

**Cabinet**

**17 January 2024**

**Creation of a County Durham Culture Trust**



**Ordinary Decision**

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## **Report of Corporate Management Team**

**Amy Harhoff, Corporate Director of Regeneration, Economy and Growth**

**Councillor Elizabeth Scott, Cabinet Portfolio Holder for Economy and Partnerships**

**Councillor James Rowlandson, Cabinet Portfolio Holder for Resources Investment and Assets**

### **Electoral divisions affected:**

Countywide.

### **Purpose of the Report**

- 1 The report provides an assessment of the benefits of establishing a charitable trust to support the council's culture service and sets out recommendations and key next steps for the creation of a County Durham Culture Trust (CDCT).
- 2 This report also provides an update on the development of a fundraising strategy for the Durham Light Infantry (DLI) Museum and Art Gallery in line with recommendations agreed by Cabinet in March 2022.

### **Executive summary**

- 3 The extension and reopening of the DLI Museum and Art Gallery (DLIMAG) requires a robust and achievable business plan supported by a realistic fundraising strategy.
- 4 Drafting of this fundraising strategy has identified structural issues that could constrain its achievement.
- 5 Local authorities are not eligible to apply to a large number of trusts and foundations, are not able to claim gift aid or access similar initiatives that are considered standard in the cultural sector and furthermore there is little evidence that local authorities can access private giving.

- 6 A number of options have been explored that could mitigate these structural constraints, primarily through charitable status. The establishment of a charity partner with a Charitable Incorporated Organisation (CIO) structure is identified as the optimum option.
- 7 The structural constraints equally apply to fundraising activity across all of the council's cultural and heritage assets and local authorities in similar positions to Durham County Council have successfully established charity partners that support fundraising. Indeed, it is quite common for local authorities to establish independent charities to help fundraise for the capital and revenue requirements of its cultural venues and programmes. These may take the form of friends organisations, development trusts or foundations. In many instances these charities have trading subsidiaries, which deliver commercial activities such as venue hire, retail and hospitality, and which gift the profits from these activities in line with their individual charitable objects.
- 8 It is also relatively common for such trusts or foundations, in addition to supporting fundraising for capital projects and revenue programmes such as temporary exhibitions, to also manage assets such as cultural venues, on behalf of a local authority, e.g. Birmingham Museums Trust, Hampshire Culture Trust and Museums Northumberland.
- 9 The establishment of a CIO, like any charity, requires a constitution that must include reference to the charitable objects of the proposed charity. Consideration has been given to the name and scope of the charity and the following charitable objects have been identified, subject to comment, possible amendment and approval by the Charity Commission. The proposed objects of the CDCT are:
  - (a) the promotion of the arts, culture and heritage in County Durham, in particular, but not exclusively by:
    - (i) encouraging public participation;
    - (ii) the presentation of performances, exhibitions and festivals;
    - (iii) supporting and representing others in the sector; and
    - (iv) to advance education in culture, arts, heritage and science in particular but not exclusively by the establishment and maintenance of museums, galleries and other venues; and
  - (b) to advance education in culture, arts, heritage and science, in particular but not exclusively by the establishment and maintenance of museums, galleries and other venues; and

- (c) to provide or assist in the provision of facilities for recreation or other leisure time occupation in the interests of social welfare.
- 10 Set up costs and initial operations will require a budget of £70,004. This will be met within the service budget and/or service reserves.

## **Recommendations**

- 11 Cabinet is recommended to:
- (a) agree to instruct officers to progress an application to the Charity Commission to establish a CIO to be known as The CDCT with charitable objects as set out in paragraph 47 (or materially similar objects as recommended by the Charity Commission);
  - (b) note the utilisation of culture reserves to cover costs associated with the establishment of CDCT; and
  - (c) delegate the appointment of an appropriate senior officer as Durham County Council's first nominated charity trustee in respect of and oversight of the development of a transparent and open recruitment process for the two independent trustees to the Corporate Director for Regeneration, Economy and Growth, in consultation with the Portfolio Holder for Economy and Partnerships.

## Background

- 12 In March 2022, Cabinet agreed to reopen the DLIMAG.
- 13 At the same time, Cabinet also agreed to the development of a comprehensive capital and revenue fundraising strategy to seek external funding in order to minimise prudential borrowing and ongoing revenue commitment of the council.
- 14 Since March 2022, an intense period of development has been carried out supported by expert sector advice and a comprehensive fundraising strategy has now been produced.
- 15 This strategy includes the following:
  - (a) a review of the current fundraising context, expertise and experience internally (both within the culture service and wider corporate funding teams);
  - (b) provides an analysis of the council's strengths, weaknesses, opportunities and threats in relation to fundraising;
  - (c) explores comparator analysis and sector trends in fundraising; and
  - (d) sets out the wider external context for cultural fundraising in relation to key national themes, including for example, socio-economics, climate change and equality.
- 16 These reviews have helped to shape key considerations for the DLIMAG fundraising strategy that include:
  - (a) delivering on the ambition and vision of the DLIMAG project;
  - (b) building on the legacy of the City of Culture 2025 bid;
  - (c) the potential for significant fundraising due to stakeholder and public interest; and
  - (d) opportunities for strategic alignment with wider cultural activity in County Durham.
- 17 In light of these considerations, the strategy outlines key fundraising goals, priorities and opportunities for both the delivery of the DLIMAG project, but which could also support the delivery and impact of the council's wider cultural portfolio. The strategy proposes four key aims:
  - (a) a set of objectives under each of these aims has also been developed:

