

Report of the Cabinet Member for Health, Housing and Adult Social Services

## **Business Case for the creation of a Warden Call/CELS Social Enterprise**

### **Summary**

1. This report provides a summary of the planning underway in developing and evaluating the Integrated Business Plan for the Community Equipment Loan and Warden Call/Telecare Service (CELTAS) to become a social enterprise. This report is seeking approval:
  - of the proposed governance structure and legal form
  - to proceed initially in shadow form to facilitate a smooth transition
  - and receive a further report in December 2013 to update on progress and seek approval for a 1 April 2014 start date for the social enterprise

### **Background**

2. CYC CELTAS provides a 24 hour monitoring and response service to approximately 3,000 customers in York. The telecare service has over 1,600 customers who have at least one piece of telecare equipment installed. In 2004/5, the Community Equipment Loan Store provided 19,000 pieces of equipment. A year-on-year increase to 46,046 pieces being provided in 2011/12 (including health and social care products) represents a 142% increase.
3. A new social enterprise for this service will, if created, be the first of its kind in the UK. The unique combination of service areas (Warden Call and Community Equipment Loan Store) is not provided in this way anywhere else. If approved, this will also be the first service to 'spin out' of City of York Council to create a

mutual that is majority staff-owned and with the council continuing to have part ownership.

## **The Development of Public Service Mutuals**

4. The desire to create social enterprises as an alternative delivery model to public services has been driven by the Cabinet Office where the Mutuals Team states:  
*“The case for public service mutuals is a simple one. Mutualisation can transform the delivery of public services. Mutuals can deliver substantial benefits to a wide range of public service stakeholders.”*
5. Evidence demonstrates the benefits of greater employee ownership and/or control includes:
  - **Increased productivity** - eg Central Surrey Health made 41% productivity gains – creating 76 more treatment slots for patients per week
  - **Increased motivation** - eg In Central Surrey Health 98% of co-owners say they go beyond what is normally required. The industry norm is 84%
  - **Increased innovation** - eg Central Essex Community Services, following a staff proposal, is funding a pilot using iPads to give patients requiring speech and language therapy their interventions remotely and save them travelling to clinics
  - **Increased employee wellbeing** - eg Employee wellbeing tends to be higher in mutuals. Absenteeism is often lower, for example Sandwell Community Caring Trust saw absenteeism fall from 22% to less than 1% over a 10-year period
6. Drivers for change:
  - service needs to consider alternative options in the face of current fiscal pressure
  - “personalisation” of services and emergence of personal budgets will lead to a more direct relationship between customers and providers leading to more competition between providers
  - City of York Council’s services will need to change, to become more competitive and to keep up with these developments, if they are to survive and thrive

- transfer of services to new social enterprise will help meet dual aims: modernisation and the reduction of costs
  - development as a social enterprise will help the service, which is highly valued by the people who use it, to develop and thrive in a competitive market
7. The team developing the CELTAS Social Enterprise believe that:
- the new service will be more flexible and responsive to client needs
  - new business opportunities can be realised to help secure financial efficiency and sustainability
  - the new organisation is intending to work closely with Science City York to ensure it is at the forefront of technological developments thereby providing the customers with the most innovative solutions possible to maintain their independence
  - staff working within the new organisation will be more motivated and driven to work harder, smarter and more consistently as they have greater ownership of and involvement with the business
  - financial surpluses will be invested in the organisation to fund development of the service, technology and workforce to ensure the service is as good as it can be
  - innovation in equipment and provision of a wider range of options will be invested in (using financial surpluses) and the new organisation will be flexible enough to be able to respond quickly to new market developments
8. The CELTAS project team also believe that to be able to function successfully in the changing market, the service needs to be able to compete on price as well as quality. By being able to use innovative and creative business ideas they hope to create a business that can use any surplus money to allow greater service provision to more customers (ie in line with the demographic projections) at no extra cost to the council.

## **Consultation**

9. The CELTAS project team have been engaging with staff since the concept of Right to Provide/social enterprise development became a viable option. The project team recognise that they must continue to engage with all staff to ensure they understand and

can then decide if they agree with the vision and development of the social enterprise.

10. Three workshops were held for the CELTAS staff. The first workshop in October was to address any issues/concerns and answer any questions that they had, as well as introducing the 'spinning-out' process and running a 'visioning' session to help shape the look and feel of any new enterprise. In the second workshop we discussed the vision, mission and values of the potentially new organisation, and again addressed any issues, concerns or questions that they had. A further session was held (in early December) with staff to communicate the progress that had been made and, again, answer any issues, concerns or questions that they had. We also produced and issued a Frequently Asked Questions paper to address the 60+ questions raised by staff during the business planning process.
  - at the time of writing the majority of staff have had a 1:1 sessions during which all have agreed that they will completely commit to this if the decision is that we proceed to a Social Enterprise
  - staff have also attended workshops with the CEO of Social Adventures who spoke to them about having been through the process and what life is like on the other side. These workshops were very well received by staff
  - discussions have taken place with health and other external stakeholders. Meetings with staff have been held with Unison and GMB in attendance where possible and discussions held at the ACE DJCC
  - in addition Unison and GMB have fed back the concerns of staff in meetings they have held during the work to date on the Social Enterprise. These have then been responded to by managers in the service, in a Frequently Asked Questions document and the provision of HR advice on TUPE and pensions
11. The initial work completed by the whole staff group is shown below in the vision, mission and values that they have set for the new organisation.
12. The Social Enterprise's vision describes its ambition and what it is the organisation hopes to achieve:

*We will create a high quality, comprehensive and sustainable telecare and equipment service that redefines care delivery, and helps people manage their lives and stay independent in their own homes through life enhancing equipment solutions.*

13. The mission sets out how the enterprise will achieve this vision. The enterprise would achieve the vision by:
  - supporting social, health and wellbeing by offering advice, signposting and a wide range of solutions to our customers
  - working with partner organisations across all sectors to prevent hospital admissions and prolonging, wherever possible, a quality of life at home
  - providing support and reassurance for both formal and informal carers
  - being committed to equality and fairness
  
