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**Cabinet****16 July 2013****Report of the Cabinet Member for Leisure, Culture and Tourism****The Co-operative Council: A Community Benefit Society for Libraries and Archives****Summary**

1. In January Cabinet agreed that a business plan should be drawn up to determine whether it would be in the overall interests of the Council to transfer its Libraries and Archive service to a social enterprise.
2. This report summarises the results of this work which has been undertaken by a project board consisting of Library Service, HR, finance, IT, legal, and procurement staff, Veritau, and Unison, supported by Mutual Ventures as part of the Cabinet Office's Mutuals Support Programme.
3. The Libraries and Archives staff who will form the social enterprise believe that it is not only a viable proposition, capable of maintaining the current service, but that it represents an exciting and enterprising route to developing new forms of service delivery. The key conclusions set out in this report are:
  - The best possible legal model is a Community Benefit Society (CBS) with exempt charitable status, as previously approved by Cabinet, to be owned one third by staff and two thirds by the community.
  - The CBS will make a major contribution to helping the Council engage with its communities, facilitating adult learning, getting people on line, promoting the health and wellbeing agenda, and supporting vulnerable people, e.g. housebound people and people with mental health issues.
  - The CBS can manage the £450k savings required within the budget process whilst maintaining paid staff in every library, ensuring no closures, and driving service improvement.
  - The CBS will require a contract from the Council. Only a contract will provide the necessary certainty to the Council regarding the service to be delivered, as well as to the CBS regarding the

funding it will receive over the 5 years. It will allow the CBS to drive a robust growth strategy to deliver increased income.

### **Background**

4. The Council Plan sets out an ambition to engage the community and the voluntary sector in the provision of Council services. Co-production is a new vision for public services where, recognising people as assets, services deliver alongside users, their families and their neighbours in partnership, harnessing their capabilities and involving the community more deeply in service form and delivery.
5. At the same time York has signed up to the Co-operative Council movement in order to empower employees who wish to take a greater stake in their work. This social enterprise proposal arises from staff in what is a highly successful service with a strong track record of delivering service improvement:
  - Promoting the highly successful Explore library learning model across the community library network
  - Delivering the refurbishment of York Explore and the phase 2 project which will create a world-class archives facility
  - Facilitating self-directed learning by joining learners together and providing spaces
  - Opening the country's first reading café
  - Installing self-issue machines in all libraries
  - Increasing digital inclusion through developing skills, encouraging volunteer support and providing wi-fi access
6. The Cabinet Office's Mutuels Support Programme has provided £100k worth of support through *Mutual Ventures* whose expert legal and financial advice has been instrumental in preparing the business plan.

### **Consultation**

7. **Public Consultation:** Further to the public consultation undertaken in October and November 2012, we have subsequently put up displays in every library explaining what is happening and set up a blog: [www.explorethefuture.org.uk](http://www.explorethefuture.org.uk). Staff have been talking with the public in libraries and we attended every ward committee in April and May.
8. The main issues emerging from these discussions were that people are principally concerned about whether any changes would affect their local library, with worries about closures, reduction in opening

hours and loss of staff frequently expressed. There was some suspicion of the Council's motives, with a fear that the transfer to a mutual might enable the Council to make further cuts to the Libraries and Archives budget. A significant number of people wanted to understand more about the plan for financing the new organisation and were relieved when they understood that the Council would still be providing the bulk of the funding. When people understood that the proposal was led by staff rather than imposed by the Council they were much more inclined to view the idea positively.

9. Many people recognised that the only alternative to making a change would be a managed decline in the current situation. From those who understood and accepted the need to innovate there was considerable interest in the proposed new model and a positive response to the idea of joint staff and community ownership, with many people enthusiastic about becoming actively involved. A minority of individuals expressed ideological opposition to any change from Council ownership to mutualisation.
10. QA Research delivered 6 focus groups during April and May attended by 53 people recruited using a variety of approaches. Key findings from the focus groups were:
  - Awareness of the proposals was low with most respondents unsure of what the changes would look like in practice. Respondents were therefore cautious about the proposed changes and expressed some uncertainty and confusion about the possible outcomes, though outright hostility was rare.
  - Some respondents were suspicious about the proposals seeing them essentially as a means for the Council to cut spending on Libraries and Archives, and then reduce the service.
  - Respondents were positive about the potential for members of the CBS to have a direct influence and create a more flexible and responsive service.
  - Respondents also wanted assurance that assets (including buildings and the Archives) would be protected.
  - Most respondents were more positive about the scheme after attending the focus group and receiving more information. In most groups there was strong interest in getting involved in Libraries and Archives.
  - There was also a small group who felt that they lacked information to say whether or not the change would be

beneficial, and who do not understand why positive changes cannot be achieved under the current model.

