

**COUNCIL**

**10<sup>TH</sup> MAY 2012**

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**NORTH HERTFORDSHIRE MUSEUM & COMMUNITY FACILITY**

**REPORT OF THE PROJECT EXECUTIVE/STRATEGIC DIRECTOR CUSTOMER SERVICES**

**1. SUMMARY**

- 1.1 This reports sets out proposed arrangements for the development of a new North Hertfordshire Museum and Community Facility in partnership with Hitchin Town Hall Ltd. Details of the negotiated Development Agreement, Lease and associated Management and Community Use Agreement are presented for approval along with the Management Agreement between the Trust and NHDC. A limited number of matters yet to be concluded are set out in the corresponding Part 2 report for further consideration or agreement.

**2. FORWARD PLAN**

- 2.1 This report contains a decision which was first published in the Forward Plan in August 2011.

**3. BACKGROUND**

- 3.1 This report provides an update on the North Hertfordshire Museum and Community Facility project following Council's decision on 11<sup>th</sup> November 2010 to proceed with Hitchin Initiative's sponsored 'community' proposal for Hitchin Town Hall now being taken forward by Hitchin Town Hall Ltd. At that meeting Council resolved:
- 1) That officers be instructed to take forward the scheme outlined by Hitchin Initiative and proceed to negotiate the necessary arrangements and consents to use Hitchin Town Hall as the North Hertfordshire District Museum and as a community venue;
  - (2) That officers, in consultation with the Portfolio Holder for Community Engagement and Rural Affairs, be instructed to report to the Hitchin Gymnasium and Workmans Hall Trust and seek its agreement to proceed on this basis.

Appendix 1 lists previous decisions made from August 2005 relating to this project.

- 3.2 Since confirmation of the grant/loan award from the Community Builders Fund (now known as 'Future Builders England Ltd') on 10<sup>th</sup> February 2011 significant progress has

been made and regular updates have been provided via Members Information Service (MIS), Cabinet and Hitchin Area Committee . [http://www.north-herts.gov.uk/index/leisure\\_and\\_culture/art\\_museums\\_and\\_heritage/art\\_museums\\_and\\_heritage\\_forum/hitchin\\_town\\_hall-2.htm](http://www.north-herts.gov.uk/index/leisure_and_culture/art_museums_and_heritage/art_museums_and_heritage_forum/hitchin_town_hall-2.htm)

- 3.3 The project is managed by the Strategic Director Customer Services acting as Project Executive operating under delegated authority and via the Project Board which includes representation from Hitchin Town Hall Ltd. During the active phase of negotiation, meetings of the Project Board were limited as the project could not proceed until the Development Agreement was confirmed. However, regular liaison and project meetings were held with representatives of Hitchin Town Hall Ltd and other stakeholders were updated via the Arts, Museums & Heritage Forum and newsletters and the public generally via Outlook Magazine and media releases.
- 3.4 In overall terms, this project is one of the most innovative and complex the Council has ever embarked on. The financial, legal and operational complexities and tripartite relationship between Hitchin Town Hall Ltd, Hitchin Gymnasium and Workmans Hall Trust and NHDC whilst challenging, could provide an economically sustainable model of service delivery.
- 3.5 During the course of negotiations officers have been conscious that the project differs from a commercial development and have sought to take a pragmatic approach which retained a focus on the potential overall benefit for the local community and Council Tax payers generally. This approach is consistent with the thrust of provisions within the Localism Act 2011 which provides encouragement to local authorities and organisations to work together to transfer appropriate assets to the communities they serve, provided the organisation has the capacity to do so and that the transfer brings visible benefits to both parties. The project also aligns with the intentions expressed in the Council's 'Priorities for the district' document to 'work with local communities'.
- 3.6 The project is also unusual in the sense that practical steps necessary for the rapid completion of the project to accommodate the financial model adopted by Hitchin Town Hall Ltd and conditions imposed by their funder have taken place simultaneously with the negotiations on the Development Agreement. This created additional risks as delays in either aspect could affect progress in the other.
- 3.7 The Workman's Hall and Gymnasium was given in Trust to the Council in 1934. The objectives of the Trust are:

*"Upon trust to use or permit it to be used as a Gym for the benefit of the residents of Hitchin and for other purposes mentioned in s6(3) Museums and Gymnasiums Act 1891 and also for any other (charitable) purpose for the benefit of the North Hertfordshire District for which North Hertfordshire District Council can lawfully use building and land vested in them".*

The Trust has no income of its own and the Trust building is managed and funded by the Council.