14. The customers are at the centre of everything the business will do; the organisation understands that every customer is unique and will treat them that way. The values will be at the heart of the organisation and will create the culture and influence the way the organisation and its members conduct themselves:
  - COMMITMENT - we pride ourselves on our commitment to maintaining the public trust and respect through a commitment to the highest standards of customer service
  - INTEGRITY – we will be truthful, open and honest; we will maintain consistency in our actions, values and principles
  - RESPECT – we keep our promises. All actions are guided by absolute honesty, fairness and respect for every individual
  - SERVICE EXCELLENCE – we strive to be the best that we can be and to deliver excellence in everything we do
  - PASSION – we will use energy, dedication and commitment to make a difference by helping our customers improve their health and to change their lives for the better
  - COMMUNITY - we are perceived as a trusted partner and dependable community resource
  - TEAMWORK - respect the value and contribution of each individual

15. Two externally facilitated focus groups have been held to assist understanding of the views of customers and interested others. They were well attended and a number of local groups as well as customers and family members were represented.
16. The proposal has also been discussed within the Older Peoples Provider Forum, Age UK and at the York Older Peoples Assembly. The themes running through all of the discussions held so far are:
  - overall that they were extremely happy with the current service and were passionate advocates of its continuation
  - concerns regarding whether there will be a financial impact on customers
  - some were worried about changes to the service as they appreciated its quality and wanted as many people as possible to enjoy the service in the future
  - customers (and carers) of the service were most interested to hear about benefits of any planned changes to the organisation of the service
  - requests were made for a prompt update of the outcome of the Cabinet decision and a clear explanation of the advantages of the move from a council-provided service to a social enterprise
17. An information sheet was prepared for customers with the assistance of our communications team and this was sent out to all warden call customers along with a feedback form to allow customers to be able to voice their thoughts.
  - to date 559 replies have been received and 67.4% are in favour, 19.7% would like more information and 12.9% disagree
  - ten telephone messages have been left on the dedicated phone line, two of which were in favour, three did not have any comments to make, three wanted more information, one left no message and one was cut off
18. A dedicated email address has been available to allow customers and their families to provide us with their comments electronically.
  - so far five emails have been received three requesting further information and two in favour as long as the price does not change

19. The information sheet has also been available on the CYC website showing the email address for anyone to leave comments if they wish to do so.
20. It is the intention to use this feedback to continue dialogue with customers and third sector organisations throughout the transition phase to ensure all are being included in the process and kept up to date with information on progress.
  - the greatest number of comments relate to concerns that the SE will mean increases in charging
21. There is a proposed consultation with customers on the introduction of a tiered charging system for warden call customers due to take place through the end of April and into the beginning of May. A report will then be presented in June to the Cabinet Member for Housing, Health and Adult Social Care.

## **Options**

### **Proposed governance structure and legal form**

22. Expert legal advice has been taken from Bates, Wells and Braithwaite (the UK's leading charity and social enterprise lawyers) on appropriate legal forms for the new enterprise<sup>1</sup>. They have recommended two potential options as being the most appropriate for meeting the requirements, both of which would involve constituting the new enterprise as a Company Limited by Guarantee.
23. A Company Limited by Guarantee in an incorporated legal form meaning that it is able to enter into contracts (including employment contracts) and own property in its own right. It has limited liability so that its members cannot be held liable for more than the nominal guarantee of £1. Members will generally not incur personal liability unless it can be shown they failed to fulfill their duties.
24. The first option would be to establish the enterprise as a Company Limited by Guarantee in the form of a Community Interest Company (CIC). A CIC is a particular type of company that uses its assets and profits for the community benefit and is regulated by both Companies House and the CIC regulator. To be registered

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<sup>1</sup> Refer BWB Governance and Legal Form Options Paper

as a CIC, a company must show that it is established in the interests of the community; and each year the directors must complete a form demonstrating how it has met the community interest. The Articles must also conform to the statutory requirements; in particular it must have an asset lock which means that the wealth of the company can never be distributed privately to individuals or for non-community interest purposes. Therefore, the assets must be used solely for the community interest or transferred to another organisation which also has an asset lock such as a charity or another CIC.

25. The second option is to establish the enterprise as a Company Limited by Guarantee in the form of a Charitable Trust. Charity is a status that attaches to an underlying legal form rather than a legal form of itself. There are potential financial benefits associated with charity status. The first is that any surpluses generated by the enterprise would be exempt from corporation tax. The second is that the enterprise may be able to benefit from zero rated VAT on some of its services as a charity, meaning that the new enterprise would not be required to charge customers VAT and would be able to recover any VAT it is charged on supplies and other inputs.
26. It is recommended that the new organisation is established as a Community Interest Company (CIC), in the form of a Company Limited by Guarantee. As a CIC there is the flexibility to offer staff ownership in the form of membership of the enterprise. This would be difficult if not impossible as a charity as trustees of charities must be unpaid. The Community Interest Company form also provides a degree of regulation and an asset lock.
27. It is proposed that the new organisation will have a governance structure that is proportionate and appropriate to the scale of the organisation. Two forms of membership of the new enterprise are proposed. Staff would be “staff members” with the power to nominate and elect a “staff director” from their group to take a position on the board of the new enterprise. There will be five “members” who will be responsible for the strategic management of the business and will hold the statutory responsibilities of company directors under company law. Alongside the “staff director”, will be the chief executive officer and three non-executive directors. We propose that the City of York Council in the first instance appoints the chief executive officer (with future performance management, removal and appointment of this