- Many participants were regular service users and tended to be concerned about any change to a service they valued.
11. An e-petition was placed on the Council's system: "We the undersigned petition the Council to keep all libraries open, not to cut the book fund or outsource the service to a Social Enterprise. We want our Libraries and Archives Service to remain in council control and for the Council to fulfil its legal duty to provide a comprehensive and efficient service for all residents to make use of, and to encourage both adults and children to make full use of the service. We further call on the Council to drop its proposal for a further £200k of cuts in 2014/15. We believe that as Library and Archives are a statutory service, it should be fully controlled by the Council and democratically accountable. We further believe that as a free service it can only rely on Council grant to survive, and any income opportunities or tax breaks are marginal".
  12. 128 people signed this e-Petition which ran from 7 February to 26 March 2013.
  13. **Staff Consultation:** Informal consultation with staff and unions has been on-going since November 2010. A group of staff is working with the head of service to ensure that staff thoughts and queries are reflected back and that they influence the work. A representative of the staff group also sits on the Project Board.
  14. Cllr. Crisp visited all the libraries early this year to speak with staff about their views. Her feedback was that staff needed more time to discuss the proposals with each other and as a result staff workshops were organised which have been very positive and invaluable to the process of consultation. In May we undertook a follow-up survey of staff's views. Key results from the survey:
    - There is scope for further developing staff consultation and participation and specific methods were suggested. Nonetheless, over 70% of staff are confident to talk to members of the public about the proposals.
    - In answer to the question "How do you feel about the proposal to become a community benefit society?" 70.2% are in favour, 19.3% undecided and 10.5% are against.

15. Some quotes from staff:

*“Before the workshops I was against the community benefit society. I am more positive now but am still undecided.”*

*“I don't see another alternative right now, if we are to keep all the branches open. In the current long-term financial crisis, it feels better to “try something”, with hope and energy, rather than to sit still.”*

*“I wish we were there now”*

16. Unison maintains its in-principle opposition to the establishment of social enterprises for the delivery of Council services. It nonetheless continues to be represented on the Project Board.

### **The Vision**

17. The vision for the CBS will build upon the success of the Explore concept. Explore has created centres that have become true community knowledge hubs with an enormous range of events and activities. We have been able to promote the joy of reading and learning to many more people. We will build on this by developing a range of “explore community hubs”, different for each community depending on the needs of local people. They will be safe, welcoming, impartial spaces for everyone, incorporating all the aspects of libraries that create unique community spaces. The success of the Reading Café in Rowntree Park shows how the model can be adapted to fit different communities whilst securing new income streams.
18. The core of the Explore Community Hub will be a 21<sup>st</sup> century libraries and archives service that delivers the promotion of reading, a high quality reference and information service, support for lifelong learning and help with digital inclusion as well as access to the history of York and its people. Wrapped around that will be space for partners whose activities are complementary to a library service e.g. other information providers, community groups, health providers, CAB and other voluntary organisations. A range of activities will take place for all ages and there will be a programme of adult learning.
19. The hubs will also actively promote community engagement, working with the Communities and Equalities Team to allow the public to contact their councillors, have their say on local matters and discover volunteering opportunities.

20. The full description of the strategic objectives of the CBS can be found in the Annex.

**How this will be delivered**

21. The business values of the community benefit society will be:
- Sustainable business that can grow through reinvestment of surpluses to meet charitable objectives
  - Innovative culture that strives for excellent service delivery
  - Impartiality
  - Co-production with the community and partners to improve outcomes
  - A strong, dynamic, passionate team
  - Helping staff and the community to be more involved in decisions and governance and to have a clear voice
22. The CBS will establish a culture of innovation and enterprise to drive a strong growth strategy. All staff will be involved in this with income targets at each library. Ideas that we are working on include:
- Establishing Friends Groups to aid with fundraising locally
  - Community events, e.g. craft fairs, plant sales, coffee mornings
  - Merchandising – borrowing model from Northants Libraries
  - Investigating how to facilitate donations and other giving opportunities

**Detailed Proposals**

**Name:**

23. It is proposed that the name of the CBS will be *Explore Libraries and Archives Mutual*, branded as Explore Libraries and Archives, with the strap line of 'Knowledge and Ideas for Everyone'.

**Contract:**

24. It is proposed that the Council enters into a 5 year contract with the CBS as a contract will legally guarantee both the delivery of the statutory library service and the legal requirements of the archives. It gives the Council a greater control over what is delivered and greater recourse if something fails to be delivered. This demonstration of commitment to the service will ease some public worries over the transfer.

