

**Executive**

24 September 2015

Report of the Director of Communities and Neighbourhoods

## **York Museums Trust Funding**

### **Summary**

1. This report proposes a new legal and funding relationship between City of York Council and York Museums Trust (YMT).

### **Recommendations**

2. The report asks the Executive to:
  - Note York Museums Trust's revised charging plans following discussions between the Council and YMT
  - Agree a process for updating the legal agreements between CYC and the trust to reflect new funding levels
  - Commission further work with regard to options for new legal structures to better protect the museum assets
  - Agree the release of £20k from contingency to fund the maximum cost of the new concessions

Reason: To ensure a vibrant and sustainable museums service over the long-term.

### **Background**

3. In 2002 City of York Council entered into a partnership agreement with the newly constituted York Museums Trust in order to ensure the long-term stability and prosperity of the City's museums and collections. The background to the decision was a sharp decline in museum visits and a pressing need for investment in the museums. YMT has been highly successful. Its key achievements have been in the following areas:
  - a. **Visitor numbers:** Visitor numbers have risen from 387,000 in the first full year of operation to 656,000 in 2011/12.

- b. **Delivering new income streams:** YMT has increased the diversity of their income streams and their overall income. In 2002 the Council's grant accounted for over 50% of YMT's income; in 2015 it has reduced to less than 10% of income with admission charges, Arts Council *Major Partners Museum* funding, and other trading income making up the remainder.
  - c. **Developing new exhibitions and interpretive service:** There is now an excellent programme of activities at all the sites managed by the Trust. Partnerships with the Arts Council: England, The Tate and the British Museum have not only brought the best of national collections to York but have also shown York's collections regionally and nationally. The Trust's Learning support team have won awards for their interpretation and informal learning programme. The Trust contributes to many wider city initiatives such as the York Mystery Plays.
  - d. **Upgrade the building assets:** YMT has so far raised approximately £16m which it has invested in the Council's buildings, gardens, public programmes and collections.
  - e. **Increase use and involvement by residents:** There were 5,000 visits from York school children from over 50 state and independent sector schools last year. The volunteer programme has over 400 active volunteers at any one time, and working with the H.E. sector the trust hosts over 20 student placements annually. They have an active inclusivity programme supported by the Joseph Rowntree Foundation, Arts Council: England and Renaissance in the Regions.
  - f. **Achieve high visitor satisfaction:** The Trust has successfully retained the Visitor Quality Assurance standard and their own visitor survey show that visitor satisfaction is consistently above 96% with an average 98% of visitors willing to recommend the visit to others.
  - g. **Ensure the cataloguing of the collections:** The agreed programme of retrospective documentation is on target. The Trust team has also developed an acquisitions programme to reflect the history, science and culture of the city and region.
4. Funds raised have been used to:
- Complete a major refurbishment of the York Art Gallery, to reopen on 1 August, increasing exhibition space by 60%, with a mezzanine gallery and new upper south gallery which will house the new Centre of Ceramic Art

- New gardens are being created that will connect the historic Museum Gardens with the area behind York Art Gallery. Two of the garden areas open to the public in time for the opening of the gallery.
  - Undertake a major development at the Castle Museum, using film and voice to tell the stories of the Debtors prison, and bringing the social history remit of the museum up to date through the 1960s exhibition. Kirkgate has also been refreshed with new interpretation including sound and light. Better learning spaces have been provided and, for the first time, a visitor lift. The first exhibition held in these new spaces was the successful *1914: When the World Changed Forever*
  - Create a vibrant museums education provision with 3 new learning posts
  - Tackle the problems in collections management through a new Directorate of Collections
  - Strengthen the curatorial team with new posts in archaeology and natural history
  - Refurbish the Yorkshire Museum through a £2.2m project to redisplay the museums collections. A specially commissioned History of York Video is now available to all visitors in the Tempest Anderson Hall
  - Invest in the Yorkshire Museum Gardens improving the planting and labelling in order to restore the botanical garden and open it up more sustainable and flexible use
  - Develop a new contemporary art venue in the city at York St Mary's showcasing the best of international contemporary artists and developing a programme of events to support major festivals in the city.
  - Achieve accreditation for all of YMT museums, an important mark of quality within the sector
5. YMT continues to develop robust and exciting plans for the continued development of the city's museums and gallery; however, it faces significant financial challenges. The Council's annual grant has reduced from £1.5m in 2012/13 to £600k in 2015/16, a 60% cut. In response to these reductions YMT has made significant efficiency savings including reducing the number of senior managers and curatorial staff; however, the trust recognises that savings alone will not come close to closing the funding gap and that it needs to