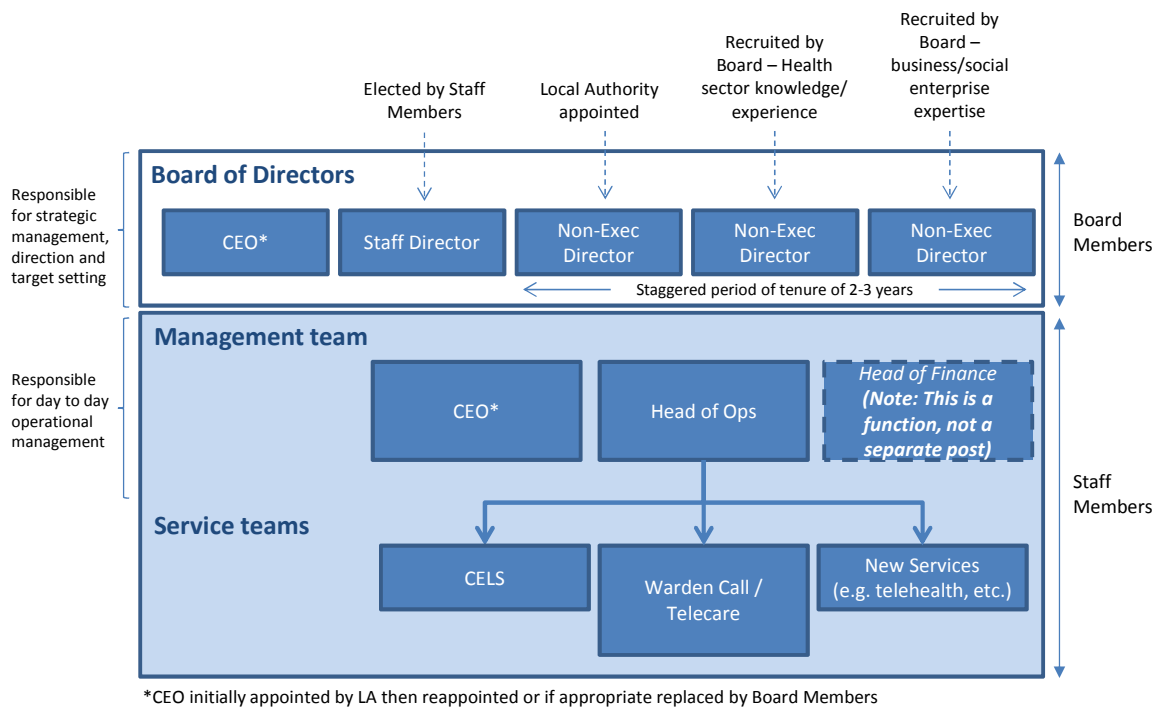


position then becoming the responsibility of the board). The LA will retain the power to appoint one non-executive to the board, thereby influence but avoiding the need to consolidate accounts or take on any future liabilities of the enterprise – the LA would effectively retain 20% ownership through the non-executive director. See Figure 1 below – proposed governance structure.

28. In addition to the governance structure proposed, one or more advisory committees will be established to enable different key stakeholders/stakeholder groups, including users, to be involved and have their input to the new organisation. Whilst these committees would not have any formal decision making abilities, it is anticipated that any key outcomes/requests/etc. From these meetings would be tabled at the management team meeting, and latterly the board meeting.
29. As well as user representation on one or more advisory committees, a user could also be appointed a non-executive director provided that they have the appropriate skills and experience.

### **Rationale for ownership model**

- ownership by staff increases buy-in and involvement in design and delivery of services, productivity, innovation and organisational resilience
- aligns with Localism Act, Open Public Services, National policy and changing delivery landscape
- recognises that the LA is a customer of services and has a need to secure delivery of statutory services
- LA power to appoint one non-executive to the board, thereby influencing but avoiding the need to consolidate accounts or take on any future liabilities of the enterprise
- 20% is the threshold of influence – LA ownership stake >20% would mean that the council would be required to account for liabilities of the SE in annual reports



**Figure 1 – Proposed governance structure**

30. It is proposed that the above governance structure is established and run in shadow form from May/June 2013 up until go-live in January/April 2014 (timescales to be confirmed). This will enable coaching and mentoring of the management team (and board), as well as any issues to be identified and rectified before the new organisation is formally awarded the CELTAS contract.

## Analysis

31. The options and recommendations presented above regarding the legal form and governance structure for an independent social enterprise assumes that CYC, by approving the Expression of Interest, has agreed that the preferred option for the future service delivery of CELTAS is by an independent social enterprise.
32. Below is a summary of the main options that are available to CYC/CELTAS team and the impact that each option has on the key considerations addressed during the development of the Business Plan. The 'Do Nothing' and 'CELTAS is outsourced' options have not been covered below as it is felt that these options are least in-line with the intention of the Business Plan. (Note: This summary focuses on the delivery models rather than different legal forms, as this has already been addressed in the BWB Governance and Legal Form Options Paper).

Key Considerations	Alternative Options	
	1	2
	<b>CELTAS as an independent social enterprise with part ownership by CYC.</b>	<b>CELTAS as an independent staff-owned social enterprise.</b>
Ownership	20% ownership by CYC, 40% by staff (incl managers) and 20% by each of the two other non-executive directors.	100% owned by CELTAS staff.
Asset (and Liabilities) Transfer	It is proposed that assets will be transferred to the new organisation at market value (given the relatively low value of the equipment and also that no buildings or land is being transferred), else they will be leased at a 'peppercorn rent' rate. If the latter approach is used (which is the default method that has been used by groups spinning-out under 'Right to Provide') the responsibility for the maintenance and replacement of assets would lie with the new organisation (or if CYC prefers the responsibility could remain with CYC). This avoids the issue of state aid <sup>2</sup> as these assets would be made available to the successful bidder as part of the contractual terms, rather than specifically to the new organisation.	As per option 2.
Procurement / commissioning route	No automatic procurement exemption for any contracts, but uncontested contract agreed for initial (current) contracts.	As per option 2.

<sup>2</sup> The total de minimis aid provided to any undertaking must not exceed 200,000 Euros over any period of three fiscal years.