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25. The 5 year period of certainty with regard to funding that the contract will give will also be essential to the CBS to allow its growth strategy to develop in order to grow future sustainability. A contract is also more financially efficient as the CBS will be able to claim VAT to the value of at least £20k p.a. which would otherwise have to be paid.
26. We have investigated whether there is a European market for libraries and archives. Across Europe, public libraries are delivered by local and municipal authorities, often as a statutory service e.g. Finland, Catalonia, Norway and Sweden. They tend to be part of a national network. We do not believe that there is a commercial market for libraries and archives in Europe.
27. Similarly, we do not believe that any funding provided by the Council could be deemed to distort competition or affect trade between member states and will not therefore amount to state aid.
28. There is little evidence of a developed commercial market for the provision of library services in the UK and we have established no evidence of interest from commercial providers. There are a small number of existing social enterprises trading in this area but given the cost-efficiency of our service we do not believe that there is evidence of these organisations being better able to provide the service or that they would seek to challenge the direct award of a contract by the Council to the CBS.
29. It is therefore proposed that the Council enters into a direct contract with the CBS through a “single tender action”.
30. The contract will not allow for assignment to any third party without the permission of the Council. In the event of the failure of the CBS the service would revert to the Council. Regarding the possibility of the CBS being bought out, in the establishment of the CBS the shares will be issued as 'withdrawable' shares (rather than 'transferrable') so that they cannot be sold to / purchased by a buyer and it would be at the discretion of the Directors of the CBS whether they could be withdrawn (i.e. the member paid back). This discretion will be stipulated in the Rules.
31. To further reduce any concerns over the CBS being bought or its asset being sold, an 'asset lock' will be added to the Rules of the CBS to ensure that the assets of the CBS (including any profits or other surpluses generated by its activities) are used for the benefit of the community. This means that, subject to the CBS meeting its obligations, its assets must either be retained within the CBS to be used for the community purposes for which it was formed or, if they

are transferred out of the CBS, the transfer must satisfy one of the following requirements, that it is made:

- For full market value so that the CBS retains the value of the assets transferred
- To another asset-locked body (a CIC or charity, a permitted industrial and provident society or non-UK based equivalent) which is specified in the CBS's rules
- To another asset-locked body with the consent of the Regulator
- For the benefit of the community

32. At the end of the 5 year term it cannot be assumed that the contract can be renewed through a single tender action as the market for library services may develop in the interim. A review will therefore need to be undertaken in the second half of year 3 to determine the strategy for securing the service from year 6 onwards.
33. The contract specification will set out the key requirements with respect to service levels including book stock, professional staffing, service points, and the outcomes to be achieved by the CBS. It will also be important that the CBS is able to demonstrate how it adds social value as a return on the Council's investment. This will be a key part of the contract specification.
34. Although, it is evident that public libraries deliver social value outcomes, it is not easy to demonstrate the impact of these. We will be working with Shared Intelligence to define a number of specific and measurable social impacts which will put the service vision into practice. Initially these are likely to be around employability, digital inclusion and the use of the YorkCard but the work will grow to encompass and support broader areas. We already hold a lot of the data that will underpin this work.
35. Reports will be made quarterly by the Chief Executive Officer of the CBS to the Cabinet Member of Leisure, Culture and Tourism on the performance of the CBS against the contract specification. Reports will also be made twice a year to the Learning and Culture Scrutiny Committee. The Assistant Director (Communities, Culture and Public Realm) will act as client officer for the contract.

**TUPE:**

36. All staff will transfer on their existing terms and conditions under TUPE.



**Assets:**

37. The collections will be considered in two areas: permanent collections and general library stock. The permanent collections including the civic archives, donated private archives, and the local history library collections will remain the property of the Council. The Council will also remain the legal custodian for Deposited Public Records, Manorial Records, and deposited non-civic archives. Consumables, such as the library books will become the property of the CBS. The replacement value of the books is £2.031m. The contract between the Council and the CBS will ensure that the CBS must continue to maintain a bookstock at a specified level. This will ensure that whilst the individual books will change the stock will be maintained. The asset lock will protect the value of the bookstock.
38. With regard to IT, general IT equipment will form part of the IT support service whilst service specific equipment such as the People's Network will transfer to the CBS. The split will need to be negotiated.

**Property:**

39. All buildings which the Library Service occupies are included in the Council's current Asset Management Strategy Review which seeks to ensure that the Council uses its assets to:
- Make best use of publicly owned assets across York
  - Encourage shared use of property resources
  - Minimise the cost of occupation of land and buildings
  - Ensure the assets comply with sustainability policies
- The principles and process for this strategic review approved by Cabinet in November 2012 will be used to work with the CBS in looking at all the library buildings to ensure the library service occupies buildings in the right locations to deliver its vision.
40. Condition surveys have been undertaken on all the current buildings. These show a liability of £361k over the next 5 years (excluding York Explore). The repair and maintenance budgets available to the CBS over the same period will be around £250k based on existing budgets. It will therefore be a priority for the CBS to address this deficit through attracting investment and finding improved premises solutions through partnership working.
41. Freehold properties will be leased to Explore by the Council (to include fixtures and fittings). The lease term will be coterminous with the term of the service contract. For leasehold properties, the

Council will assign the lease to Explore or underlet it if the landlord is unwilling to accept covenant. The detailed discussions and agreement of the leases will be delegated to officers and reported to the Capital and Asset Board.

