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**Learning & Culture Policy & Scrutiny Committee**

21 March 2016

Report of the York Museums Trust Scrutiny Review Task Group

**York Museums Trust (YMT) Scrutiny Review – Final Report**

**Purpose of the Review**

1. At the outset of its review the task group asked that options be brought forward to meet the following objectives:
  - To ensure that the Council’s financial contribution to YMT:
    - supports the core purpose of the museums and the collections
    - reflects and furthers the distinctive interests of York residents in the city’s museums
    - provides long-term confidence in the Council’s commitment to the museums in order to secure the commitment of other funders / investors
    - gives YMT a viable financial planning window
    - supports an agreed capital development plan that YMT and the Council will take forward in partnership
  - To identify the most appropriate custodianship arrangements to:
    - provide protection in perpetuity for the buildings and collections, ensuring that they are conserved and remain in the city
    - ensure that the collections continue to grow
  - To enable YMT to operate effectively as a business-like charity

**Consultation**

2. A Council press release was issued in early March 2016 in support of this review, suggesting members of the public may like to submit their views via email on what they hope for from York’s museums in the future. Only a limited number of submissions were received – see Annex A.

3. The press release also suggested that members of the public may like to participate in the review by registering to speak at the Task Group's final meeting or at this meeting of Learning and Culture Scrutiny and Policy Committee.
4. Representatives from YMT attended all of the Task Group meetings and contributed to the discussion on the information provided.

### **Information Gathered**

5. Over a number of meetings the Task Group received information in support of the review. This included:
  - Ideas for core partnership objectives in any future agreement
  - A presentation from YMT with regard to its current financial plan
  - A presentation from YMT on its emerging capital development ideas
  - Information on the current legal structure of the relationship between the Council and YMT
  - Information on the current charities, the properties and collections, and the potential for a new charitable scheme

6. Core Partnership Objectives

The following list of core partnership objectives was presented for the Task Group's consideration. These were drawn from the founding documents from when YMT was established and subsequent "Partnership Delivery Plans", enhanced and updated to reflect the Task Group's discussion at its first meeting and the objectives that the Task Group set out:

- Creation of museum and gallery provision capable of contributing to positioning York as a world class cultural centre
- Provision that is a source of inspiration and enjoyment for all and a stimulus for learning and skills development
- The protection and conservation of the collections, gardens and buildings for future generations including improved storage
- Promotion of the city's museums and collections through a varied range of activities which could include exhibitions, displays, community projects, volunteering opportunities, formal learning for schools, informal activities for families, and adult learning
- Increased access to the city's collections, gardens and buildings and increasing visitor numbers, especially young people

- Recognition of the special significance of the museums and gallery for York residents through the maintenance of pricing incentives for York residents and opportunities for free access
- The facilitation of outreach activities and pricing mechanisms designed to encourage visits by those who do not traditionally use the museums or gallery
- Excellent customer service and visitor experience
- Improved public realm<sup>1</sup> through capital investment and imaginative interpretation schemes
- Active international partnerships to enhance public programmes, to increase YMT's and the city's reputation, and to raise funds
- Retention of registered museum status and development of the designated collections to ensure maximum public benefit
- The maintenance of the Museum Gardens on the Register of Parks and Gardens of Special Historic Interest maintained and the register of botanical gardens
- Public access to the Museum Gardens daily (except relevant Christmas / New Year holidays) unless closure is necessary for reasons of public safety
- Effective, open and transparent governance including effective access and equalities policies covering trustees and staff recruitment practices

## 7. Current Financial Plan

YMT provided an indicative 3 year financial plan, based on current funding levels from the Council and Arts Council England, for the Task Group's consideration - see Annex B. The purpose of this was to demonstrate a potential format in which YMT could present their future financial plan to the Council annually, as public information, for the purpose of negotiating the Council's financial contribution to YMT.

## 8. Capital Development Ideas

YMT also provided a presentation on their emerging capital development ideas – see Annex C. Again, the purpose of this was to demonstrate the

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<sup>1</sup> All the publicly owned and publicly accessible land associated with the museums and gallery i.e. the squares, pathways, right of ways, gardens and open spaces, as well as the buildings and facilities

type of information that the Council might receive from YMT annually as part of the process for developing and renewing the funding agreement.