The Trust is registered with the Charity Commission and therefore has a responsibility to ensure that any use of its property meets the Public Benefit Test required by the Charity Commission.

As part of its considerations on whether it can support this project, the Trust will have to have satisfied itself that the uses to which its buildings will be put meet both its own objectives as detailed above and also meet the Charity Commission Public Benefit Test.

The Trust will be separately reported to. In short the principal decisions it will need to consider and agree to include:-

- i. The primary use of the Trust Property as a District Wide Museum (already agreed in principle).
- ii. The terms of the Management Agreement between the Trust and the Council which in essence provides that all day to day responsibility for managing the Trust Property is with the Council.
- iii. Leasing part of the Trust Property to Hitchin Town Hall Limited for 125 years.
- iv. Approval of the terms of the Development Agreement as it applies to the Trust
- v. The transfer of 14 Brand Street to the Trust at the conclusion of the construction.

The Trust will need to consider how the proposal safeguards the future of the Trust Property and will need to ensure that the decision it reaches meets all Charity Commission requirements, including in respect of disposal and acquisition of land and the Public Benefit requirements as to the use of land.

- 3.8 At its meeting on 10 January 2011, the Hitchin Town Hall Gymnasium and Workman's Hall Trust Sub-Committee resolved:

*That the scheme prepared by Hitchin Initiative for use of the Hitchin Town Hall as the North Hertfordshire District Museum and as a community venue be approved in principle, subject to consideration of the Public Benefit Test and guidance received from the Charity Commission*

- 3.9 Consideration has already been given to the Charity Commission's requirements regarding the principle of the potential disposal of part of the Trust land to Hitchin Town Hall Ltd by way of a 125 year lease. As a result of that consideration, an initial report was prepared by the Trust's Surveyors Lambert Smith Hampton (LSH) confirming that the circumstances relating to the disposal of the Trust's land are sufficient to satisfy the criteria laid down by the Charity Commission, without the need for their formal consent subject to the terms of the legal agreements. LSH will provide a further report to the Trust providing confirmation as to whether their initial advice has changed in light of the terms set out in the Development Agreement, Lease and Management Agreements.
- 3.10 A further consideration for the Trust will be the transfer of 14 Brand Street which is proposed to be gifted to the Trust at the conclusion of construction of the new facility. This proposal was made after the initial consideration by LSH and the Trust last year and will need to be considered, as for Charity Commission purposes it would be an acquisition by the Trust and would therefore need to satisfy the relevant criteria. LSH will also advise the Trust on this acquisition. The matters set out above will be considered at a meeting to be arranged.
- 3.11 Following the substantive conclusion of negotiations on the Development Agreement, a series of events with stakeholders and Members were promoted to ensure those with a direct interest in the project were briefed ahead of this meeting.

#### 4. PROJECT UPDATE

##### Work Completed To Date

- 4.1 Regular updates have been provided on the project via Members Information Services and the key stages completed to date are summarised below:

<b>Design &amp; Construction</b>	<b>Start Date</b>	<b>End Date</b>	<b>Progress</b>
<b>Design &amp; Construction</b>			
Appointment of Design Team	Nov-10	Nov-10	Complete
Briefing Meeting	Nov-10	Nov-10	Complete
Initial Consultation with Planners	Nov-10	Nov-10	Complete
Develop Sketch Design	Dec-10	Dec-10	Complete
Meeting with Client Team	Dec-10	Dec-10	Complete
Refine Design Proposals	Dec-10	Dec-10	Complete
Stage C Cost Plan	Dec-10	Dec-10	Complete
RIBA Stage C 'Sign Off;	Dec-10	Dec-10	Complete
Develop Stage D Design Proposals	Jan-11	Jan-11	Complete
Second Pre Application Consultation	Jan-11	Jan-11	Complete
Finalise Stage D Drawings	Jan-11	Jan-11	Complete
Prepare PPs 5 Statements	Jan-11	Jan-11	Complete
Stage D Cost Plan	Jan-11	Jan-11	Complete
Stage D Sign Off *	Jan-11	Jan-11	Complete
Submit for Planning/LBC	Feb-11	Feb-11	Complete
Deliberation Period (8 weeks)	Feb-11	Mar-11	Complete
Appoint Supervising Architect (OJEU)	Jun-11	Oct-11	**