operate increasingly as a self-sustaining commercial organisation, adapting its business model and seeking new ways to generate income, if the museums are to continue to be a key part of York's cultural offer. The trust sees freedom to set pricing as a central component of the approach required to make the trust economically viable and, over time, more self-sufficient.

6. In line with this, YMT approached the Council seeking permission to introduce a new scheme of entry charges to the museums and Art Gallery for YorkCard holders. This proposal was considered by the Learning and Culture Scrutiny on 29 July followed by the Executive Member for Culture Leisure and Tourism at a decision session. Following the recommendation of the scrutiny committee the Executive Member deferred a decision to this meeting of the Executive.
7. Notwithstanding this deferral YMT then took the decision to implement a new scheme of charging for YorkCard holders, at the three institutions, with effect from 1 August.
8. Following these events a series of meetings has taken place between YMT and the Executive Member, members of the Learning and Culture Scrutiny Committee and officers with a view to understanding better the needs of both the Council and YMT and to reach an acceptable position with regard to proposed charges. This report sets out the improved position that has been achieved as a result of these discussions.

## **Issues**

### **YMT's Financial Position**

9. The £500k reduction in the trust's budget in 2015/16 has presented severe challenges to the trust. This is compounded by the fact that the York Art Gallery project was c. £200k over budget due to unforeseen structural problems, whilst the extension to Museum Gardens is c. £500k over budget, and rising, due primarily to the discovery of large areas of contaminated ground which have had to be disposed of in specialist tips.
10. The result of cuts in council funding and capital cost over-runs is that YMT's cash reserves are depleted from £1.2m to c.£500k, which is less than one month's expenditure, including salaries, and only a third of a prudent level. YMT's future sustainability is heavily dependent on ticket and membership sales.

11. It is worth noting that whilst many local authority museum services have suffered severe cuts over the last few years, few major services have such low levels of investment as York. The following table shows a sample of 2015-16 Local Authority funding, in total and as a % of turnover:

	Local Authority Funding £	% of Turnover
Birmingham Museums Trust	3,433,000	29%
Brighton Museums Service	1,550,000	22%
Derby Museums Trust	1,054,000	53%
Leeds Museums Service	4,160,000	59%
Sheffield Museums Trust	1,543,700	47%
Newcastle Museums Service	2,786,460	31%
Cheltenham Leisure & Culture Trust	800,000	16%
Wakefield Hepworth	1,200,000	38%
<b>York Museums Trust</b>	<b>600,000</b>	<b>9%</b>

12. Turning to the financial outlook, it is to be expected that the Council will have to make further significant staged reductions in the grant in the years up to 2019/20 in view of the decreasing funding that York receives from central government. YMT also faces the possibility that national income streams for the arts could be reduced or reallocated elsewhere which could have a major impact if the grant that it receives from the Arts Council is reduced.
13. With the likelihood of further reductions in the future YMT believes that going forward it needs to establish a new relationship with York residents, one based around a membership scheme whereby users pay for their use. It can be expected that over time this will build to tens of thousands of residents and generate several hundred thousand pounds. Since it will no longer be possible for the Council to fund free entry for York residents in the future by charging every one through their council tax it is logical that the cost is borne by those who choose to make use of the facilities. Membership schemes have additional benefits in facilitating communication between visitor attractions and their users, increasing usage and encouraging residents to get involved in other ways such as volunteering.