- (i) have a high performing fundraising function;
  - (ii) meet or exceed annual fundraising targets;
  - (iii) grow a strong, committed pool of supporters; and
  - (iv) deliver effective fundraising communications.
- 18 The strategy also outlines key sources for fundraised income to support capital and revenue needs at the DLIMAG, these are:
- (a) lottery funding (e.g. Arts Council England and National Lottery Heritage Fund);
  - (b) government funding (e.g. UK Shared Prosperity Fund and Section 106 funding);
  - (c) trusts and foundations (capital and revenue grant makers such as the Wolfson Foundation, Garfield Weston Foundation, Paul Hamlyn Foundation and Foyle Foundation etc);
  - (d) individual giving (e.g. major gifts, membership, donations, legacies and “Make your mark” schemes etc); and
  - (e) business partnerships (e.g. corporate membership and sponsorship).
- 19 The council currently, as a local authority, is not eligible to receive funding from many of the trusts and foundations that support culture, art and heritage. The authority is also not able to realise tax benefits from individual donations, such as gift aid, which can increase the value of a donation by 25%. The council are also not able to realise the tax benefits which charitable organisations are able to nor to maximise opportunities for business partner or corporate donor engagement.

## **Fundraising Options**

- 20 In order to deliver against the fundraising objectives outlined in paragraph 17, three options have been explored:
- (a) delivering all fundraising functions within existing resource and as a local authority;
  - (b) work with an external partner, e.g. the Community Foundation to access funding not available to local authorities; and
  - (c) establish an independent charitable partner to support fundraising.

- 21 In terms of delivering all fundraising functions within the existing resource, the council has significant experience working with lottery and Government funding to support elements of both capital and revenue programmes. There is also some experience working with trusts and foundations however, as a local authority, the council can only make applications to a handful of these as many do not fund the work of local authorities.
- 22 In addition, although there is a small existing resource to support fundraising for DLIMAG through the central funding and programmes team and also within the Culture, Sport and Tourism service and experience of raising grant funding from lottery distributors, Government and a small number of trusts, there is very little internal experience of fundraising from individuals and companies and no dedicated resource to pursue those channels of income.
- 23 As a result, it is unlikely that the full fundraising potential of the DLIMAG project could be realised and maximised within the existing resource and while acting as a local authority.
- 24 There are examples of local authorities working with established external charitable partners, both to deliver against shared priorities, and also to access funds that local authorities on their own would otherwise be ineligible for.
- 25 Darlington Borough Council successfully used this approach to fundraise against a capital programme to redevelop the Darlington Civic Theatre. The Community Foundation provided a bespoke fund management and grant making service which provided a mechanism for Darlington Borough Council to receive funds and provided a donor service. A similar agreement with the Community Foundation was also put in place for The Story project in April 2020.
- 26 The benefits of this approach are access to a greater range of funding opportunities including those which local authorities are ineligible for however external charitable partners are likely to charge for this service. For example, in the agreement between the Community Foundation and The Story, the Community Foundation's trustees may retain 3% of the amount donated and gift aid this from donations to the Community Foundation to use it as a contribution towards the cost of providing the service. The agreement also makes provision for the Community Foundation to retain any interest earned on unallocated balances relating to The Story in the fund.
- 27 The third option is to partner with an independent charitable organisation such as a development trust or foundation. Local authorities widely use this approach to support eligible aspects of their cultural programmes.

For example, Manchester City Council gallery service partner with an independent fundraising charity, Manchester City Galleries Trust. Appendix 2 provides further examples of local authorities supported by an independent fundraising charity.

- 28 While the DLIMAG project has been the initial driver for reviewing the culture service's ability to deliver a comprehensive fundraising strategy the outputs of this work have identified a strategic need to look more widely across the service in respect of the benefits of establishing a charitable trust to support the council's culture service. Considering the benefits and limitations of each fundraising option described above, the establishment of an independent charitable trust is proposed. There are several different options for how such a trust could be structured and established, these are explored in detail below.

### **National Fundraising Context for Local Authority Culture Services**

- 29 It is quite common for local authorities to establish independent charities to help fundraise for the capital and revenue requirements of its cultural venues and programmes. Appendix 2 provides examples of local authority cultural services which have established similar charities, including neighbouring Tyne and Wear Archives and Museums (TWAM), and Museums Northumberland (the public name for Woodhorn Charitable Trust, an independent charity providing Northumberland's museums service), alongside examples from further afield such as Derby Museums and Manchester City Galleries.
- 30 All the local authority services detailed in Appendix 2 have partner charities which fundraise in support of their activities. These take the form of friends organisations, development trusts or Foundations. In many instances these charities have trading subsidiaries which deliver commercial activities such as venue hire, retail and hospitality and which gift the profits from these activities in line with their individual charitable objects.
- 31 It is also relatively common for such trusts or foundations, in addition to supporting fundraising for capital projects and revenue programmes such as temporary exhibitions, to also manage assets, such as cultural venues, on behalf of a local authority, e.g. Birmingham Museums Trust, Hampshire Culture Trust and Museums Northumberland.
- 32 While some of the charitable trust examples detailed in Appendix 2 manage assets such as museum venues in this way, it is not proposed that at its inception the CDCT proposed in paragraph 28 will do this; all building and physical assets would remain owned and managed by the council. Initially the proposed trust would provide support for programmes and capital projects only however it would be possible for

the proposed trust to take on this type of role in the future. While the inception phase of CDCT may focus on fundraising support future phases could see the development of the trust role, for example, future phases may include the development of a trading subsidiary or transfer of the management of council owned of building assets.