Table 1: North Herts Museum & Community Facility Project Plan [Update July 2011]

\* In order to allow submission of planning approval, Stage D was substantially completed but full sign off has been deferred until the appointment of Supervising Architect to avoid duplication

\*\* See paragraph 4.6

- 4.2 As detailed in MIS updates, Members will be aware that the transfer of responsibility for funding from Community Builders to Future Builders England (the recently created national endowment fund) has meant that critical elements of compliance with the funder's requirements have changed significantly since the award of the grant/loan at the beginning of 2011 and indeed these are still being clarified. An initial requirement, now rescinded, was to conclude a Development Agreement and start work on site by 1<sup>st</sup> April 2011. The new dates is one of the issues still being considered with FBE.
- 4.3 These changes and the very tight timescale proved to be challenging. Nevertheless, huge progress was made in developing the scheme to the point where it secured planning approval and listed building consent at the end of March 2011.
- 4.4 An initial assumption in the outline project plan was that procurement via the Official Journal of the European Union (OJEU) would not be required for the engagement of a Supervising Architect but, following extensive research, this proved not to be the case

and the indicative project timescales were amended to reflect the necessary time required to conclude negotiations with Hitchin Town Hall Ltd and FBE and this has been a material factor in changes to the outline project timetable.

- 4.5 Officers are currently investigating ways in which some of this slippage from negotiations might be recovered, particularly in the procurement of the main construction contractor and fit out specialists and these are outlined in paragraph 6.11. This will be considered in detail by the Supervising Architect once appointed.
- 4.6 Following the European Union procurement process the firm of Buttress Fuller Alsop Williams (BFAW) has been selected as Lead Consulting Architects for the scheme although a contract for this will not be issued until the Council has approved the Development Agreement. There were 85 initial expressions of interest in the tender, which was advertised in the Official Journal of the European Union (OJEU) on 23<sup>rd</sup> June 2011. Seventeen firms submitted a Pre-Qualification Questionnaire, and after evaluation seven firms were then invited to tender, with an Open Day at Hitchin Town Hall on 3<sup>rd</sup> September 2011. All were highly skilled heritage architects, with extensive museum experience. The tenders were assessed by an NHDC evaluation team under the guidance of the NHDC Procurement Officer. An external assessor was also appointed. Scoring was weighted 40% Price/60% Quality, and BFAW gained the highest overall score. This firm is already familiar with the project, having undertaken the Feasibility Study and drawn up the plans for Planning Permission. They are ready to start as soon as appointed, without the normal lead-in time, saving the Council both time and money.
- 4.7 In August 2011 NHDC submitted a grant application for £953,000 was submitted to the Heritage Lottery Fund, for a project entitled 'Unlocking the Heritage of North Hertfordshire'. The application had four aims:
- To enable access for everyone to the heritage of North Hertfordshire
  - To improve the visitor experience
  - To improve the conservation, storage and display of the heritage
  - To ensure long-term sustainability of the North Hertfordshire Museums Service

The application was in two parts; a 'first-round' application for development funding of £123,400, and details of the 'second-round' application. This will be for the further £830,500 needed to complete the fit-out of the new museum in line with the four aims. The first-round application has been successful, and NHDC has recently received £61,700, as the first 50% of the £123,400 grant towards the employment of an Audience Development officer, the production of an Audience Development plan and an Activity Plan, and production of exhibition designs. Once this development work has been completed in winter 2012/13, NHDC will apply for the second-round funding. This is not guaranteed, but is granted in the majority of cases, particularly where there have been no major changes to the plans or costings.

HLF has advised that the second round bid will need to address the following points:

- Further details about the project's integration with the wider Museum/Town Hall project, with a thorough risk analysis
- Further development of activity costs in the delivery phase
- Public consultation carried out in the development phase

- The future of the current museum buildings, and how any income from their sale or letting might contribute to the project
- Further fundraising

4.8 In summary, there has been substantial progress in taking the practical steps necessary to negotiate, configure and implement the project. Details and implications of the negotiated position are set out in the following sections of this report. In addition the corresponding Part 2 report sets out a limited number of issues which require specific approval or delegation and those still subject to confirmation by Futurebuilders.