## **The Legal Position**

14. There are three main aspects to the legal position relevant to the issue of charging:
  - The building leases
  - The Partnership Funding Agreement
  - YMT's charitable status

### **The Leases:**

15. The reason that YMT needs the Council's permission to charge residents for entry to the Art Gallery and Castle Museum, is that the leases for those buildings contain a clause requiring them to give free entry to York residents for everything other than special exhibitions, except where the Council gives them written permission to do otherwise. (The trust has full freedom to charge non-residents).
16. In practice the Council has not required YMT to give free access to York residents over the years, but rather has asked them specifically to give free access only to residents who have bought a YorkCard from the Council / Explore York.
17. By introducing a charge for YorkCard holders without agreement from the Council, the Trust is in breach of the relevant clause in the lease. The Council would have the right to seek an injunction to stop the trust making the charge, or alternatively, to seek to forfeit the lease and take back the property.
18. To obtain an injunction the Council would need to satisfy the Court that it was "just and equitable" to make an order. This would be difficult to argue since the trust will assert that it has been forced into making the charges because of the reduction in its grant funding made by the Council without its agreement.
19. A forfeiture of the lease is entirely impractical since the Council has no means of operating the Art Gallery. Furthermore, it would face the prospect of having to make repayments of some of the capital grant funding obtained by YMT to transform the Art Gallery. In any event, if the Council decided to seek to forfeit the Lease, the trust has the option of applying to the Court for relief against forfeiture, which if successful, would allow it to remain in the premises. Clearly, the trust would not wish to give up possession of the Art Gallery and would no doubt oppose any forfeiture of the Lease. It

would argue that it has been forced to introduce charging because of the cuts in its grant funding from the Council.

### **The Partnership Funding Agreement:**

20. The Partnership Funding Agreement between the Council and YMT provides a mechanism for funding to be agreed for fixed 5 year periods. Funding was agreed in 2012 for the period 2013-18 at a figure of approximately £1.2m. Subsequently, however, the Council informed YMT, without negotiation, that its funding would be reduced to £1.1m in 2014/15 and to £600k in 2015/16. YMT would argue that these reductions represented a major breach of the Partnership Funding Agreement since no negotiation took place about how the service provided by YMT would be varied in response to the cuts.

### **YMT's Charitable Status:**

21. YMT has charitable status, and as such, there are specific legal duties placed on the trustees. They must, amongst other duties, act in the Charity's interest at all times, and manage the Charity's resources responsibly. The trustees will argue that in raising the charges they were acting in accordance with their duties to protect the interests of the charity and its objectives.
22. For these reasons, it is clear that legal action cannot be recommended. The Council and YMT have continued to discuss the issues in accordance with the dispute resolution procedure contained in the Partnership Funding Agreement and it will be important now to reach a resolution.

### **The Charges**

23. YMT's initial proposal considered by Learning and Culture Scrutiny Committee and the Executive Member for Culture, Leisure and Tourism included:
  - a) An admission charge for York residents at all YMT sites
  - b) A new membership scheme (the YMT Card) offering 12 months free entry to all YMT sites, as well as other benefits / discounts at the cafés and shops, costing £17 for a YorkCard holder (compared to £22 for a non-YorkCard holder).
  - c) Up to 50% off day tickets and 50% off the YMT Card for 17-24 year olds and those on Universal Credit, Pensions Credit, Jobseekers Allowance, Employment and Support Allowance and Income Support. This would mean that for those who

qualify for this discount and who also have a YorkCard, the YMT 'Access Card' would cost £6 (£5 if paid by direct debit)