## **Charitable Structures**

- 33 The type of structure affects how a charity can operate such as:
- (a) who will run it;
  - (b) whether it will have a wider membership;
  - (c) whether it can enter into contracts or employ staff in its own name; and
  - (d) whether the trustees will be personally liable for what the charity does.
- 34 There are seven structures recognised as being charitable in the United Kingdom. Of those, four are regulated by the Charity Commission, these are:
- (a) CIO;
  - (b) charitable company (limited by guarantee);
  - (c) unincorporated association; and
  - (d) trust.
- 35 The three other structures (community benefit societies, royal charter bodies and charitable statutory incorporations) are unsuitable.
- 36 Choosing the right structure for a charity depends on whether it needs to have a corporate structure. CIOs and charitable companies are corporate bodies. This gives the charity the legal capacity to do things such as:
- (a) employing paid staff;
  - (b) delivering charitable services under contractual agreements;
  - (c) entering into commercial contracts in its own name; and
  - (d) owning freehold or leasehold land or other property.
- 37 If a charity structure is a corporate body, generally its trustees are not personally liable for what it does.



- 38 If a charity is not a corporate body ('unincorporated'):
- (a) the trustees are personally liable for what it does;
  - (b) it will not be able to enter into contracts or control some investments in its own name; and
  - (c) two or more trustees, a corporate custodian trustee or the Charity Commission's land holding service will have to 'hold' any land on the charity's behalf.
- 39 A CIO provides a straightforward form of incorporation for charities. A CIO is a corporate body which is not a company incorporated under the Companies Acts, it is therefore not subject to company regulations and does not have to be registered at Companies House. A CIO is registered with, and accounts to, the Charity Commission only. Trustees have either no liability at all or limited liability for its debts (provided that they act reasonably, operate within their charity's constitution, comply with their legal obligations and take due note of the Charity Commission's published guidance). Its governing document is a constitution.
- 40 There are two models of CIO: an association CIO and a foundation CIO. An association CIO has a distinct membership of voting members other than the charity trustees. In a foundation CIO, the charity's voting members are its trustees. A foundation CIO does not have a separate voting membership.
- 41 In contrast to a CIO, a charitable company is set up, registered and regulated as a company with Companies House as well as being separately registered and regulated as a charity with the Charity Commission. A charitable company must comply with company legislation and is required to file accounts with both Companies House and the Charity Commission. A charitable company is usually limited by guarantee not shares. Its governing document is its articles of association. A charitable company also has a voting membership and a Board of Directors (who are the trustees). The voting membership can be restricted to the Board of Directors or can be separate.
- 42 An unincorporated association is a simple way for a group of volunteers to run a charity for a common purpose. An unincorporated association may be appropriate for a charity which does not need a corporate structure (for example, if it will be relatively small in terms of assets), e.g. a voluntary group, a sports club or a friend's group. Individual members are personally responsible for any debts and contractual obligations. Its governing document is, normally, a constitution or rules.
- 43 A Charitable Trust is a way to manage assets such as money, investments, land, or buildings with a dedicated charitable goal. Trusts

are governed by their trust deed/declaration or Charity Commission scheme (though they can also be created by a will) which must specify a sum of money, land or some other assets that the charity will hold in trust to start with. A trust may be an appropriate vehicle for a charity that has no separate voting members and which does not need a corporate structure, for example, if it is unlikely to employ a significant number of staff or if it makes grants but does not do any other type of work.

- 44 The following legal rules apply to all charities:
- (a) charities must only undertake activities that are within their objects and powers;
  - (b) charities must be independent of Government and other funders;
  - (c) trustees must act only in the interests of the charity and its beneficiaries; and
  - (d) trustees must make decisions in line with their duty of care and duty to act prudently taking account of the Charity Commission's published guidance.
- 45 The importance of a charity's independence cannot be overstated, it may not be used as a means of carrying out the policies or directions of the council, and it must be recognised that conflicts may, from time to time, arise between things that would be popular with the electorate and the objects of the charity (as defined in its governing document).
- 46 It is proposed to establish a foundation model CIO, that will be able to fundraise to support culture, art and heritage programmes, both capital and revenue, with the proposed name CDCT, and to nominate an officer of the council as one of the first three charity trustees. This initial Board will make the application for incorporation and registration to the Charity Commission. Once the CIO has been incorporated, the initial Board will recruit more trustees to assist in the governance of CDCT.
- 47 At this stage, the CDCT does not intend to manage council assets, such as The Story or the DLIMAG, in the way that other local authorities have set up their trusts, e.g. Birmingham Museums Trust. Management of buildings and venues would stay with the council. Rather it is proposed that the CDCT would manage fundraising including:
- (a) individual giving e.g. gift aid, donations, membership schemes and major gifts (enabling tax benefits to be fully realised);
  - (b) business and corporate partnerships/sponsors; and
  - (c) grants from trusts and foundations.