42. The CBS will continue to be able to bid for capital funds through the CRAM process (in the same way that the York Museums Trust is able to).

**Insurance:**

43. Assets which remain the property of the Council can continue to be insured by the Council and this is likely to remain the cheaper option for the CBS; however, public liability and employer's liability insurance would need to be procured separately by the CBS. There is a risk that the premium for the CBS will be greater than the cost to the Council but this has not been quantified yet. The business plan assumes that the cost will be similar to the current cost. If the cost increases significantly the business plan will need to be reviewed and additional income or a reduction in costs identified.

**Support Services (and other centrally procured contracts):**

44. Support functions (such as HR/payroll, finance, legal and ICT) will continue to be purchased by the CBS from the Council, at the level of the current recharge values, in the first year of its operation. The Council will then set out the charge it proposes to make for each support service from year 2 onwards based on actual costs. Its annual contribution to the CBS will be adjusted to reflect these revised charges. At that point the CBS will be able to review its needs for these services and may decide to procure some or all of them from an alternative provider. Any savings made in this way will contribute to achievement of the business plan.

**Pension Liabilities:**

45. An actuarial review is currently underway to assess the future pension contribution rates for the CBS and the value of the bond required to cover the potential liability build up in future years. It is currently proposed that the Council continues to fund any pension deficit in relation to the pool of employees transferring to the new organisation (either through contribution or other guarantee / indemnity) that has arisen up to the point of transfer consistent with other similar staff transfers. In addition, there may also be a need to have a bond in place that would act as an insurance policy in the event that the new organisation cannot continue to meet pension contribution payments over the period of the contract e.g. through insolvency.

**Redundancy Liabilities:**

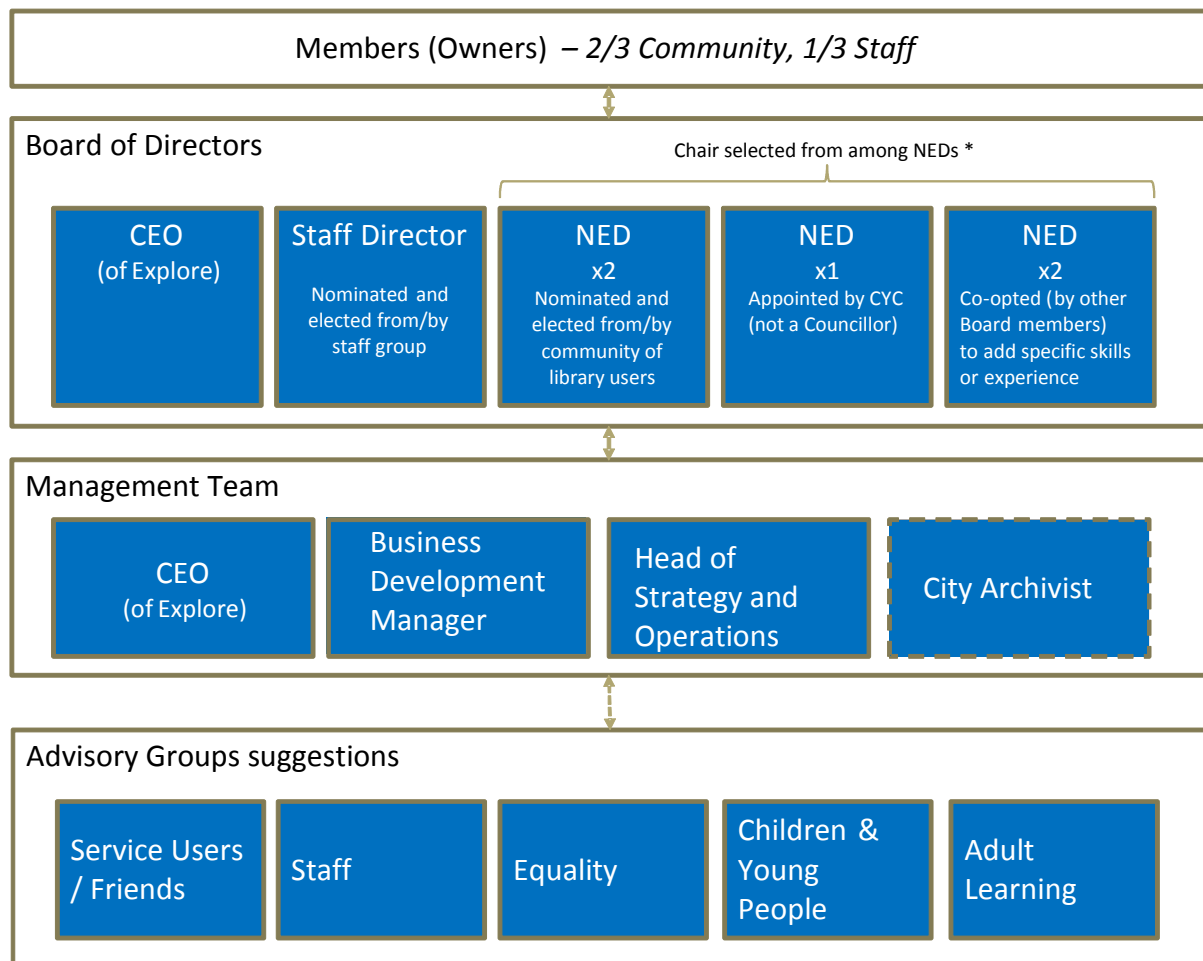
46. The CBS will meet any costs arising due to redundancy from the point of transfer onwards by ensuring it has sufficient reserves.