- d) All York Cards bought before 1 August would remain valid, continuing to give the advertised benefits for their 12 month period (these don't include the Art Gallery). Explore York, who manage the YorkCard scheme on behalf of the Council, would continue to refresh the YorkCard offer so that it would remain attractive to residents with a range of benefits on offer.
24. The scrutiny committee raised a number of concerns about these proposals and resolved that the Executive Member be recommended to defer his decision and, in consultation with members of the Learning & Culture Policy and Scrutiny Committee, to continue talks with YMT, these talks to include the financial implications of free access for York Card holders or agreeing further concessions ahead of a financial decision being taken by the Executive in September.
25. Residents have also held meetings with regard to the new charges. Concern has been expressed by residents about various aspects of the charges and their impact on York residents particularly young people and people from lower socio-economic groups.
26. In addition, the Executive Member has raised further concerns about the ability of those on particular benefits, vulnerable and hard to reach groups to make use of the museums and gallery.
27. The Executive has noted the various views and concerns expressed across the city and, in light of these, has facilitated a series of discussions between YMT, the Executive Member, members of the Learning and Culture Scrutiny Committee and officers in order to seek to address the various issues.
28. In these discussions YMT clarified their expectation that the Council's core funding will, in future, represent only around 4.5% YMT's turnover, a level that will provide for only one third of the £950k maintenance costs of the public spaces and 18 buildings, including two scheduled monuments, in YMT's care. YMT see the introduction of charges for residents as vital to the future of the service; however, whilst this will mitigate some of the worst effects of reduced funding it will not balance the books by itself. In spite of the additional income from charging, YMT is already having to plan further cuts in staff and non-staff costs of more than 10% in 2016-17, reducing expenditure by £700k.

29. Whilst this financial reality constrains the scope for changes to the charging proposals YMT wish to address the important issues raised and, in the light of the discussions that have taken place, they have agreed to put in place a new charging scheme with the following revised features:
- a) The YMT Card will cost just £10 for YorkCard holders (compared to £20 for a non-resident). Children up to 16 will be free
  - b) Continued free access will be provided for York residents during the Residents' Festival and for other special occasions and events determined by YMT
  - c) Those YorkCard holders who would have qualified for a discounted YMT card under 23 c) above, i.e. 17-24 year olds and those on particular benefits, will now be entitled to a free YMT card. In return for this provision, the Council will reimburse YMT £5 for each free YMT card issued with a target of 4,000 cards p.a. (Customers who have already bought an Access Card will be reimbursed by YMT)
30. In addition, YMT have offered to make available free tickets to YMT's venues to vulnerable and hard to reach groups who would not otherwise make use of the museums and gallery. Examples of the groups include:
- People with mental health issues and their befrienders
  - Young carers
  - Residents of older person's homes and their carers
31. The Council will work with YMT to finalise the criteria for use and will direct YMT to key contacts. The aim will be to see as many as 20,000 new visits facilitated. For YMT this is part of its participation in the Arts Council's Creative Case, a new strategic approach to diversity and equality.

### **Options**

32. The principal options open to the Executive are:
- a) To refuse YMT's request and continue to insist on free access for YorkCard holders
  - b) To agree to YMT's request and seek to reframe the legal and financial relationship between the Council and YMT