## **5 CONSIDERATIONS**

### **Legal Agreements**

5.1 Various legal agreements are required to protect the Council's position in respect of the proposed development. The Development Agreement between NHDC and Hitchin Town Hall Limited sets out the parties responsibilities in respect of the Development itself. The Lease and Community Use & Management Agreement sets out the rights of Hitchin Town Hall Limited. Any clause in the agreement which has [square brackets] is yet to be confirmed.

5.2 In order to unify the Council's interest in the Building, the Council and the Trust have negotiated a Management Agreement so that the overall management of the building passes to the Council.

5.3 In addition to the key documents noted above, there are several legal documents not reproduced with this report which are ancillary to the main documents. These are:

- An Option Agreement to be entered into between Hitchin Town Hall Limited and the current property owner which will give HTH Limited the contractual right to acquire 14 Brand Street.
- A transfer deed which will legally transfer 14 Brand Street from the current property owner to Hitchin Town Hall Limited.
- A transfer deed which will legally transfer 14 Brand Street from Hitchin Town Hall Limited to the Hitchin Gymnasium and Workman's Hall Trust

Where relevant, a brief explanation of these documents is included in this report or in the Appendices.

5.4 Finally, there are still several outstanding documents relating to the requirements of Hitchin Town Hall Limited's lender, Futurebuilders England Limited. As part of the conditions of the loan and grant Futurebuilders have requested a legal charge over the Development Agreement, 14 Brand Street and the Lease. Each of the three legal charges will be contained in a legal document and Hitchin Town Hall Limited cannot complete any of the three documents until they have been approved by NHDC. Currently the Council has not received drafts of these documents. It is hoped that the legal charges will be on standard terms which will enable NHDC to easily approve the documents.

5.5 Furthermore, Futurebuilders have indicated that they will require two separate guarantees from NHDC. It would be usual for such guarantees to be contained in separate legal documents. Futurebuilders have not clarified their requirements in this

regard nor produced draft documents for consideration. Matters referred to in paragraph 5.4 and this paragraph are referred to further in paragraph 5.22

### **Development Agreement**

5.6 The Development Agreement sets out the legal obligations on the parties, from the beginning to the end of the Development (ie from signature through to all conditions being satisfied and the lease granted). In essence it states that the following sequential events will occur:

- NHDC will appoint the Architect
- NHDC will appoint the Building Contractor
- HTH Ltd will acquire 14 Brand Street and allow NHDC access to the site for the purpose of the Development.
- NHDC will carry out the Development
- HTH Ltd will fit out the kitchen for the Café at its own cost
- The Architect will confirm completion of the Development
- HTH Ltd will pay it's contribution to the Building Contractor
- HTH Ltd will transfer 14 Brand Street to the Trust
- NHDC will grant HTH Ltd a Lease in the agreed form and will also enter into the Community Use and Management Agreement.

The Agreement sets out the detail of each of these stages and deals with ancillary matters such as:

- Dispute resolution
- Liaison arrangements
- The ability for the Agreement to be used as financial security by HTH Ltd.
- Standard clauses that would ordinarily appear in a legal agreement of this nature

5.7 The Agreement also sets out the parameters within which NHDC must instruct the Architect to design the Development.

5.8 As well as setting out the principal steps in the Development, the Agreement addresses some key project issues which are reported in the detailed Development Agreement and the Part 2 report.

5.9 A detailed report on the terms of the Development Agreement and a copy of the Agreement appears at Appendix 3 and 4. Some of the annexes in Development Agreement have not been reproduced as they are not material to the considerations before Members. Figure 1 below, illustrates key stages in the Development Agreement timetable.