<b>Key Considerations</b>	<b>Alternative Options</b>	
	<b>1</b>	<b>2</b>
	<b>CELTAS as an independent social enterprise with part ownership by CYC.</b>	<b>CELTAS as an independent staff-owned social enterprise.</b>
Access to Local Government Pension Scheme	The new organisation would need to apply to North Yorkshire County Council LGPS to gain admitted body status (ABS), or possibly the comparable admitted status for community bodies (CAB) - the appropriate route for the new organisation will be decided by the LGPS - to enable continued access to the LGPS.	As per option 2.
Mutualisation Benefits (ie from staff ownership)	As a 40% staff (incl managers) owned organisation, Mutuals Taskforce evidence would suggest that the benefits and efficiencies will be greater than an LATC but less than a 100% staff owned enterprise.	Evidence shows that the greatest benefits and efficiencies are achieved when organisations are wholly owned by the staff.
Consequences of failure (ie making continual losses)	Limited liability status would protect staff/owners against liability of losses. Service would be closed or staff could be TUPE'd back to CYC/to a new provider and staff continue to run the service.	Limited liability status would protect staff/owners against liability of losses. Service would be closed or staff could be TUPE'd back to CYC/to a new provider and staff continue to run the service.

Key Considerations	Alternative Options	
	1	2
	CELTAS as an independent social enterprise with part ownership by CYC.	CELTAS as an independent staff-owned social enterprise.
Summary & Conclusion	<ul style="list-style-type: none"> <li>• Similar levels of transitional activities required to establish organisation as a CYC-owned organisation.</li> <li>• Through its ownership (20%) there is, to an extent, a 'safety net' if service fails/continually operates at a loss. (CYC ownership of &gt;20% would mean that the council would be required to consolidate the accounts of CELTAS and therefore any liabilities of the organisation would still fall to the council should the organisation fail.</li> <li>• Joint ownership increases buy-in and involvement in design and delivery of services, possibly including a user as a non-executive Director.</li> <li>• Aligns with Localism Act, Open Public Services, National policy and changing delivery landscape.</li> <li>• High level of benefit from mutualisation.</li> <li>• High level of flexibility to grow and diversify service.</li> <li>• <b>This is our preferred option as it provides the non-centralised approach required to grow the business, whilst also having direct involvement and ownership from key stakeholders, including CYC.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Similar levels of transitional activities required to establish organisation as a CYC-owned organisation.</li> <li>• No substantial 'safety net' if service fails/continually operates at a loss.</li> <li>• Aligns with Localism Act, Open Public Services, National policy and changing delivery landscape.</li> <li>• Greatest benefit from mutualisation.</li> <li>• Greatest flexibility to grow and diversify service.</li> <li>• <b>This option provides the non-centralised approach required to grow the business and the ability to tailor the governance and management models provide some further advantages over an LATC.</b></li> </ul>

33. Desirability of the Social Enterprise for the customers:

- secures the future provision and development of these services – ability to retain surpluses and invest in service improvement
- improved responsiveness – decisions taken closer to the user, greater empowerment of frontline staff
- new opportunities to expand service lines, innovate and develop partnerships to improve the quality of outcomes for users
- builds on existing high standards/highly regarded services/ quality of service – provides clear vision to improve health and wellbeing outcomes

34. Desirability of the social enterprise for the council:

- intangible benefit of ownership/association with innovative, high quality service provider
- significant financial and service quality benefits for the council
- provision of social care services to a wider audience through increased marketing and geographical spread
- additional realisation of budgeted savings of £50k to £200k in years two to five made possible through introduction of additional revenue generating services
- further notional savings due to no inflationary rise in la contributions over the period (c £194k), where funded customer numbers are also likely to grow
- over time able to serve more customers for the same or less CYC funding

### **Feasibility**

35. Reasons to be confident that this is achievable:

- existing service teams have established good reputation for high quality service delivery
- significant opportunity to develop services in tangential markets with modest additional investment
- sole focus of the enterprise on delivery services that enable and support independent living – less distraction for management team
- management team are driven and committed – support by appropriately qualified and experienced Board members

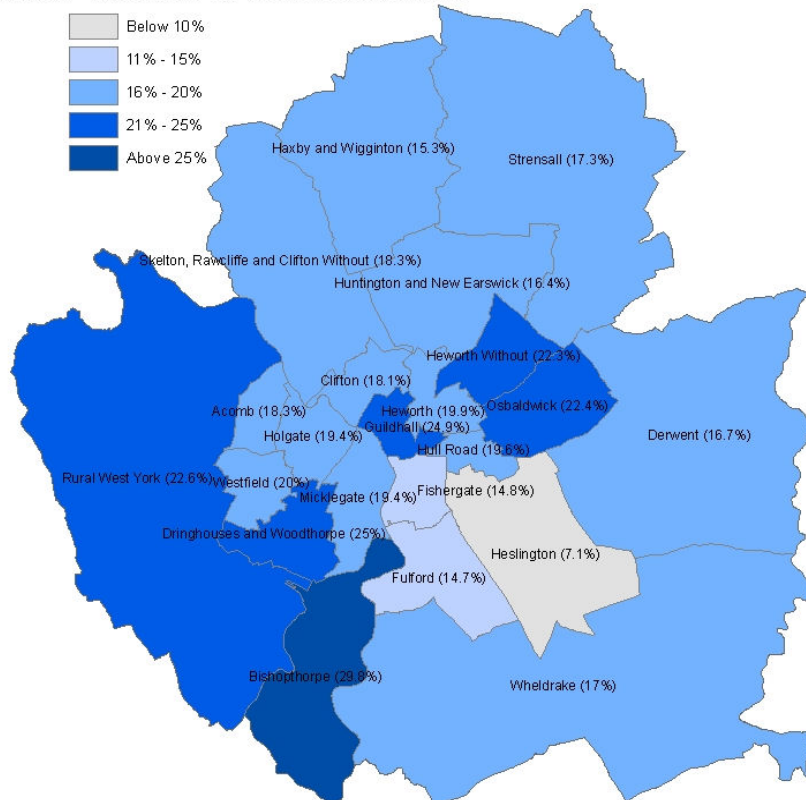
- managed transition from CYC – to run in “shadow form” for initial period prior to transition
- financial projections are balanced (ie not unduly optimistic)

36. Local demographic information show us that the service is currently only being provided to a small percentage of possible customers. Looking at the number of customers aged 80+ receiving a service from CELTAS compared to the whole population in York of people who are 80+, the data shown below indicates that there is a lot of potential market growth within York.