## Analysis

33. Option a): The practical difficulties of forcing YMT to provide free access are noted above. Notwithstanding these difficulties, if the Council were to insist on continued free access for YorkCard holders it would have significant financial implications for the Council. Not only would the Council have to ring-fence the current £600k grant but it would potentially need to reinstate funding previously cut in order to allow the museums to remain viable. It is reasonable to believe that, over time, YMT Card income from residents could rise to £400k per annum once gift-aid is factored in. Assuming that, rather than ring-fencing the grant, the Council may need to reduce it by a further £300k it would mean that the cost to the Council of maintaining free entry for YorkCard holders in future years would potentially be as much as £700k p.a. This cannot be recommended in light of the Council's future budget position. It should be noted that, should YMT not be able to continue to operate the museums and gallery its staff and obligations would revert to the Council, creating a potential multi-million pound liability.
34. Option a) cannot therefore be recommended.
35. If option b) is selected and it is accepted that YMT will charge York residents it opens up the possibility of redrawing the agreements between the Council and YMT.
36. **The Partnership Funding Agreement:** This document was drawn up in 2002 when the Council's funding of YMT was on a much greater scale. It set out a requirement for a comprehensive service with targets across a range of areas. Now that the Council's funding has fallen to just 9% of YMT's turnover and is likely to fall to less than 5% this is no longer realistic or appropriate. It is recommended that a new service level agreement is drawn up reflecting the key priorities that the Council wishes to fund YMT to deliver.
37. It is suggested that the Council's key priority might focus on ensuring access for those most likely to be excluded from using museums. The YMT "Access Card" costs as little as £5 for an adult visitor, and will be free for YorkCard holders, but we know that there are more complex reasons why some groups do not use museums. The Council would commission YMT to focus on these groups with the aim of increasing usage. A target will be set of 4,000 free Access Cards.

38. A process would be undertaken to develop the new SLA with the input of views from key stakeholders including the Learning and Culture Scrutiny Committee. The new SLA would be agreed by the Executive Member for Culture, Leisure and Tourism.
39. **Funding:** Agreement of a new SLA would be undertaken in tandem with the negotiation of a new revenue funding settlement for the next 5 years which would be finalised as part of the Council's budget process. In order to give certainty to YMT and to its external funders it is proposed that the required funding reduction is staged, guaranteeing YMT funding of £500k in 2016/17 reducing to £300k by 2018/19.
40. With regard to capital, the Council has already allocated £500k in 2015/16 for YMT and it is proposed that this is now made available to them. It will be open to YMT to bid for further capital to support major developments in the future and any such bids will be evaluated within the Council's CRAM process in the normal way.
41. **The Leases:** These were drawn up in 2002 and again are no longer suitable for the current era. It is clear that they cannot provide effective control of how the assets are used. As the Council's funding reduces so will its influence and control and this introduces a vulnerability in respect of the Council's museum assets. It will therefore be important to consider a legal framework that provides more protection for the buildings and collections.
42. It is recommended that a further report is produced on the options available to provide greater protection for the Council's museum assets.

### **Implications**

43. **Finance:** The Council makes an annual grant to YMT. In 2015/16 the grant is £605k, a reduction of £900k compared to 2012/13. The Council will make an additional payment of £5 for each free Access Card issued by YMT up to a maximum commitment of £20k in a full financial year. There is currently no budget to fund this commitment so it is proposed that the initiative is funded in 2015/16 from the council contingency. The contingency currently stands at £206k. Should Members agree to the release of £20k this will reduce the level of contingency to £186k.
44. **Equalities:** The proposed Access card will offer half-price access for 17-24 year olds and those on Universal Credit, Pensions Credit,

Jobseekers Allowance, Employment and Support Allowance and Income Support. This means that with a YorkCard local residents on benefits will get entry to the Castle Museum, Yorkshire Museum and York Art Gallery for a year for £5. YMT have long-established relationship with York schools who regularly use the learning services. They also have successful projects such as *Territories* that work with a number of hard to reach groups in the city. The *Genesis* project involves YMT working closely with young people. YMT also operates a volunteer scheme which attracts around 350 active volunteers at any one time. All volunteers are entitled to free access to all venues. Finally, YMT's provision of free tickets to the Council will enable and encourage communities who have not previously used museums to have access for the first time.

45. The report has no additional implications relating to: Human Resources, Crime and Disorder, Information Technology, Property.
46. **Legal:** These are contained within the report. It should also be noted that under s14 of the Public Libraries and Museums Act 1964, the Council has the statutory power to provide financial assistance to the Museums Trust.

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

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