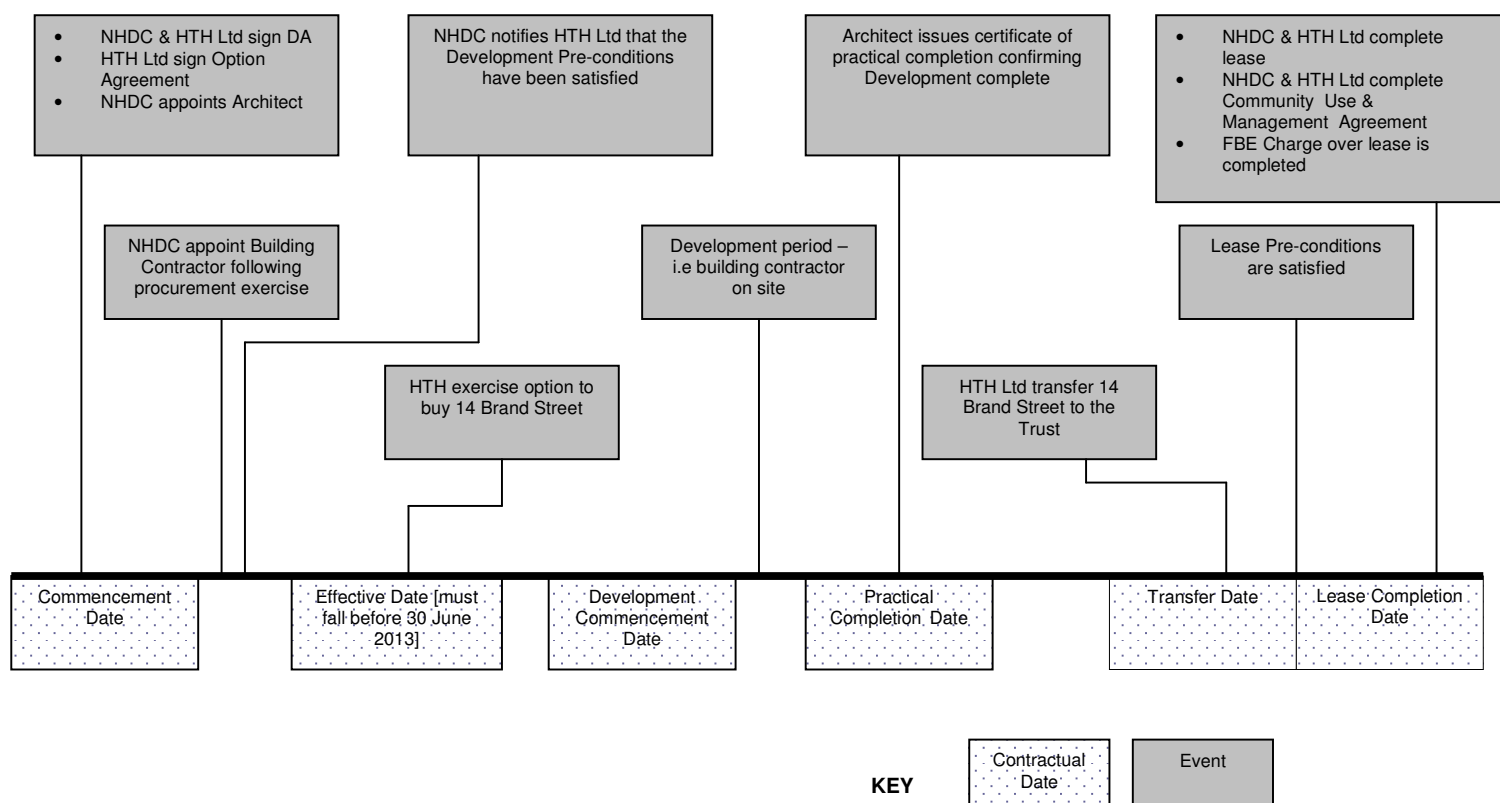


Figure 1: Development Agreement Timetable: Key Stages

## Lease

- 5.10 The Lease will be granted to HTH Limited after the Development works are complete and subject to specified conditions in the Development Agreement. The key condition is that HTH Limited must have paid its £490,000 contribution towards the build costs in full before the lease is granted.
- 5.11 The Lease term is for 125 years at a peppercorn rent. The Tenant is Hitchin Town Hall Limited (company number 07974116). The Property demised by the lease is identified by blue shading on the lease plans and includes the Mountford Hall and the café area. The Lease will create a legal interest in land that can be sold or mortgaged by HTH Limited. However there are strict conditions regulating the Tenant's ability to sell or mortgage the lease and NHDC's written consent is required in both instances.
- 5.12 The majority of the obligations on HTH Limited in respect of the building are contained in the Lease. However some of the obligations relating to the shared areas are contained in the Community Use and Management Agreement. This is a bespoke arrangement which has been put in place because of the need to remain flexible over the day to day management of the Building and the provisions of the Community Use and Management Agreement can be revised as necessary. The detail of this document is considered further below.
- 5.13 The Lease includes regulation of the Tenant's use of the Property, responsibility for repair, and liability for outgoings and taxes.
- 5.14 A detailed report on the terms of the Lease and a copy of the Lease appears at Appendix 5 and 6.