37. In total, there are 1,928 people recorded who are currently receiving these services out of an estimated 80+ population of 9,897 people in York. This equates to a market penetration of only 19.5%.

38. When looking at the equivalent number of customers over the age of 65 the percentage falls even lower indicating that the growth potential for the service is within this age range is even higher.

Percent of Population Aged 80+ with Warden Call or Telecare on 09/01/2013



## Viability of the Social Enterprise

39. In order to enable the Cabinet Members to make the decision whether or not to approve the decision for the CELTAS team to establish an independent social enterprise, a summary of the financial viability of the new organisation has been provided below (the financial implications to CYC are described in the 'Implications' section towards the end of this paper.)
40. A detailed analysis of future financial projections has been undertaken for the new organisation and concludes that it does represent a financially viable business opportunity. However, this financial viability is dependent upon certain key assumptions:
- continued level of contributions/income from CYC, NHS and North Yorkshire County Council (including PCT health gain funding of £75k pa)
  - successful launch of new service lines:
    - *Loneworker Monitoring*
    - *Retail Outlet (based at the community stadium)*
    - *Telehealth (following successful bid for NHS contract)*
    - *Tele-consultancy service*
  - realisation of growth projections for the above new services, as well as for private customer telecare income
  - continuation of the CELS building lease agreement on current terms
- (A full list of the planning assumptions used to develop these projections can be found in Sections 2.2 and 11.2 of the Business Plan.)
41. Projections indicate traded income growth of average. 2.15% per year with cumulative retained profit at year five of £146k (after tax and before accounting for any reinvestment).
42. The summary five year forecast Income & Expenditure statement for the new organisation is shown below:



<b>Income and Expenditure - 5 year summary (£'000)</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Income from existing services:</b>					
CYC contribution	1,534	1,495	1,449	1,399	1,349
Warden Call customer Income	301	316	335	358	387
Other income and contributions (E.g. Health)	256	263	269	276	283
total	<b>2,091</b>	<b>2,074</b>	<b>2,053</b>	<b>2,033</b>	<b>2,019</b>
<b>Cost of existing services</b>					
Staffing	1,381	1,391	1,416	1,416	1,416
Warden Call Equipment	0	27	33	41	51
CELS Equipment	176	181	187	192	198
Other	245	250	256	260	267
Support Service costs (Recharges)	198	198	198	198	198
total	<b>2,000</b>	<b>2,047</b>	<b>2,090</b>	<b>2,107</b>	<b>2,130</b>
<b>Profit/(loss) from existing services</b>	<b>91</b>	<b>27</b>	<b>(37)</b>	<b>(74)</b>	<b>(111)</b>
<b>Income from new services:</b>					
Loneworking	5	21	33	40	47
Telehealth	148	191	191	225	225
Retail Outlet	0	58	108	130	156
Teleconsultancy	35	43	53	62	73
total	<b>188</b>	<b>313</b>	<b>385</b>	<b>457</b>	<b>501</b>
<b>Cost of new services</b>					
Loneworking	8	8	9	5	6
Telehealth	129	166	166	196	196
Retail Outlet	0	46	104	117	130
Teleconsultancy	27	33	47	53	59
one off costs	13	23	0	0	0
Depreciation	1	3	3	4	4
total	<b>178</b>	<b>279</b>	<b>329</b>	<b>375</b>	<b>395</b>
<b>Profit/(loss) from new services</b>	<b>10</b>	<b>34</b>	<b>56</b>	<b>82</b>	<b>106</b>
<b>Overall profit/(loss) of operations</b>	<b>101</b>	<b>61</b>	<b>19</b>	<b>8</b>	<b>(5)</b>
less tax at 20%	(20)	(12)	(4)	(2)	0
<b>Net profit after Interest, Tax, Depreciation and Amortisation</b>	<b>81</b>	<b>49</b>	<b>15</b>	<b>6</b>	<b>(5)</b>
Retained Profit	81	130	145	151	146

43. The table above shows the forecast five year Income & Expenditure statement for the potential PSM. It can be seen that for the existing services a surplus is made in the first two years, following which there is a decline in subsequent years. This decline is largely due to two key factors. Firstly, the CYC contribution reduces year on year to meet the budgeted £200k saving. Secondly, the decline in profit is also impacted by the CYC contract value for funded customers being fixed, requiring the additional costs of a growing customer base to be absorbed by the potential PSM. NB there is an expectation that once the volumes pass a to-be-agreed threshold the contract value will be re-

negotiated to reflect the new volumes (funded customer volumes are expected to grow between 3-5% year-on-year).

44. The table above also shows that for the new services a modest surplus is made in the first year, following which there is a gradual year-on-year increase in the surplus generated.
45. The overall effect on the Income & Expenditure statement for both existing and new services is a surplus in each of the first years of trading. In the fifth year the forecast shows that there will be a small overall loss.
46. Analysis of the cash flow position shows the service being in a cash surplus throughout each of the first five years, removing the need for any capital injection or bridging loan (a facility that would often be required by a new business).
47. In the medium to long term, the organisation will develop its services to offer a selection of tailor-made services to both statutory agencies and the general public. It will also develop the appropriate charging models to ensure the organisation is able to grow and achieve long term sustainability.
48. It is proposed that this plan is achievable and represents significant short-term financial benefits for CYC, whilst ensuring the longer term survival, development and growth of our services, which are so important for our customers in York. There is confidence that this is achievable because:
  - existing service teams have established a good reputation for high quality service delivery
  - there is significant opportunity to develop services in tangential markets with modest additional investment
  - the sole focus of the enterprise is on service delivery that enables and supports independent living – less distraction for management team
  - the management team are driven and committed – support by appropriately qualified and experienced Board members
  - managed transition from CYC – the board will run in ‘shadow’ form for initial period prior to transition
  - financial projections are balanced (and not unduly optimistic)

49. However, it must be recognised that realising this plan will be challenging and, accordingly, it will be important to establish the social enterprise with the right leadership and culture and manage the transition from CYC as professionally and effectively as possible.