- 48 Consideration has been given to the scope of the trust and draft charitable objects are detailed in paragraph 48 below. An initial outline business plan to cover the inception phase of the CDCT is included as Appendix 4. Once appointed the trustees will be responsible for developing a detailed five-year business plan.

### **Key Considerations in Establishing a Charitable Partner**

- 49 The establishment of charitable trusts to support local authority cultural services is not a new option, for example, Sheffield museums moved to trust status in 1998. Although, establishing a trust is not a panacea or one size fits all solution for all local authorities, in some cases it has been shown to represent the best long term response to the pressures facing local authority owned and managed cultural services and venues and new trusts continue to be established, e.g. the recently established Southampton 2025 Culture Trust. Although capital fundraising campaigns are often the catalyst for establishing a development trust once capital campaigns have been delivered, development trusts can continue to have an important ongoing role in raising revenue funds in support of programme activities and in some cases have taken on operational management of assets and venues.
- 50 The establishment of the proposed CDCT is expected to provide the following benefits:
- (a) it offers tax efficiency to major donors, both philanthropic giving from high-net-worth individuals and from corporate donors, who can benefit from the tax advantages of making gifts to charities; where a trust manages venues and/or asset it also offers tax efficiency in the form of business rate relief;
  - (b) it allows the charity to claim gift aid on donations and major gifts thus increasing the value of all eligible donations by 25%; this is an important consideration when running membership schemes, asking for donations or soliciting gifts in wills;
  - (c) open up considerable fundraising potential particularly from trusts and foundations which can only make grants to other charities and have a strong interest in funding the activity being delivered, e.g. Garfield Weston Foundation, currently the council can only make applications to a handful of trusts and foundations who will fund the work of local authorities, the proposal to establish a charity partner, CDCT, will open up considerable potential to fundraise from those myriad trusts and foundations which only support other charities' capital and revenue ambitions, many trusts and foundations are extremely used to working within this model and with the right charity vehicle in place will make

substantial gifts and in some cases gifts will be made over a number of years and will support both revenue and capital activities;

- (d) it provides a separate entity which can be helpful when seeking and making assurances to funders that the funds given would only be used for the purposes intended and not statutory local authority services;
- (e) in examples where a trust takes on the management of venues and assets they are able to employ staff; and
- (f) it can offer a useful solution to effectively manage commercial activities through trading subsidiaries.

## **Establishing a CIO**

51 In order to establish a CIO an application to the Charity Commission is required. This application must include a written constitution for the proposed charity as well as a business plan. These will provide direction for the focus and activities of the charity in its first five years. A proposed draft constitution and inception business plan are included as Appendix 3 and Appendix 4 respectively.

52 A CIO's constitution must follow the Charity Commission's model constitution as closely as possible.

53 The constitution must include reference to the charitable objects of the proposed charity. Consideration has been given to the scope of CDCT and the following charitable objects have been identified. The proposed objects of the CDCT are for the public benefit:

- (a) the promotion of the arts, culture and heritage in County Durham, in particular but not exclusively by:
  - (i) encouraging public participation;
  - (ii) the presentation of performances, exhibitions and festivals; and
  - (iii) by supporting and representing others in the sector;
- (b) to advance education in culture, arts, heritage and science, in particular but not exclusively by the establishment and maintenance of museums, galleries and other venues; and
- (c) to provide or assist in the provision of facilities for recreation or other leisure time occupation in the interests of social welfare.

- 54 Conflicts of interest and conflicts of loyalty are dealt with in Clause 7 of the draft constitution. The trustees can also adopt a suitable conflicts policy.
- 55 Clause 9 of the draft constitution deals with the functions and duties of charity trustees, eligibility for trusteeship, the number of trustees and the first charity trustees. Whilst a single trustee may administer a CIO, in the interests of transparency and good governance, it is considered good practice to have at least three charity trustees. Regulations require that a CIO's constitution must state the names of the first charity trustees.
- 56 Again, it is important to keep in mind that, once appointed, a charity trustee is not a delegate or representative of the council. Charity trustees must act solely in the best interests of the charity. It is essential, therefore, that the council nominated trustee understands their legal duties, and that any conflicts of interest that may arise between their roles and responsibilities within the council and those as charity trustee, are identified and appropriately managed.
- 57 If established, the management of the charity must be kept separate from the business of the council and the finances of the CIO must be kept separate from those of the council. The Charity Commission's registration and reporting requirements must be observed. The charity trustees must actively manage the charity by:
- (a) keeping records up-to-date;
  - (b) submitting the necessary returns to the Charity Commission; and
  - (c) reviewing investments, risks and opportunities on a regular basis.
- 58 As part of the application process an initial cohort of independent trustees will be identified to exercise the functions of the CIO. Durham County Council may nominate one charity trustee, this trustee does not necessarily need to be a member of the appointing body.
- 59 It is proposed that the Corporate Director of Regeneration, Economy and Growth should have delegated authority in consultation with the Portfolio Holder for Economy and Partnerships, to select an appropriate senior officer to act as Durham County Council's first nominated charity trustee in respect of CDCT in order to ensure the smooth establishment of the charity. Two further independent trustees are also proposed for submission of the application. It is also proposed that the development of a transparent and open recruitment process for the two independent trustees is overseen and delegated to the Corporate Director for Regeneration, Economy and Growth in consultation with the Portfolio Holder for Economy and Partnerships.

