as relief from income tax, corporation tax and capital gains tax, exemption from inheritance tax and relief from business or non-domestic rates, but they are not required to register with the Charity Commission since they are regulated by the Financial Conduct Authority.</p> <p>Please see http://getlegal.bwbllp.com/charitable-status-for-community-benefit-societies</p> <p>Such an option would see minimal oversight or involvement from the Council of the assets or direction. An SLA could be used to contract manage our provider but cultures and behaviours maybe ambiguous and LCC would lose control of delivery.</p>
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<p>Charitable Trust and Company Limited by Guarantee (Non-Profit Distributing Organisation)</p> <p>(Former Option H)</p>	<p>Companies limited by guarantee are widely used for charities, community projects, clubs, societies and other similar bodies.</p> <p>A not-for-profit company will not distribute profits to members but either retain them within the company or use them for some other purpose.</p> <p>The company limited by guarantee will protect the people running the Trust from personal liability for the Trust's debts.</p> <p>There are no shareholders, but the company must have one or more members.</p> <p>Please see http://www.communitycompanies.co.uk/companies-limited-by-guarantee</p> <p>Such an option would see minimal oversight or involvement from the Council of the assets or direction. An SLA could be used to contract manage our provider but cultures and behaviours maybe ambiguous and LCC would lose control of delivery.</p>
<p>Community Interest Company (CIC)</p> <p>(Former Option I)</p>	<p>CIC provide an effective legal form for enterprises which aim to provide benefit to the community or to trade with a "social purpose," rather than to make a profit.</p> <p>While social or community enterprises may elect to become charities, in many cases this is not possible, and in others it may not be desirable.</p> <p>CICs are not subject to the more onerous regulations and limitations which apply to charities.</p> <p>A CIC must;</p> <ul style="list-style-type: none"> - submit a Community Interest Statement - submit an annual Community Interest Report - be subject to an "asset lock" – a provision written into the CIC's articles of association which acts as a means of making sure that any assets are retained by the CIC and not transferred away from it <p>Please see http://www.communitycompanies.co.uk/community-interest-companies</p> <p>Such an option would see minimal oversight or involvement from the Council of the assets or direction. An SLA could be used to contract manage our provider but cultures and behaviours maybe ambiguous and LCC would lose control of delivery.</p>

Form a Commercial Company or Local Authority Trading Company (LATCo)	A company that is organised to make a profit. This would be Local Authority owned, provide separate accounts with a Board of Directors and would provide general powers to trade.
Public Services Mutual	This would be Staff owned. A Teckel does not apply, however there would be minimal powers for Local Authority. Trading must be for social, public or community benefit, this cannot be for profit distribution. Existing powers are within the Localism Act 2011. This could involve the Foundation Trust model.

4. Conclusion

As can be seen from the report, the options available require a complex analysis balancing legal constraints with the financial, administrative, regulatory and other implications of the different approaches and different entities that are available to the Council.

Further due diligence is also required on any constraints imposed by the way in which the buildings and collections are held or the conditions attached to external funding.

We would like to seek permission to form a working group with a cross section of Councillors to review and discuss the five presented options together with the different potential legal entities, with a view to refine this further.

The intention is to then return to Scrutiny in October 2017 with an update from the working group and a refined list of options for further consideration, before the working group meets again to recommend a single option.

The final recommended option will be presented to the Public Protection and Communities Scrutiny in January 2018 alongside a detailed Business Case as part of a pre-decision scrutiny item, before being considered for approval by the Executive in March 2018.

Date	Meeting	Purpose
25 July 2017	Public Protection and Communities Scrutiny	Discussion on initial work streams and timeframe for the exploration of the potential future governance models for the Heritage Service
31 October 2017	Public Protection and Communities Scrutiny	Discussion on further refined options list and their Outline Business Cases
23 January 2018	Public Protection and Communities Scrutiny	Pre-decision Scrutiny item on the preferred recommended option including a Detailed Business Case
06 March 2018	Executive	For approval to implement the recommended option by April 2019

5. Consultation

a) Have Risks and Impact Analysis been carried out??

N/A

b) Risks and Impact Analysis

Risks and Impact Analysis will be completed during late Autumn of 2017 when options have been refined.

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	2013/14 Long List of options for the Future Governance Models for the Heritage Service

7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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