9. The Current Legal Structure and the Potential for a New Charity

10. **Legal Structure:** The Task Group received information on the key legal agreements that currently govern the relationship between YMT and the Council:

- YMT's Memorandum and Articles of Association
- The Funding Agreement
- The Transfer Agreement
- The Building Leases
- The Collections Loan Agreement
- The Scheme for the Yorkshire Museum and Gardens Charity
- The Kirk Deed

11. It was noted that these agreements were created at a time when circumstances were very different. The principal issues noted with the current arrangements were that:

- Since 2002 the Council's support to YMT has decreased by 74% in real terms such that it now represents less than 10% of YMT's income. The implications of this are that:
  - The Council has much less control, in practice, over YMT's actions
  - It is unrealistic to expect the relationship to continue on the basis of detailed reporting back on a myriad of specific targets
  - YMT increasingly needs to be able to operate as a self-sustaining organisation, adapting their business model and seeking new ways to create funds
  - YMT has already created a new relationship with its visitors, including York residents, through the creation of the YMT card. The inappropriate inclusion of clauses within building leases relating to access for York residents (clauses which would not normally be found in building leases) needs to be addressed
- The Council has not maintained the 5 year funding agreement. It was noted that it will be essential to restore the confidence of other funders through a new funding agreement.
- The Collections Loan and Management Agreement has only 11 years left to run. Furthermore, it provides that any additions to the collections

are transferred to the ownership of the City Council. Given the lack of legal protection for the collections of the Art Gallery and Castle Museum potential major donors do not have sufficient confidence to transfer their collections into the ownership of a local authority. As a result, the city is missing out on potential significant collections: the best that can be achieved in these cases is a long-term loan. There is a real risk at present of the collections failing to grow and potentially significant new collections going elsewhere.

- The leases have 21 years left to run. This is insufficient to attract further major investment funding.
- The above issues taken in the round mean that there is now inadequate protection for the long-term security of the city's museum buildings and collections.

12. **The Yorkshire Museum and Gardens Charity:** The Yorkshire Museum was originally opened in 1830 by the Yorkshire Philosophical Society. The Yorkshire Museum & Gardens is a linked charity to YMT, sharing its charity registration number (1092466) and being treated as forming part of YMT for registration and accounting purposes.
13. YMT is the managing trustee for the Yorkshire Museum & Gardens whilst the Council is the custodian trustee. The duties and responsibilities of a managing trustee and a custodian trustee are different. The role of custodian trustee is limited in scope but important as the custodian trustee formally holds the trust property and can refuse permission for changes which constitute a breach of trust. In this way it acts as a check on use of the assets outside of the initial agreed charitable purpose.
14. The managing trustee on the other hand is responsible for the general control and management of the administration of the charity, including the exercise of any power or discretion exercisable under the trust. A managing trustee has the ultimate responsibility for directing the affairs of the charity, ensuring it is well run and meeting the objectives for which it has been set up. There is, in relation to the financial affairs of the charity, a duty of care and a duty to act with integrity, along side the other trustee duties.
15. All of the property of the Yorkshire Museum and Gardens charity is subject to the terms of the Charities Act and the particular land and buildings listed within the Scheme have an additional level of protection in that they must be retained for use for the object of the charity.

16. **The Kirk Deed:** There is a separate Charity Commission Scheme document in relation to the Kirk Collection of Bygones and again the Council is custodian trustee and YMT is managing trustee in the same way. This Scheme relates to that part of the Castle Museum collections that was originally donated to the City by Dr Kirk in the 1930s.