60 There will be an expectation that all trustees will actively engage in fundraising by making introductions to networks, asking for gifts and supporting the fundraising staff of the council. It is therefore vital that appropriate trustees are selected.

61 It is expected that the three initial trustees will be appointed for staggered terms of two, three and four years in the first instance. Table 1 outlines the proposed lead responsibilities of the founding trustees:

<b>Trustee</b>	<b>Term of Office</b>	<b>Lead responsibilities</b>
Trustee A	2 years	<ul style="list-style-type: none"> <li>• Ensure good governance</li> <li>• Lead on set up tasks and establishment of processes</li> <li>• Policy development</li> <li>• Trustee recruitment process development, training and induction</li> <li>• Statutory and governance documentation and process</li> </ul>
Trustee B / (Chair)	4 years	<ul style="list-style-type: none"> <li>• Strategic Lead and Chair</li> <li>• Ensure good governance and compliance</li> <li>• Lead fundraiser</li> <li>• Lead on development of the detailed business plan including vision, mission and initial timebound priorities</li> <li>• Lead on stakeholder management and partnership development</li> <li>• Trustee recruitment</li> <li>• Strong advocacy for the CDCT</li> <li>• Equality diversity and inclusion awareness</li> </ul>
Trustee C	3 years	<ul style="list-style-type: none"> <li>• Marketing and Communications Lead</li> <li>• Awareness building</li> <li>• Human Resources Lead</li> <li>• Equality Diversity and Inclusion Lead</li> <li>• Fundraising</li> <li>• Trustee recruitment</li> <li>• Advocate for the CDCT</li> </ul>

**Table 1: Lead Responsibilities founding Trustees of Proposed CDCT**

62 As part of this inception phase, the founding trustees will carry out an assessment of the skills, experience and knowledge that will be needed to support the newly worked up vision, mission and detailed business plan of the CDCT. With this understanding in place, the founding trustees will develop and implement a trustee recruitment strategy with reference to the Charity Commission’s best practice guide on trustee

recruitment entitled 'Finding new trustees: what charities need to know' and the Arts Council England's 'Let Us Create Investment Principles Resources Transforming Governance' materials. The founding trustee's recruitment strategy is therefore likely to include:

- (a) determination and agreement to a recruitment process including the roles and responsibilities of the founding trustees within it;
- (b) development of short job descriptions and person specification for each new trustee role;
- (c) consideration of the best ways to attract a diverse range of candidates, this will include incorporating the best practice recommendations of the National Council for Voluntary Organisations in its EDI guidance entitled 'Equality, Diversity, and Inclusion at Board Level';
- (d) an open recruitment process including advertising in range of suitable places and across different media;
- (e) short-listing and interviewing against an agreed set of criteria; and
- (f) proper vetting and references for those candidates the founding trustees wish to appoint to the Board.

63 Throughout the inception phase, the trustees will work closely with Durham County Council and Counterculture Partnership LLP on the formal establishment of the CDCT and its initial growth. Key advisors to the trustees will include:

- (a) head of culture sport and tourism, Durham County Council;
- (b) strategic manager for culture, Durham County Council;
- (c) project manager, funding & commissioning, culture sport and tourism, Durham County Council;
- (d) solicitor, senior partner (legal), Counterculture Partnership LLP; and
- (e) associate, consultant fundraiser, Counterculture Partnership LLP.

64 In this inception phase the CDCT will also require support from Durham County Council with the initial legal administration of the CIO. This will include the identification of suitable independent legal, professional or other advisers who will work with the charity in the future. An inception

phase business plan has been developed for consideration by the founding trustees and is included as Appendix 4.

## Financial Implications

- 65 Whilst it is expected that a charitable partner, like CDCT, will bring in substantial income, any new body will incur initial set up, and year one costs, that would need to be met. CDCT will be responsible for ongoing costs once established. These include governance costs such as:
- (a) financial administration;
  - (b) bank charges;
  - (c) insurance and fundraising costs such as donor cultivation events;
  - (d) donation card readers;
  - (e) development of a fundraising database;
  - (f) fundraising print and materials;
  - (g) brand and website design;
  - (h) donor recognition; and
  - (i) case for support development.
- 66 These costs total £70,004. Should Cabinet agree to the recommendations outlined in paragraph 11 it is proposed that these costs are met from Culture, Sport and Tourism reserves. The breakdown of these costs is detailed in Table 1 below:

<b>Fundraising Costs</b>	<b>Set Up Costs</b>	<b>Year 1 Operating Costs</b>
Case for Support development	£10,500	
Donation points		£3,850
Cashless donation card readers	£2,000	
Gift Aid Documentation		£1,000
Fundraising schemes materials		£5,000
Case for Support Campaign documentation for DLIMAG	£4,000	
Hospitality and cultivation events		£3,600
Spektrix - data cleanse and preparation	£10,000	
Spektrix - fundraising module	£2,000	
Donor recognition		£5,000
Database training		£1,000
<b>Fundraising total</b>	<b>£28,500</b>	<b>£19,450</b>



<b>Governance Costs</b>		
Financial administration		£13,440
Financial software		£360
Bank charges		£240
Trustee Indemnity Insurance		£1,500
Fundraising Regulator Fee		£150
<b>Governance total</b>		<b>£15,690</b>
<b>Sub total</b>	<b>£28,500</b>	<b>£35,140</b>
<b>Combined Sub total</b>		<b>£63,640</b>
<b>Contingency and risk</b>		<b>£6,364</b>
<b>Total</b>		<b>£70,004</b>

**Table 2. Anticipated Initial set Up and Year One Costs for Proposed Charity Partner**

## Timeline

- 67 There is currently a backlog of applications with the Charity Commission and it is expected that an application for the incorporation of the CIO could take six to 12 months to work through the process therefore a quick response from the Charity Commission is not expected however should Cabinet approve the recommendations outlined in paragraph 11 an application could be submitted in early 2024. It is expected that if this timeline were met CDCT could be up and running from Autumn 2024.

## Key Considerations and Risks

- 68 The CDCT, as a culture partner, would open up considerable potential to fundraise from trusts and foundations, individuals and corporate supporters. Analysis of the council's current fundraising resource, experience and fundraising eligibility suggest that that without the proposed charity it will be difficult to realise the significant fundraising targets required to support capital and revenue programmes and minimise the prudential borrowing and ongoing revenue commitment of the council.
- 69 There is the risk that the application is rejected by the Charity Commission. This would impact the ability to fundraise for various projects but most pressingly the DLIMAG project. In order to mitigate against this, the application will be prepared with the support of an experienced specialist solicitor, expert consultant support will also support the development of the required business plan for the proposed charity, both of which will support and strengthen the application.
- 70 Should the recommendations in paragraph 11 be taken forward the council would have no legal or financial liability for the proposed CDCT. In addition, and as set out in the draft constitution (Appendix 3), should

the CDCT be wound up, the trustees would have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

## **Summary**

- 71 In order to maximise capital and revenue fundraising potential for Durham's cultural portfolio it is proposed that a CIO is established to be called CDCT.
- 72 It is relatively common for local authorities to establish independent fundraising charities to help fundraise for the capital and revenue requirements of its cultural venues and programmes.
- 73 The proposed CDCT has the potential to play an important role not only in providing a mechanism to access funds, grants and donations that a local authority would otherwise be ineligible for but would also provide a mechanism to maximise the value of individual giving and major donors as it will be able to claim Gift Aid and offer donors a tax efficient option when making gifts in support of the proposed charity's work.
- 74 As part of the application process an initial cohort of independent trustees will be identified to exercise the functions of the CIO. It is proposed that the Corporate Director of Regeneration, Economy and Growth should have delegated authority in consultation with the Portfolio Holder for Economy and Partnerships, to select an appropriate senior officer to act as Durham County Council's first nominated charity trustee in respect of CDCT in order to ensure the smooth establishment of the charity.
- 75 It is also proposed that the Corporate Director of Regeneration, Economy and Growth should have delegated authority, in consultation with the Portfolio Holder for Economy and Partnerships, to agree an open and transparent recruitment process for two further independent founding trustees.
- 76 It is proposed that funds of £70,004 from culture reserves are utilised to set up CDCT.
- 77 If the recommendations are approved an application could be submitted to the Charity Commission in early 2024 with the aim that CDCT is set up by Autumn 2024, subject to the Charity Commission timescales.

## **Background papers**

- Report to Cabinet 16 March 2022: Feasibility Study Outcomes: Refurbishment and Re-use of the Former DLIMAG Building at

Aykley Heads – Report of Corporate Director of Regeneration,  
Economy, and Growth [Key Decision: REG/02/22].

### **Other useful documents**

- None

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## **Appendix 1: Implications**

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### **Legal Implications**

The Charities Act 2011 creates the basic legal framework for a CIO. This framework is completed by regulations:

- (a) the Charitable Incorporated Organisations (General) Regulations 2012 ('General Regulations'); and
- (b) the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 ('Dissolution Regulations').

If established, the management of the charity must be kept separate from the business of the council and the finances of the charity must be kept separate from those of the council.

The Charity Commission's registration and reporting requirements must be observed.

Charity trustees must act solely in the best interests of the charity. It is essential, therefore, that the council nominated trustee understands their legal duties, and that any conflicts of interest that may arise between their roles and responsibilities within the council and those as charity trustee, are identified and appropriately managed in accordance with the trust's constitution.

### **Finance**

To implement the proposed CDCT there are initial set up and year one costs that would need to be met. These include governance costs and fundraising costs. These costs total £70,004 and are detailed within the report. Should Cabinet agree to the recommendations outlined in paragraph 11 it is proposed that these costs are met from Culture, Sport and Tourism reserves.