### **Parent Body Commitments**

50. An implicit part of the creation of an independent NEW NAME (and indeed the status quo with the creation of most public service mutuels) is for the Parent Body (CYC) to make a financial contribution to the nascent organisation during the early years of operation. This reflects the fact that the new organisation will continue to provide a public service and also to allow the organisation to build solid foundations as an independent commercial enterprise.
51. The CYC financial commitments are included in the summary I&E figures above, within the income figures for each service, but have been presented separately here for the purposes of clarity.

### **Council Plan**

#### **Strategic Objectives**

52. The new organisation will continue to provide the high quality service to its existing customers while reaching out to more people and searching for more efficient and effective solutions for all customers. Our objectives will benefit both the customer of the service and the wider community. We will work closely with partner organisations to fulfil these and they will challenge us to improve and be successful.
53. The strategic and social objectives of the organisation will help the council in at least three of its five stated objectives within the current Council Plan and will endeavour to assist where possible with the protection of the environment:
- create jobs and grow the economy
  - build strong communities
  - protect vulnerable people

Strategic Objective Group	Strategic Objective
Accessibility	To provide an efficient emergency response service to vulnerable people.
	To offer equipment services as a universal service to support primary prevention.
	Increase the uptake of equipment services by communicating the potential benefits to service users and carers and by providing Telecare opportunities in a diverse range of existing service settings across health, housing and social care.
	Increased access through extended opening hours, online ordering and the development of a retail outlet.
	Work in partnership to ensure that equipment services are more widely accessible, acceptable and understood by all those who could benefit from Telecare and other equipment solutions.
Employer of choice	To create an organisation that values and supports its members and one that encourages personal development.
	To employ and provide, where possible, apprenticeships to support young people into the work place.
	To support the City of York Council pledge regarding provision of a 'living wage' to all employees.
The safe use and care of equipment and telecare	Develop and offer training packages for both statutory and private agencies relating to equipment, telecare and the prevention agenda.
Sustainable and flexible organisation	Upgrading of existing stock through the reinvestment of cost savings and profits.
	Develop and increase stakeholder involvement and include service users in the future direction of the organisation.
	Deliver growth in the telecare service and ensure targets for delivery and installation are maintained.
	To secure contracts with public sector and private agencies to provide equipment, telecare and telehealth.

## Social Objectives

54. These objectives are aspirations of the positive intention towards the local area, aiming to promote prosperity and develop a strong relationship with local residents in order to co-exist harmoniously.

They indicate what this organisation will ‘give back’ to the wider community.

Social Objective Group	Social Objective
Job Creation	The organisation will grow its infrastructure in line with increasing demand on its services and will seek to employ locally.
	Look to develop supportive work placements and supported employment where possible for people with disabilities.
	Will provide apprenticeship programmes where possible to support young people into employment.
Partnership working to support the Public Health priorities	Making York a great place for older people to live where they can maintain their independence as long as possible.
	Improving mental health and intervening early supporting the early awareness of dementia.
	Reducing health inequalities and help to find solutions to prevent loneliness and isolation.
Environmentally conscious	The organisation will seek to monitor, regulate and reduce its carbon footprint where possible.
	Will continue to refurbish all low cost equipment until an environmentally friendly alternative has been sought.
Carers support	Wherever possible the organisation will provide equipment solutions, advice and training to support informal carers.

## Implications

### Financial

55. The detailed analysis of the financial viability of the proposed enterprise, prepared by Mutual Ventures, is set out in the main body of the report. The assumptions within the business plan about the existing CYC budgets, current income and contributions have been verified.
56. The plan assumes that employer pension contributions remain at the current CYC level of 19.7%. However, this is yet to be assessed and therefore the costs set out in the plan may vary. If the final assessment results in increased costs, either to the social enterprise if the “matched” option is taken or to the council if the

“full risk” option is taken, then further cost mitigations would have to be identified.

57. The business plan assumes that all equipment will be retained by the council and leased to the new enterprise at a peppercorn rent.
58. The proposed new enterprise is to be incorporated as a Community Interest Company. As such it will have to charge VAT to non-disabled customers for the warden call response service. This could increase some customers' charges by 5% (the 20% rate would not apply). This issue will be considered in the consultation with customers about the introduction of a tiered charging policy which is the subject of a separate report to the Cabinet Member in June. The VAT element could be included in any overall increase in charge for the service if agreed to avoid customers having to pay this.
59. The future viability of the enterprise is clearly dependent on the assumptions within the business plan for customer and income growth. The plan assumes that by year 5 additional income totalling £501k (£106k net of associated costs) will be generated from the introduction of new services. In addition, private customer numbers are assumed to rise by 5%, 6%, 7%, and 8% respectively over years 2 to 5 of the business plan.