### **Analysis**

17. In regard to the future legal relationship between the Council and YMT, having considered the information provided, the Task Group agreed that it should be based on two key building blocks, replacing all the current agreements and leases:
- A funding agreement which would govern how the Council would fund YMT
  - A charity with a governing document or scheme, which would set out how the buildings and collections would be managed
18. The Funding Agreement  
The Task Group agreed with a proposal that the future funding agreement be made up of four core elements:
- i) *Common Partnership Objectives for Museums Provision* – The Task Group agreed the appropriateness of the suggested objectives listed at paragraph 6.
  - ii) *Agreed Reporting Mechanisms* - The Task Group agreed that it would be appropriate for YMT to continue to report back to the Council via Learning and Culture Scrutiny Committee twice a year. The report should cover the activities of both YMT and the Council, highlighting development and challenges against:
    - The Core Partnership Objectives
    - The Long-Term Financial Plan
    - The Capital Development Plan
  - iii) *A Long-Term Financial Plan* - Having considered the example 3 year financial plan at Annex B, the Task Group agreed that the format and level of detail was appropriate to inform the negotiation of the Council's annual contribution to YMT; however, they agreed that it would be preferable to extend it to form a 5 year rolling plan in order that it would provide a planning window more consistent with the capital

development plan and the funding cycles of the Arts Council. It was also agreed that a narrative would be needed to support the figures presented providing a commentary on issues such as expected income levels and the variables that could affect this, planned efficiency measures, levels of reserves required and so on.

The Task Group noted that the financial plan would need to provide for a healthy bottom line that would provide a contingency against shortfalls in income, build up depleted cash reserves, assist with the cash-flow requirements of capital projects, and provide match funding for capital projects (it was noted that the indicative levels forecasted in the indicative version at Annex B will not do that).

iv) *A Projected Capital Development Plan* – it was noted that YMT were at an early stage of developing a new capital development plan, focussing on:

- The Castle Museum
- The Museum Gardens
- Storage Consolidation
- Yorkshire Museum - expansion of Public Space

The Task Group agreed that the development plan should identify the respective roles of YMT and the Council within it, the financial areas where YMT would seek support from the Council and other areas where the Council can support delivery of the plan. It should also set out:

- Timescales
- Projected capital requirements
- Outline fundraising strategy
- Connections with partner projects
- Project management and procurement strategies
- Risk assessments

## 19. The Process for Updating the Funding Agreement

In considering how best to establish, maintain and update the Funding Agreement, it was proposed that an annual discussion take place between YMT and the Council. In support of that discussion YMT would need to provide their refreshed 5 year financial plan and an updated capital

development plan. It was also proposed that the annual discussion should take place during August-September each year so that the product of the discussion can be factored into the Council's annual budget setting process. Once the budget for the following financial year is set in February the updated Funding Agreement can be formalised by the relevant Executive Member.

20. It was recognised that it is essential for the Council to continue to make an annual revenue contribution to YMT and that it will not be helpful to YMT for this contribution to be capitalised. It was also recognised that the Council would need to provide YMT with as much certainty about its funding contribution over the life of the 5 year financial plan as it could (recognising that the Council cannot commit future administrations with regard to grant funding levels).
21. It was agreed that the Council's financial contribution should be in respect of the core purpose of maintaining and operating the properties managed by YMT.
22. Charitable Scheme

Consideration was given to the multiple legal agreements currently in place. It was agreed that improved protection is needed for the buildings and collections to ensure that:

- The existing collections remain in the city
- York's collections are used to full advantage for the benefit of York's residents and visitors
- The collections grow

In order to identify the most appropriate custodianship arrangements to ensure the above, the Task Group were asked to consider the benefits of putting all the museum and gallery assets onto a similar basis to those of the Yorkshire Museum and Gardens, i.e. under a charitable scheme, which has the Council as custodian trustee and YMT as managing trustee. In considering that approach the Task Group agreed that any new scheme should:

- Put a double-lock protection on the assets so that neither YMT nor the Council could dispose of or use them outside of the terms of the governing document or scheme without the other's consent (and, in the case of the core assets, the Charity Commission)



- Provide clarity and consistency of approach regarding the long-term use and management of the assets
- Reassure potential donors to the collections regarding the long-term security of their donations
- Reassure potential funders, legacy donors and others regarding the long-term security of their contributions
- Demonstrate the long-term commitment of both the Council and YMT to a partnership approach to protect, preserve and enhance the assets for the public good