### **Consultation and Engagement**

None.

### **Equality and Diversity / Public Sector Equality Duty**

None.

### **Climate Change**

None.

## **Human Rights**

None.

## **Crime and Disorder**

None.

## **Staffing**

The establishment of the trust will require in kind support and resource from the Head of Culture, Sport and Tourism, the Strategic Manager for Culture and the Project Manager for Funding & Commissioning. This will be managed through co-ordination and prioritisation of workload.

## **Accommodation**

It is not intended that the council would transfer any assets at this stage. Any change in this approach would be the subject of a future Cabinet report.

## **Risk**

In implementing the proposed recommendations outlined in paragraph 11 there is a risk that the application is rejected by the Charity Commission. This would impact the ability to fundraise for various projects but most pressingly the DLIMAG project. In order to mitigate against this, the application will be prepared with the support of an experienced specialist solicitor, expert consultant support will also support the development of the required business plan for the proposed charity, both of which will support and strengthen the application.

The council will have no legal or financial liability for the proposed CDCT.

## **Procurement**

Procurement of supplies and services, e.g. financial administration will be the responsibility of the CDCT trustees.

## Appendix 2: Comparator Analysis

These organisations have been selected for comparison because they are or have been ACE NPO funded local authority services similar to Durham County Council's culture portfolio (Derby Museums, Tyne and Wear Museums (TWAM), Manchester City Galleries, Colchester and Ipswich Museums) or are independent charities created by sponsoring local authorities and have been held up as exemplars (The Hepworth) and/or are the nearest largescale contemporary art gallery to the DLIMAG (The Baltic).

<b>Organisation Name</b>	<b>Description</b>	<b>Charity Partner Structure</b>	<b>Fundraising Activities</b>	<b>Financial Information</b>
<b>Tyne &amp; Wear Archives &amp; Museums (TWAM)</b>	<i>Joint service of four local authorities: Newcastle, South Tyneside, North Tyneside &amp; Gateshead TWAM manages nine museums and galleries across Tyneside and the Archives for Tyne and Wear - Arbeia South Shields Roman Fort, Discovery Museum, Great North Museum: Hancock, Hatton Gallery, Laing Art Gallery, Segedunum Roman Fort, Shipley Art Gallery, South Shields Museum &amp; Art Gallery, and Stephenson Steam Railway.</i>	<i>partner fundraising charity - Tyne &amp; Wear Archives &amp; Museums Development Trust. Two trading companies (one for commercial activities, one for exhibitions) gift their profits to the Trust at year end. Trust does not manage any venue or building assets</i>	<i>Individual giving - regular giving, online donations, tiered membership scheme (Gold £90pa, Silver £75pa, Bronze £60pa, Free), Major gifts, legacies. Business partnerships - sponsorship, in-kind, social value community partnerships and payroll giving. Grants - e.g., Garfield Weston, Headley Trust, Paul Hamlyn Foundation, Pilgrim Trust, Wolfson Foundation, The Shears Foundation, Sir James Knott Trust, Barbour Foundation.</i>	<i>TWAM income in 2021/22 = £8.5m (breakdown skewed by CRF, however, partner LA's and University £3m, ACE £4m, trading £86k (net), fundraising £460k) Expenditure = £8.2m (£4.5m staffing, £3.7m running costs) £470k fundraised by the Development Trust in 2021/22 including donations gifted from trading companies.</i>

Organisation Name	Description	Charity Partner Structure	Fundraising Activities	Financial Information
<b>Derby Museums</b>	<i>Derby Museums operates three museums: the Museum and Art Gallery, Museum of Making and Pickford's House. It also houses the Royal Lancers Museum.</i>	<i>Independent charitable trust caring for collections on behalf of Derby City Council.</i>	<i>Individual giving - regular giving, online donations, Friends scheme (individual member £26pa, Individual + guest £31pa, Family £35pa, Lifetime membership £260pa), legacies, "Make Your Mark" initiative, "Buy A Bird" initiative, Adopt an Object initiative, Giving Wall, 1839 Circle. Endowment Fund Business Partnerships - sponsorship, corporate volunteering. Grants - e.g., Calouste Gulbenkian Foundation, Lord Barnby's Foundation, The Headley Trust, 19th May 1961 Charitable Trust and Wolfson Foundation.</i>	<i>Latest available annual report 2020/21. Income = £7.1m (includes £4.7m from T&amp;Fs (of which £3.7m capital for Museum of Making and future expenditure), £156k endowment, £125k donations, £517k Arts Council England and £782k Derby City Council). Expenditure = £1.9m (staff costs £994k, programming £277k, fundraising £72k)</i>
<b>The Hepworth</b>	<i>Art gallery and gardens</i>	<i>Independent charitable trust caring for Wakefield's art collections, most significantly works by Barbara Hepworth and Henry Moore. A trading subsidiary, Hepworth Wakefield Enterprises, delivers the shop, café and venue hire business.</i>	<i>Individual giving - online donations, regular giving, major gifts, legacies, Membership (Young Members £12, Member £36pa, Joint Member £60pa, Gift Membership), Patron £500pa, Collection Circle £3,000pa, Contemporary Circle £3,000pa Business Partnerships - Business Club (two levels: £150pa and £500pa), sponsorship Grants - e.g., Burberry Foundation, The Kirsh Foundation, The Headley Trust, Henry Moore Foundation, John Ellerman Foundation, The Liz &amp; Terry Bramhall</i>	<i>The Hepworth income in 2021/22 = £6.25m (£323k grants and individual giving, £2k gallery box donations, other donations £6k, Patrons £6k, Wakefield Council £875k, ACE NPO £921k, acquisitions funding £2.6m, car parking £71k, trading income £832k) Expenditure = £6.28m (staff costs £1.6m, learning programme £107k (direct cost, collections and exhibitions £3m (direct costs, public programme £19k (direct costs))</i>