#### Implications for CYC Budgets

60. The current net CYC base revenue budget (excluding capital financing costs, but including 2013/14 staff increment growth and estimated support service costs) for the services transferring would form the basis of the value of the contract that CYC would have with CELTAS. These budgets total £1,534k.
61. From this base figure the council's MTFE assumes £50k pa savings each year over the period 2014/15 to 2017/18 (£200k in total). This means the annual contract value (subject to adjustment to the support service charge amounts discussed below) would be:
  - Year 1 £1,534k
  - Year 2 £1,495k
  - Year 3 £1,449k
  - Year 4 £1,399k
  - Year 5 onwards £1,349k

62. Within the figures above there are support service charges totalling £198k covering centrally provided services such as HR, payroll, finance, ICT, legal etc. The business plan assumes that these services will continue to be purchased by CELTAS from CYC in the first year at the level of the current recharge values.
63. Prior to year 2 CYC will set out the actual charge it proposes to make for each support service from year 2 onwards. At this point the annual CYC contribution to CELTAS would be adjusted to reflect these actual support service costs. From year 2 onwards the business plan assumes that CELTAS will review these services and may decide to procure some or all of them from an alternative provider. This could result in a loss of income for these CYC services from year 2 onwards. If these services cannot reduce their own costs to match the reduction in their income then this will result in an additional pressure on CYC budgets.
64. There is a further potential risk for CYC budgets in relation to customers currently in receipt of Housing Benefit and/or Council Tax Benefit. These customers do not pay for their service and the base budget assumes £312k to fund these 1,200 non-paying customers. The CELTAS business plan assumes that this number of non-paying customers will remain relatively stable. However if the numbers were to increase then CELTAS would request an increase in the contract value. It could be argued that it would be in CELTAS's financial interest to actively promote an increase in non-paying customers as CELTAS income would increase accordingly, with a consequent unbudgeted expenditure pressure on CYC budgets. Under the current arrangements there is no such incentive for CYC to actively seek an increase in non-paying customers. This risk could be mitigated by requiring CELTAS to agree in advance any increase in CYC customers prior to any additional funding being made available.
65. The business plan assumes that the current CYC Capital Programme rolling allocation of £250k pa for Warden Call and Telecare Equipment is made available on an on-going basis to purchase equipment that will be used by CELTAS for CYC customers. The council's currently approved capital programme includes this sum through to the 2017/18 financial year.
66. It is assumed that CYC will fund the costs arising from any shortfall in pension liabilities at the point of transfer. Security bonds may be needed and held by the authority to facilitate this. An actuarial

review will need to be undertaken to assess the value of this potential initial liability. In addition, as discussed previously the council would become responsible for any future pensions risk if the “full risk” option were chosen. If this were the case then further mitigating savings would be required.

67. It has been assessed that CYC’s VAT position would not be adversely affected financially from the proposal to spin out CELTAS. The partial exemption limit of 5% is not breached by moving these services outside of the council, nor does it move the council into a repayment rather than a recovery position and as such there is no financial impact on CYC.
68. The costs of preparing the business plan and developing the case for establishing the social enterprise have been funded from a grant of £68k from the Cabinet Office’s Social Enterprise Investment Fund (SEIF), and a £5k allocation from the council’s Development and Innovation Fund (DIF). If approval is granted to establish a social enterprise then a further grant to cover the implementation costs has been agreed in principle from the Cabinet Office.

### **Human Resources (HR)**

69. The development of the business plan has included HR advice and guidance to determine the TUPE implications for the staff group concerned. TUPE would apply to all staff and managers in the current service to transfer to the new organisation. Actuary work is being completed with regards to staff pensions and it is expected that this Social Enterprise would receive admitted body status into the LGPS as we have had initial confirmation that it would be accepted. Further consultation with staff, unions and stakeholders will continue throughout the business planning, and if approved, transition phase.
70. This will impact on a total of 51 front line staff members, one supervisor (CELS), two team leaders (Warden Call), one service lead and one service manager – all staff and managers are to be included in the TUPE transfer.

### **Equalities**

71. Under S149 Equalities Act 2011, the LA has a general duty to have due regard to the need to eliminate discrimination and



advance equality of opportunity. This will involve a comprehensive Community Impact Assessment of the service as a result of the change of provider.

72. A full Community Impact Assessment has been completed as part of the final Business Plan and report to Cabinet. There are no equality issues arising from this proposal.

### **Legal**

73. There are various legal implications associated with the proposed decision to establish a Community Interest Company and the main considerations may be summarised as follows:
- power to establish the Company - Section 1 of the Localism Act 2011 provides a general power of competence, enabling local authorities to do anything an individual can do, which includes the power to set-up a company
  - fiduciary duty - The LA is under a duty to local tax payers to ensure that it is spending their money prudently. In addition the LA must demonstrate, through its business case, that it is obtaining best value in setting-up the Company, and in any contract with it
  - procurement - There are no procurement implications in setting-up the Company, but if the LA decides to contract with the Company, consideration will need to be given to the EU Public Procurement Regulations and Directives. These apply to services above the threshold value of £173,934
74. “Part B” services, such as health and social services, are not subject to the full extent of the Procurement Regulation, such as the requirement for an OJEU notice (although a Contract Award Notice will still be required). However, the general principles of the Treaty need to be followed where there may be cross-border interest in a contract. These are the principles of non-discrimination, transparency, equal treatment, proportionality, and mutual recognition.
75. Compliance with these requirements is generally demonstrated though a formal tender process although it can be demonstrated through a degree of advertising sufficient to enable the market to be opened up for competition.

76. There is no market and no possibility of cross border interest then there is no obligation to advertise or go through a formal tender process. In ascertaining whether there is potential cross border interest regard should be had to the subject matter of the procurement, the estimated value of the procurement, the place of performance or delivery, the size and structure of the relevant service market.
77. If there are potentially serious consequences for making an incorrect judgment as to whether a contract may attract cross border interest. The most likely outcome is that an aggrieved potential bidder could seek to prevent the contract being awarded or seek damages if it had been awarded. Alternatively the EU could take action against the government.
78. It is a judgment which requires knowledge of the market. For that reason carrying out a formal market testing is often recommended. That has not happened in this case. That is not necessarily fatal but means that the assessment of the risk of challenge is based purely on the service directorate's knowledge of the market.
79. State Aid - Any public funds provided to entities who engage in commercial activities, which has the potential of distorting competition, and which may affect trade between Member States may amount to State Aid. Aid includes, for example, grants, other financial assistance, sale of assets at less than market value, and rents at less than commercial rates.
80. Officers will need to decide whether any aid which is likely to be given to the Company is likely to affect trade between Member States, or whether the services to be provided by the Company are purely local and have no interest to European entities.
81. If State Aid does apply, however, financial aid over a rolling period of three years from any source up to the de minimis level of 200,000 Euros is exempt, which means financial assistance can be given to the Company up to this limit without breaching the State Aid rules.