**VAT:**

47. A high level exercise has been undertaken to assess the impact on the Councils partial exemption status as a result of removing this activity area from the Councils financial reporting remit. The calculation shows that the impact in terms of partial exemption is not significant enough to affect the Council's status adversely.

**Governance:**

48. A Community Benefit Society (in full: Industrial and Provident Society for the benefit of the community) is governed by a legal document called the Rules and is regulated by the Financial Services Authority (FSA). The rules describe how the society is run. A set of model rules, already agreed by the FSA, are used as a starting point, adapted to reflect local need. The key elements of the rules are the objects of the society and the make up of the board of directors. Once a set of rules has been agreed, they are registered with the FSA as part of the set up of the society.
49. It is proposed that membership with voting rights will be open to everyone aged over 16 who support the objects of the society. Each Member will have a single vote based on the issue of a single share valued at £1. Young people under 16 cannot be members and so we will use alternative ways of including them.
50. Membership of the society will be separate to membership of the Library, which will remain free of charge. People will have the choice of belonging to just the library or to the society as well. Residents of York will also have the option to pay for a YorkCard. The CBS will continue to administer the YorkCard on behalf of the Council.
51. The following table shows the proposed governance structure:



\* NED = Non-Executive Director

52. The Board of Directors will delegate the day to day running of Explore to a Management Team which besides the Chief Executive Officer will include the Staff Director, Head of Strategy and Operations, Business Development Manager, City Archivist and Head of Resources. (Note: The Head of Resources is a function and not a separate post). The management team will report performance to the Board on a regular basis, every 2 months initially.
53. It is proposed that the Council nominates a director to the board. This person should be someone chosen on the basis of their ability to contribute to the skills mix of the board. The proposed board is small and it is therefore essential that each member is able to bring a distinctive set of skills. It is proposed that this should not be a councillor since it is important to recognise that the CBS will be an independent body and that its relationship with the Council will be governed through the formal mechanism of the contract and the reporting arrangements that this will enshrine. Any councillor acting as a board member would encounter a conflict of roles as they will

not be able to represent both the Council and the CBS simultaneously.

54. It is proposed that a number of Advisory Groups are established to enable key groups to have a voice in the running of the CBS. These will be chaired by directors, giving a greater degree of connection between the Advisory Groups and the Board of Directors. The make up and function of the groups will be finalised in the transition period.

### **Highlights of the Business Plan**

55. A detailed businesses plan has been developed using the expertise of *Mutual Ventures*. Central to the development of the plan is the understanding that we will help staff and the community to have a clear voice in decisions and governance through ownership. They will be engaged as key stakeholders working in partnership to further the Explore vision.

56. Explore will establish a culture of innovation and enterprise as a means to drive income generation. All staff will be involved in this with income targets at each library. Ideas that we are working on include:

- Donation boxes in every library
- Friends groups supporting fundraising locally
- Community events, e.g. craft fairs, plant sales, coffee mornings
- Library shop areas – borrowing from the Northants. model

Strensall and Dunnington Libraries are already beginning to adopt this enterprising model with increasing success.

57. Cafés – We are already developing the commercial performance of the cafés. Year 1 will see the redevelopment of the café at York, introducing a new look and feel which will be unveiled when the new libraries and archives service opens in September 2014. This is targeted to generate an increase in income of 10%. In year 2 we will extend the opening hours at Acomb, again with the intention of increasing income by 10%. In addition, where space is limited, some of our smaller libraries will have coffee machines installed, with income targets of £500 each.
58. Room hire – We are proposing up to 50% of room sessions to be made available to York Learning free of charge as part of the contract with the Council. The remaining 50% of sessions will generate a gently rising income as we market the service in a much more targeted and effective way.

59. Further contributions are made to the business plan through NNDR rate relief and an increase in the price of YorkCard to £4.
60. We have identified a large number of contracts and agreements that support service delivery. We are working through each one, challenging it to identify efficiencies.