### **Review Recommendations**

23. At its final meeting in March 2016 the Task Group agreed to make the following review recommendations:
24. In regard to the Council's financial contribution to YMT that:
  - i. A Funding Agreement be developed and maintained consisting of four elements: *Common Partnership Objectives for Museums Provision; Reporting Mechanisms; A Long-Term Financial Plan; A Projected Capital Development Plan*, as set out in paragraph 18
  - ii. YMT provide a 5 year rolling financial plan with commentary (at the level of detail given in Annex B) to support the Council in its consideration of its contribution to maintaining YMT's core business.
  - iii. YMT provide a long-term capital development plan to inform the Council's consideration of its support of YMT's capital development programme.
25. In regard to future custodianship arrangements:
  - iv. A consistent charitable framework to be implemented for all assets and collections, which addresses the objectives set out at paragraph 22, and which, together with the proposed Funding Agreement, replaces the various current legal agreements.

26. To ensure YMT can operate as an effective business-like charity:
- i. The *Common Partnership Objectives for Museums Provision* at paragraph 6 be endorsed as the partnership's long- term shared intentions
  - ii. The reporting arrangements set out at 18 ii) to be adopted and this committee to receive bi-annual reports on developments and challenges with respect to the Common Partnership Objectives, the Financial Plan and the Capital Development Plan as the basis for discussion on shared opportunities for the partnership between the Council and YMT

Reason: To inform the future renewed agreement between YMT and the Council, and to conclude this review in line with scrutiny procedures & protocols

### **Implications**

27. **Legal** – In regard to recommendation (iv), in an effort to ensure one coherent approach across all museums and assets, appropriate legal advice will need to be sought to identify the best approach e.g. whether the existing charitable scheme can be extended or whether a new scheme is required, before a report is made to the Executive Member. Discussion will also be required with regard to whether all the assets should be included in the charity or whether there should be any exceptions.
28. **Financial** – The Council's annual grant to YMT is £607k in 2015/16. The scrutiny review demonstrates the outstanding success of YMT in operating with a council grant 74% lower in real terms today than that required back in 2002, such that the Council's funding now represents less than 10% of YMT's income. This compares very favourably with other services across the country.
29. The Executive previously agreed a plan to reduce the funding by a further £100k each year for three years commencing in 2015/16; however, this saving was deferred in the budget process. This was reflected in the 4 year financial strategy, set out in the budget report, which referred to "a saving through a reduction in the YMT grant contribution as YMT explore alternative funding and income generation options. This includes a £100k saving agreed by Executive in September 2015, which has been deferred to 2017/18 to allow for discussion with YMT". Keeping the funding at the

same level in 2015/16 demonstrates that the Council is not abandoning the highly successful partnership with YMT through which these important Council services are delivered.

30. The legal costs associated with recommendation (iv) will be shared between the Council and YMT, and should be possible to contain the council's costs within existing budgets.
31. There are no other known implications associated with the recommendations arising from this review.

### **Risk Management**

32. The public still perceive the museums in York as a council service and therefore any reduction in that provision is likely to reflect negatively on the Council. Without a renewed funding agreement between the Council & YMT it will not be possible to ensure long-term confidence in the Council's commitment to the museums, or secure the commitment of the Arts Council or other funders / investors. Should significant external funding be lost, YMT could become unviable. The ultimate risk in these circumstances would be of the museums and collections being handed back to the Council in which case the Council would immediately become liable for the maintenance, storage and conservation costs of the buildings, gardens and collections currently in YMT's care which represents over £900k of YMT's current expenditure. It should be noted that this is before the cost of operating the museums as visitor venues.
33. Improved custodianship arrangements will mitigate the concerns potential funders and legacy donors have about the long-term security of their contributions, which has previously prevented YMT from expanding the city's collections.

### **Contact Details**

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**Report Approved**  **Date** 16 March 2016

**Wards Affected:**

**All**



**For further information please contact the author of the report**

**Background Papers:** None

**Annexes:**

**Annex A** – Online Consultation Feedback

**Annex B** - Indicative long-term financial plan

**Annex C** - Copy of Presentation on YMT Development Plans