### **Crime and Disorder**

82. There are no Crime and Disorder implications.

## **Information Technology (IT)**

83. A number of IT considerations have been included in the Transition Plan, which outlines the activities that have to be completed prior to any go-live for the new organisation.

## **Property**

84. The LA is normally required to obtain best consideration which can reasonably obtain for any sale or lease for more than seven years of land and buildings. However, a lease in this case can reasonably be viewed by the council as having benefits to the social, economic or environmental well being of the area such as to bring it within a general consent from the Secretary of State to a disposal for less than best consideration.
85. Property Services have agreed an extension to the current lease of the CELS building. For the new organisation to take over the lease, CYC may be asked to act as a guarantor in the first instance, an arrangement not unusual to the council.

## **Governance**

86. The report proposes the establishment of a company limited by guarantee with LA appointed directors. Members will be aware that directors owe their fiduciary responsibilities to the Company and not the council. The proposed Company would be a Community Interest Company and its assets used for community benefit. However, it would be for the Company to decide how best to meet that responsibility.

## **Contractual Issues**

87. There will be a need to develop detailed contractual arrangements which will provide for the transfer or use of assets, the transfer of staff, the services to be provided back and the price to be paid for those services. The contract will aim to secure during its lifetime financial benefits for the council arising from the business plan being realised.

## **Risk Management**

88. The Business Plan contains a full list of the risks identified with spinning the CELTAS services out. All of the risks have been

assessed and activities undertaken to mitigate these. The key risks have been summarised:

#	Risk	Mitigation Activity
1	Admitted body status not being achieved could lead to staff not being in favour of proceeding.	Initial positive discussions with local LGPS administrator, North Yorkshire County Council, have been had. Continue these discussions and instruct actuary to complete a valuation and agree the risk transfer for pension contributions etc.
2	Staff concerns regarding leaving the LA may result in staff not wishing to transfer into the new organisation. This would result in the loss of expertise to the organisation.	Ensure Human Resources and positive Union involvement throughout process. Seek support and advice regarding TUPE arrangements.
3	Procurement challenge by other potential providers to uncontested contract award could delay/end the spinning-out process.	Market analysis completed and it indicates that no single provider currently provides the range of services delivered by the potential PSM, and therefore be in a position to challenge. Legal advice taken on options for mitigation (eg exemptions from public procurement rules).
4	State aid challenge by other potential providers could delay/end the spinning-out process.	Market analysis completed and it indicates that no single provider currently provides the range of services delivered by the potential PSM, and therefore be in a position to challenge. Legal advice taken on overall risk of challenge and solutions identified to mitigate this (eg lease arrangements for asset transfer) and a challenge is therefore less likely, but still possible.
5	The governance of the new organisation may not be sufficiently robust leading to failure of the new organisation.	Robust governance structure developed as part of the Business Plan that includes a board member from CYC, a sector expert and a social entrepreneur/business expert.
6	Staff lacking skills required to fulfil all of the requirements could lead to poor performance by the new organisation.	Completed a detailed training needs analysis during shadow form period, and develop training programme as required.

#	Risk	Mitigation Activity
7	The level of commercial acumen within the management team could impact on the development of the new enterprise.	<p>A board member will be appointed with social entrepreneur/business/financial expertise.</p> <p>The capability for service delivery already exists and will be bolstered by the composition of the Board.</p> <p>Seeking additional commercial, legal and marketing support from the Mutual Support Programme through the transition phase of the process.</p>
8	Creation of a regional control centre that would to potentially be able offer a more competitive rate than our service could lead to a reduced requirement for our control room.	Based on current timescales, the potential PSM will spin-out in advance of the development of the regional control centre so the potential PSM will be best placed to become the regional hub.
9	Competition from market/ability to win contracts could threaten the new organisation becoming sustainable.	<p>Continuous engagement with initial key clients.</p> <p>Seek contracts outside locality for current services, and within/outside of locality for future services.</p> <p>Ensure marketing strategy &amp; materials is in place from go-live. Web design and ability for online sales to be developed as soon as possible to boost initial income levels.</p> <p>Develop enhanced services that will aim to achieve better social outcomes.</p>
10	The inability to make a profit to re-invest into the new organisation could cause the new organisation to fail.	<p>A flexible resourcing model will be adopted to limit our overhead costs and ensure we adapt our operational model to the development of the market.</p> <p>Ensure close relationship with CYC Financial Services, and review financial statements regularly.</p>

## Recommendations

89. Cabinet Members are asked to consider the opportunity to establish the council's first social enterprise and the following recommendations:

- to create a mutual, Social Enterprise organisation to provide the Warden Call/CELS service in shadow form to facilitate smooth transition
- approval of the proposed governance structure and legal form (Community Interest Company, in the form of a Company Limited by Guarantee) for the reasons described in sections 4 and 5 of this paper
- to provide a further report on progress in December 2013 to seek confirmation of a 1 April 2014 start date for the new organisation

Reason: To create a viable social enterprise opportunity that will provide services to a wider customer base whilst providing value for money to the council.

## Contact Details

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	<b>Report Approved</b>	✓	<b>Date</b> 25 April 2013
	<b>Cabinet Member Responsible for the report:</b> Cllr Tracey Simpson-Laing Cabinet Member for Health, Housing and Adult Social Services		
<b>Wards Affected:</b>	<b>All</b>		✓
<b>For further information please contact the author of the report</b>			

## **Background Papers:**

- Cabinet Office - Public Service Mutuuls paper

## **Annexes:**

- Annex 1: CYC - BWB Governance and Legal Form Options Paper (v1.1)
- Annex 2: CYC - Warden Call, Telecare and CELS - Business Plan (v1.1) – CONFIDENTIAL – *Commercially Sensitive*
- Annex 3: CYC - Warden Call, Telecare and CELS - Business Plan – *Non-Confidential version*