### **Community Use and Management Agreement Between NHDC & Hitchin Town Hall Ltd**

- 5.15 The Community Use and Management Agreement (CU&MA) will be completed on the same day as the Lease. It will sit alongside the Lease to regulate the day to day management issues relating to the Building so as to ensure flexibility over these issues. The CU&MA contains provisions for periodic review. A review of the Agreement can be instigated by either party and that party must specify the particular issues that need to be reviewed.
- 5.16 The general principles regulating the service to be offered by the Café are included in the CU&MA. In order to ensure that the Café facilities are appropriate to the museum service, the CU&MA prescribes how often the café must be open and the general types of product it should stock.
- 5.17 In addition to dealing with general management matters such as cleaning, security, waste removal and safety issues, the CU&MA also regulates use of the key shared areas namely the Central Gallery, the Balcony, the Terrace and the Circulation Route.
- 5.18 A detailed report on the terms of the CU&MA and a copy of the Agreement appears at Appendix 7 and 8.

### **Management Agreement between the Council and the Trust**

- 5.19 The Management Agreement is designed to pass management of the Trust Property to the Council so that the Council has complete operational responsibility of the new facility. The Agreement sets out how the Council must manage the Trust Property and also regulates any profit or loss made in respect of the property. The Trust Property is all that land currently owned by the Trust together with 14 Brand Street if and when that land is acquired by the Trust.
- 5.20 Under the terms of the Agreement the Council will be entitled to pass management of part of the Trust Property to HTH Limited. This will enable the Council to enter into the Community Use and Management Agreement in respect of the Trust Property.
- 5.21 A detailed report on the terms of the Management Agreement and a copy of the Agreement appears at Appendix 9 and 10.

### **Matters Requiring Further Consideration & Decision**

- 5.22 As highlighted in paragraph 4.8, a limited number of issues still require specific approval or delegation and further clarification from Futurebuilders. The Part 2 report sets out these issues in greater detail as they still form part of the ongoing negotiation. Matters considered in Part 2 will be:
- Architectural Specification – Hitchin Town Hall Ltd Requirements
  - Staffing matters
  - Hitchin Town Hall Ltd Governance & Accountability
  - Legal Charges, Guarantees & Indemnities
  - Hitchin Town Hall Ltd Capacity

## **6 CONSIDERATIONS & NEXT STEPS**

- 6.1 Whilst this report is primarily concerned with the physical design and construction of a new facility with the necessary Development Agreement, there are other significant elements of the project which are also being planned and managed. These include detailed arrangements for the cataloguing, repair and selection of exhibits for the new museum and the migration of the service to it, the closure of Hitchin Town Hall and arrangements for Hitchin Town Hall Ltd to take occupancy and begin operations.

### **Museums**

- 6.2 Following the Fundamental Service Review (FSR) of the Museum Service in August 2005, Cabinet recommended that 'the three ageing museum buildings (Burymead, Hitchin Museum and Letchworth Museum) should be closed to be replaced by one purpose-built district wide museum, gallery and community venue located in a town centre.' Other recommendations included the establishment of a new storage, resource and research centre, probably out-of-town; and the utilisation of new technologies for digitisation, cataloguing and a improved website.
- 6.3 Work on assessment of the Burymead site, with a survey of museum storage space requirements, is shortly to be commissioned. Work on digitisation of the museum collections and website improvement has already begun, and a new cloud-based Collections Management System is currently being investigated. These matters are being planned in detail and will be considered by the Project Board and eventually by Cabinet and/or Council as appropriate.
- 6.4 As with many other aspects of this project, it has been necessary to progress aspects of the project plan related to the planned migration of existing museums to the new site, in particular exhibit cataloguing and this work commenced in August 2011. The very extensive work and space required to conclude this in order to take timely occupation of the new building will only be achievable by closing both museums in September 2012.
- 6.5 Whilst it is acknowledged that, for a short period, closure of existing museums will limit access to the service arrangements have been made to mitigate this by:
- Providing a regular and on-demand programme of 'behind the scenes' tours to allow access to the cataloguing and repair works
  - Improving the availability of web based resources
  - Providing access to specialist resources with kind co-operation of the British School Museum
  - Providing enhanced 'outreach' services to local groups and schools

### **Hitchin Town Hall**

- 6.6 Arrangements for the closure of Hitchin Town Hall have been made in order to ensure the project could proceed following Council's decision. As many hirers require long term certainty about availability, it was considered necessary to agree arrangements and communicate this with them at the earliest opportunity.
- 6.7 Liaison has taken place with Hitchin Town Hall Ltd to:
- Provide assistance to existing hirers find alternative short-term accommodation

- Take steps to retain a commitment from hirers to return following refurbishment
- Arrange for the transfer of equipment.