### **Financial Projections**

61. The financial projections for Explore are shown below (in summary format). The forecast indicates that, given a 5 year financial settlement, the proposition represents a financially viable undertaking with steady growth from year 3. The growth assumptions we have factored into the business plan are modest and we believe that an independent service will have the ability to exceed the projections and also to develop further innovative revenue streams beyond those which have been included in the model.
62. Key assumptions to be noted:
  - Staff transfer under TUPE on their existing terms and conditions
  - Closure of York Explore for 3 months and the Archive for 6 months of year 1 during construction of the new archive
  - Inflation on relevant costs at 2.5%
  - Continued operation from the same premises with no library closures
  - Opening of the 'reading experience' at the Community Stadium
  - Additional revenue generation through:
    - Room bookings
    - Development of business hubs
    - Increased merchandising
    - Re-development of the café business model
    - Additional access to grants, donations and sponsorship
    - Increased YorkCard charges

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	5 Year Summary				
	2014/15	2015/16	2016/17	2017/18	2018/19
Libraries	2,410	2,401	2,427	2,440	2,452
Archives	208	211	219	223	234
Advertising	2	2	2	2	2
Cafes	342	372	392	409	426
Inspire & Mint Yard	17	23	32	38	44
Yorkcard	224	224	224	266	266
Merchandising Community Stadium	46	50	55	61	64
<b>Total turnover</b>	<b>3,249</b>	<b>3,282</b>	<b>3,351</b>	<b>3,438</b>	<b>3,487</b>
Libraries	(2,042)	(2,091)	(2,107)	(2,125)	(2,143)
Archives	(211)	(202)	(205)	(209)	(213)
Advertising	(1)	(1)	(1)	(1)	(1)
Cafes	(327)	(330)	(334)	(338)	(342)
Inspire & Mint Yard	(10)	(10)	(10)	(10)	(10)
Yorkcard	(1)	(1)	(1)	(1)	(1)
Merchandising Community Stadium	(28)	(25)	(28)	(30)	(32)
<b>Total direct costs</b>	<b>(2,619)</b>	<b>(2,658)</b>	<b>(2,685)</b>	<b>(2,713)</b>	<b>(2,741)</b>
Libraries	369	310	319	315	309
Archives	(3)	9	14	14	20
Advertising	2	2	2	2	2
Cafes	15	42	58	71	85
Inspire & Mint Yard	8	13	22	28	34
Yorkcard	223	223	223	265	265
Merchandising Community Stadium	17	25	28	30	32
<b>Gross surplus</b>	<b>630</b>	<b>623</b>	<b>665</b>	<b>725</b>	<b>746</b>
Operational	(442)	(449)	(449)	(449)	(449)
IT	(159)	(159)	(159)	(159)	(159)
General	(2)	(3)	(3)	(4)	(4)
Set-up/one-off costs	(22)	0	0	0	0
Depreciation	(2)	(2)	(3)	(3)	(3)
<b>Total indirect costs</b>	<b>(627)</b>	<b>(613)</b>	<b>(614)</b>	<b>(615)</b>	<b>(615)</b>
Surplus before interest and tax	3	10	51	110	131
Tax	-	-	-	-	-
<b>Surplus</b>	<b>3</b>	<b>10</b>	<b>51</b>	<b>110</b>	<b>131</b>

63. The projections show that the CBS can deliver the £200k saving required for 2014/15, but over 2 years (profiled as £150k and £50k). This is on top of the £250k saving required for 2013/14 which has now also been identified. It can do this whilst maintaining paid staff in every library and with no closures. CANs management team will undertake to find the one-off £50k shortfall in 2014/15 from alternative proposals.

64. The projections show small surpluses. As is set out in paragraph 40, however, the CBS will be faced with significant repairing liabilities on the buildings and its first priority will be to re-invest in

the service to address these issues. The CBS will be expected to deliver business transformation and diversification and should it be able to exceed the levels of surplus shown having addressed the property issues, the contract will contain a formula allowing for the Council to share in the benefit of this through a reduction in the contract payment.

65. As well as reducing the Council's repairing liabilities on its buildings the CBS will be expected to assist the Council in reducing its costs through co-location of services within the hub model. The community hub should become a default delivery route for appropriate community based services. The contract with the CBS will ensure that cost benefits are shared by the Council and the CBS in such arrangements.