<b>Organisation Name</b>	<b>Description</b>	<b>Charity Partner Structure</b>	<b>Fundraising Activities</b>	<b>Financial Information</b>
			<i>Foundation, Paul Hamlyn Foundation, The Ronald Moody Trust, The Wolfson Foundation.</i>	
<b>The Baltic</b>	<i>Contemporary Art Gallery</i>	<i>Independent contemporary art charity</i>	<i>Individual giving - online donations, regular giving, major gifts, Patrons (cost on application) Corporate Partnerships - cost on application Grants - funders not listed anywhere</i>	<i>2021/22 accounts Income = £4.8m (ACE NPO £3.16m, Donations £48k, Sponsorship £190k) Expenditure = £4.7m</i>
<b>Manchester City Galleries</b>	<i>Manchester City Galleries manages three venues - Manchester Art Gallery, Gallery of Costume at Platt Hall, and the Conservation Studios in Queens Park, Harpur Hey.</i>	<i>Manchester City Council Local Authority gallery service with partner fundraising charity - Manchester City Galleries Trust.</i>	<i>Individual Giving - online donations (single and recurring), Friends (Friend £36pa, Joint Friend £58pa, Best Friend £69pa, Joint Best Friend £113pa), Patrons (£500pa) Business Partners &amp; Sponsors - tailored packages £2,500+VAT upwards Grants - Sylvia Adams Charitable Trust, The Zochonis Charitable Trust, Paul Hamlyn Foundation, Clore Duffield Foundation, Bernard Sunley Foundation, Ampersand Foundation, The Headley Trust, The Granada Foundation, The Oglesby Charitable Trust.</i>	<i>2021/22 budget Manchester City Galleries Trust income in 2021/22 = £1.39m (Catering, events, venue hire £753k, Friends £55k, Government grants £205k, grants and donations £224k). Expenditure = £958k of which £258k was a grant to MCG to support activities.</i>



<b>Organisation Name</b>	<b>Description</b>	<b>Charity Partner Structure</b>	<b>Fundraising Activities</b>	<b>Financial Information</b>
<b>Colchester &amp; Ipswich Museums</b>	<i>Colchester and Ipswich Museums (CIMS) is a local authority service encompassing six museums across two historic cities. CIMS manages Colchester Castle, Natural History Museum, Ipswich Art Gallery, Hollytrees Museum, Christchurch Mansion, and Ipswich Museum.</i>	<i>. Independent partner charities are Colchester Museums Development Foundation, Friends of Colchester Museums, Friends of Ipswich Museums</i>	<i>Individual Giving - "adopt an object" scheme, online giving, Museum Guardian (Individual £35pa, Individual +1 £50, Family £65pa, Guardian for Life £100), Castle Pass (various ££ with discounts for residents) and legacies. Corporate Partnerships - Grants -</i>	<i>Income in 2021/22: Colchester Museums Development Foundation - £13k Friends of Ipswich Museums - £17k Friends of Colchester Museums - £8.6k NPO funding = £199k</i>
<b>Hampshire Culture Trust</b>	<i>Established as an independent charity in 2014, it promotes Hampshire as a county that offers outstanding cultural experiences to both its residents and visitors. From museums to galleries to arts centres, we manage and support 26 venues across the county that were previously operated by Hampshire County Council and Winchester City Council.</i>	<i>Charitable company</i>	<i>Individual giving, regular and one-off donations, legacies</i>	<i>Income in 2021/22 £7.71m, (including £4.98m from Government grants, £176k from donations and legacies, £810k from trading activities), expenditure £7.63m.</i>
<b>Woodhorn Charitable Trust</b>	<i>Operates six museums and cultural facilities in Northumberland. Advances learning, research, and education through access to arts, heritage, culture, and collections. Safeguards historic colliery buildings, historical artifacts,</i>	<i>Charitable company</i>	<i>Individual Giving - "Tally Wall" scheme, online giving, legacies, membership/annual pass scheme.</i>	<i>Income in 2021/22 £2.314m, including £156k trading income. £655k Government grants. Expenditure £2.307m</i>

<b>Organisation Name</b>	<b>Description</b>	<b>Charity Partner Structure</b>	<b>Fundraising Activities</b>	<b>Financial Information</b>
	<i>local collections and provides the public with access to these</i>			

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## **Appendix 3: Draft Constitution**

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Please refer to the attached document.

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## **Appendix 4: Outline Business Plan**

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Please refer to the attached document.