### Revisions to the Project Plan

6.8 The existing indicative project plan appears for information below:

Design & Construction	Start Date	End Date	Progress
Working Drawings Completed	Nov-11	Jan-12	*
Tender Documents Produced	Feb-12	Feb-12	*
OJEU Notice for Main Contract Works	Mar-12	Mar-12	*
Evaluation of Expressions of Interest	Apr-12	Apr-12	*
Tender Main Contract	May-12	Jun-12	*
Start on Site - Main Contract Works	Jul-12	Jul-13	*
Exhibition Fit out - Start	Apr-13	Aug-13	*
Final Fit out and Object Installation	Sep-12	Oct-13	*
Public Opening	Nov-13	Feb-14	*
Unallocated Time Contingency	Dec-13	Feb-14	*

Table 2: North Herts Museum & Community Facility Project Plan Updated July 2011 [to be updated

\* New dates to be reviewed by the Supervising Architect once appointed

- 6.9 The process of concluding negotiations with Hitchin Town Hall Ltd, and their funders, will clearly have an effect on the timescales in the original project plan. When considering an update at its meeting on 26<sup>th</sup> July 2011, Cabinet noted that an additional 'unallocated (time) contingency' of three months would need to be added and this is included in Table 2 above.
- 6.10 This timetable envisaged negotiations would have concluded by September or October 2011 and as a result it is considered that a review of the plan will need to be carried out by the Supervising Architect to revise the timetable.
- 6.11 Officers have continued to consider the risk arising from this uncertainty and have identified mitigating actions which could foreshorten the current estimated completion date of June 2014:
- Confirmation that the main construction contract is not required to be tendered via the OJEU route, potentially reducing the procurement by approximately two months.
  - Confirmed the availability of the Supervising Architect (BFAW) to proceed without commitment to the entirety of the works allowing work to progress without commitment to the entirety of the project. This would allow work to continue pending resolution of matters referred to in Part 2.
- 6.12 Council is therefore asked to note that the project completion date is expected to be amended and authority to determine this is already delegated to the Strategic Director Customer Services as Project Executive. This will be confirmed in consultation with the Portfolio Holder, following confirmation of revised project timescales by the Supervising Architect. Council is further asked to note that, should it be considered

necessary, specific authority may be sought to engage the Supervising Architect on terms outlined in 6.11 above.

## **7. LEGAL IMPLICATIONS**

- 7.1 Cabinet has responsibility for agreeing policies and strategies other than those reserved to Council. Strategic decisions relating to Museums and Halls are not reserved to Council but in this case because of the potential capital expenditure involved, and in accordance with previous decisions, this matter continues to be presented to Council.
- 7.2 The General Power of Competence contained within the Localism Act 2011 came into force on 18 February 2012 and effectively replaced the previous wellbeing powers. The statutory General Power of Competence gives a local authority the power to do “anything that individuals generally may do”. Section 1(4) of the same Act confirms that in using such power the local authority may do so for the benefit of the authority, its area or persons resident in its area. This power is relevant when confirming that the Council has power to enter into the Legal Agreements set out in detail in this Report.
- 7.3 The Public Libraries and Museums Act 1964 and the Local Government (Miscellaneous Provisions) Act 1976 confirms the Council’s statutory power to operate a Museum. S111 of the Local Government Act 1972 confirms that a local authority has power to do any thing (including in relation to finance and property) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 7.4 When considering the proposed Lease, Section 123 of the Local Government Act 1972 gives a Local Authority the power to dispose of land provided that it does so for the best price reasonably obtainable. The consent of the Secretary of State is required for any disposal where the consideration is less than the best that can reasonably be obtained, and the Secretary of State has issued a general consent in this regard (the General Disposal Consent 2003). Under the general disposal consent a Local Authority can dispose at less than best consideration if:
- a) The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or all or any persons resident or present in the area;
    - i) The promotion or improvement of economic well-being;
    - ii) The promotion or improvement of social well-being;
    - iii) The promotion or improvement of environmental well-being; and
  - b) The difference between unrestricted value of the land to be disposed of and the consideration for disposal does not exceed £2,000,000
- 7.5 A valuation of the entire premises has been carried out which confirms that the unrestricted value of the Building is significantly less than £2million. The valuation of the part of the property to be demised to Hitchin Town Hall Ltd (excluding the café) is £238k. The Estates Surveyor is of the view following receipt of independent valuation advice, that the total value of the property to be demised to Hitchin Town Hall Ltd including the café is significantly below the sum of £440k. Therefore NHDC can be satisfied that the difference between the value of proposed leasehold interest and the consideration to be received under the Lease is less than £2million. The Strategic Director of Customer Services in conjunction with the Head of Finance, Performance