### **Next Steps**

66. An implementation plan will be developed. Mutual Ventures will return for 10 weeks to offer support as part of the Cabinet Office work. Key steps:
- A shadow board will be set up for the CBS to develop the business plan, the rules and objects of the society and negotiate the terms of the contract with the Council
  - Formal consultation with staff will begin
  - A programme of community engagement will be developed
  - Return to November Cabinet to agree the terms of the contract and the transfer

### **Implications**

#### **Financial:**

67. **Financial Plan:** The 5 year financial plan is projecting a surplus of £3k in 2014/15 increasing to a surplus of £131k in 2018/19. This is based on current performance adjusted for a number of assumptions, some of which are outlined in the section on Financial Projections. The main assumptions which pose a potential risk are:
- Cafés - Overall a gross profit of £15k (year 1) increasing to £85k (year 5) is forecast for cafés. The surplus forecast in year 1 is a significant improvement on the current actual position for 12/13 (an overall loss of £22k). The additional surplus is mainly due to an increase in prices, extended opening hours and a restructuring of staff. It is assumed that all café staff are paid at least the living wage.



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- Inspire & Mint Yard - Income generation from Inspire events / workshops and Mint Yard lectures of £8k (year 1) increasing to £34k (year 5) is forecast. The number of events included in the forecast is significantly greater than current; however, it is assumed that a business development manager will be in post to manage and market these events. Since this is a relatively new venture on this scale this income stream will need to be monitored to ensure that the forecast targets are achieved.
  - Merchandising is forecast to generate a surplus of £17k (year 1) to £32k (year 5). This will need to be monitored as currently merchandising does not generate significant surplus. The business development post will also support the expansion of this area of the business.
  - It is assumed that donations, fundraising and sponsorship will increase significantly, partly as a result of the public perception of the new organisation (external to the council) and partly due to increased access to funding from external sources. The business plan assumes income of £40k in year 1 from these sources. This should be reviewed at the end of year 1 to ensure it is achievable in the long term.
  - The business plan projections show only a marginal surplus for the first 2 financial years (£3k in 2014/15, £10k in 2015/16). There is therefore a significant risk that the CBS makes a loss initially and there should be some consideration within the contract of how this would be dealt with.
  - The cashflow forecast accompanying the business plan remains positive throughout the 5 years. Payments from the Council will be made in advance (potentially quarterly) and this will be finalised in the contract. There is a small risk of a deficit position at the end of year 1 if the forecast surplus is not achieved, so this will need to be monitored; however it is likely that any short term cashflow deficit could be managed by the CBS through their own banking.
68. **Support Services:** The Council will award a contract to CBS initially based on the current budget allocation including a notional recharge for support services. In year 2 the element of the contract value relating to support services will be adjusted to reflect the actual cost of support services. If the CBS choose to procure support services from an alternative provider, it is essential that the Council have the ability to reduce their costs accordingly to reflect the reduction in service provision. There is a risk that the Council

may be unable to reduce costs if for example there is an element of fixed costs or if the cost relates to a proportion of a staff member.

69. **Contract Term:** As discussed in the report, a contract term of 5 years is proposed (until 2018/19) and apart from the adjustment relating to support services it is proposed that the contract value will remain fixed. The Council's current budget is set until 2014/15. Therefore for the 4 year period from 2015/16 to 2018/19 there would be no opportunity for the Council to make budget reductions in this service area. This may increase pressure on the Council's remaining services to achieve future savings targets.

**Legal:**

70. The proposed contract between the Council and the new CBS will be subject to the Public Contracts Regulations 2006. Contracts for services over the threshold of £173,934 are classified as "Part B" services and are not subject to the full EU procurement regime, but the Regulations do require the Authority to comply with the detailed requirements relating to technical specifications; and also a requirement to publish a contract award notice in the Official Journal, no later than 48 days after the contract has been awarded.
71. Additionally, if there is likely to be any cross-border interest in providing the service the principles set-out in the Treaty on the Functioning of the European Union (TFEU) will apply. The Authority would need to comply with the key principles of proportionality; mutual recognition; transparency; non-discrimination; and equal treatment. Taken together, these principles require transparency in the procurement process. The impact of this is the necessity to advertise to inform potential providers in other Member States of the procurement to give them an opportunity to express an interest. There is no requirement to have a formal tender process and a more flexible process of evaluation and selection can be adopted.
72. The Council's own Contract Procedure Rules also require contracts with a value of over £139,000 to be tendered, unless a waiver is granted prior to entering into the contract.
73. If a direct contract is awarded to the CBS and the Authority is providing financial or other aid to the Society this may amount to State Aid under Article 107 of the TFEU. Aid includes grants, capital payments, preferential loans, and the use of the Council's assets, for example. Such assistance, however, will not amount to State Aid if it does not have the potential to distort competition and affect trade

between Member States, or the level of aid is below the current de minimis exemption of €200k.”

74. Clauses 14 and 29 of the Heritage Lottery Fund (HLF) Terms of Grant for the Gateway to History project HLF require the Council to retain ownership and exclusive control over the archive facility unless it has HLF’s consent to do otherwise. This means that consultation will be required with the HLF about the proposal to include the archive within the social enterprise for Libraries & Archives.
75. The service is subject to statutory regulation. The Council, being a library authority, has a duty, under s7(1) Public Libraries and Museums Act 1964, to provide a comprehensive and efficient library service.
76. The City Archives has been designated by the Lord Chancellor as a place of deposit for local public records under the Public Records Acts of 1958 and 1967. The City Archives also holds manorial documents as designated by the Master of the Rolls and under the supervision of the Secretary of The National Archives: Historical Manuscripts Commission. The City Archives holds on deposit (i.e. loan) various archives from non-civic organisations and individuals under powers granted to the Council by the Local Government (Records) Act 1962. Under s224 of the Local Government Act 1972 the Council is obliged to make suitable arrangements for its own archives and for any archives held on behalf of others. The National Archives and the owners of the deposited archives will need to be consulted further about the implications of any transfer of the service to a CBS.
77. The Council would use primarily the general power of competence set out in section 1 of the Localism Act 2011 to establish the community benefit society.

**Equalities:**

78. A CIA has been undertaken. The action plan will deliver on the following recommendations:
  - Ensure opportunities to engage and participate in the decision-making process are offered to all.
  - Ensure representatives from the communities are consulted with regard to changes to service delivery.
  - Volunteer opportunities will be inclusive – use of equalities monitoring data will capture details of all volunteers.

- The CBS will deliver the Council's public sector duty.
- All library and archives users will be updated regularly via briefings and meetings on the development of the organisation.

### **Human Resources:**

79. Consultation with staff and unions is ongoing. The transition plan will detail the time table for formal consultation and the arrangements for the TUPE transfer of staff into the new organisation.
80. Discussions have taken place with the North Yorkshire Pension provider regarding the transferring of existing pension rights for transferring staff. They have agreed in principle to grant the CBS 'admitted body status' which will enable it to offer continued eligibility for the Local Government Pension Scheme.

### **Risk Analysis**

81. The key risks identified at this stage are:
  - Long-term illness of key staff: The head of service is leading on this project and her absence would significantly impact on the ability to move forward. To mitigate it, she is being supported by the Archives Development Manager and the Library Delivery Manager, who are being kept up to date with work.
  - Resistance to change and fast pace. The success of the project will require different and innovative ways of working and thinking. We will need to challenge "local government" ways of doing things. Having the support of senior officers and councillors will help to mitigate this risk.
  - Public resistance to the idea. Public consultation has been going on since October 2012 and is now changing to engagement. The focus groups are showing that once people have the information they are not opposed to the idea.
  - Not enough time or resources to deliver the plan. The support delivered from the Cabinet Office will significantly help with this risk. We have identified the key areas where help is needed and we are confident that working with suppliers will mitigate the risk.
  - Lack of the right skills. We have identified the skills gaps and the support from the Cabinet Office will help us to develop new skills needed both in the short term and over a longer period.

## **Corporate Priorities – Delivering the Council Plan**

82. The proposals within this paper help to deliver the Council Plan in the main priority areas:

Build Strong Communities – through:

- Roll out of Explore centres as community hubs for learning
- The primary place of Explore Centres as community information hubs
- Creation of centres of community learning in the larger explore centres located in some of the most deprived communities in the city
- Access to other council services and facilitating community consultation
- Develop volunteering opportunities
- Safe places for communities to meet particularly for children and vulnerable adults

Protect Vulnerable People – through:

- Safe, welcoming community spaces
- Delivering library services to housebound people

Create Jobs and grow the Economy – through:

- Important role in providing first step learning and opportunities for progression into work
- Creation of jobs through the roll out of Explore cafés
- Work placement opportunities for some of the most disadvantaged
- Support for people with mental health problems and learning difficulties to access learning and preparation for work
- Provide opportunities for the development of digital skills

## **Recommendations**

83. Cabinet is asked to agree to:

- Library and Archive Staff establishing *Explore Libraries and Archives Mutual* as a CBS
- The award in principle of a contract to the CBS through a single tender action
- Nominate an individual to the CBS board

- Delegate to the Director of CANS in consultation with the Director of CBBS the negotiation of the contract
- The contract terms being brought back to Cabinet for approval

Reason: To create the best delivery model for libraries and archive services in York.

### Annex: Strategic Objectives of the CBS

#### Contact Details

<b>Authors:</b>	<b>Cabinet Member &amp; Chief Officer Responsible for the report:</b>		
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	<b>Report Approved</b>	✓	<b>Date</b> 27.6.13.
<b>Specialist Implications Officer(s)</b> Sarah Kirby – Principal Accountant Glen McClusker – Deputy Head of Legal Services Sue Foley – HR Business Partner Philip Callow – Head of Asset and Property Management Isabel Jones – Audit Manager			
<b>Wards Affected:</b> List wards or tick box to indicate all		<b>All</b>	✓

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

#### Background Papers:

Focus group report  
Staff survey report  
CIA  
Options Appraisal on legal entity  
Business Plan (exempt information)