and Asset Management has considered all of the above factors, and concluded that the proposals will deliver economic, social and environmental well-being benefits to the District as a result of the grant of this Lease linked to the wider Project. Officers are therefore recommending a disposal at less than best consideration reasonably obtainable because of the well-being benefits which officers consider will flow from the Lease.

- 7.6 The legal issues and implications are otherwise considered within the body of the Report and further relevant legal implications are contained in the Part 2 Report.

## 8 FINANCIAL AND RISK IMPLICATIONS

- 8.1 The project is included as a scheme in the approved capital programme. The estimate for the scheme of £3.44 million reflects the Council's share of the cost of the project at estimates available at the time of Council approval in November 2010. The total project cost is estimated at £4.23 million with the difference of £790k financed by Hitchin Town Hall Ltd. There is a risk that building costs will have increased since November 2010. Efforts will be made to mitigate this risk when tendering for the construction contract by making allowable changes to the specification to control spend within the budget. The financial regulations allow the Project Executive to authorise spend above the budget by £25,000 or 10% (whichever is the lesser). If it is anticipated project costs will exceed this overspend a further report would need to be submitted to Members.
- 8.2 A summary of the funding for the scheme is shown in table below 3. The project plan anticipates that the application for the stage 2 Heritage Lottery Fund grant will not be submitted until after the award of the construction contract. If the application is unsuccessful a further £831k of Council resources will be required to complete the project.

Funding Source	Amount £'000	% of Total Estimated Project Cost
Council Resources (Capital Receipts / Prudential Borrowing/section 106)	2,486	58%
HLF grant (stage 1)	123	3%
HLF grant (stage 2)	831	20%
<b>Total Council Funding</b>	<b>3,440</b>	<b>81%</b>
Community Builders Grant/Loan	790	19%
<b>Total Estimated Project Cost</b>	<b>4,230</b>	<b>100%</b>

Table 3: Summary of project funding

- 8.3 Hitchin Town Hall Limited has been awarded a total of £850k from the Futurebuilders Fund. This comprises of a grant of £340k and a loan of £510k. The allocation of these funds, is to be confirmed but the elements covered are listed below. The contribution to the construction cost of £490k is defined in the Development Agreement and, is therefore, limited to this amount. Any increase in spend above the budget is at the risk of the Council.

- Purchase of 14 Brand Street
- Contribution to construction cost
- Kitchen/café fit out and Community space furniture

- 8.4 As at the end of December 2012 the Council has spent a total of £150k on the project since work began in 2009/10. Should for any reason the scheme not proceed to completion any costs incurred cannot be funded from capital sources and would need to be funded from the general fund.
- 8.5 Members have previously agreed that should capital receipts not be sufficient to fund the Council share of the project then prudential borrowing should be used. The current economic climate has delayed progress on asset disposals and as a result it is likely that the Council will need to borrow to fund this project. The minimum annual interest cost of borrowing a total of £2.486 million is likely to be £50k and will need to be met from the general fund. Consideration of the planned, prudent, approach for the repayment of the principal amount of borrowing will need to be taken in the Treasury Management Strategy.
- 8.6 An additional sum of up to £1m was initially estimated for plans in the Museum FSR to re-provide a new Collection Centre but this is not included as part of this project. Members have approved the spending of £10k on a feasibility study to consider rationalisation of the Burymead site to release part for sale.
- 8.7 Financial modelling suggests that significant annual revenue savings of c.£160k per annum can be achieved once the scheme is fully operational. Further savings are likely to be identified as the detailed designs are completed and operational costs are more accurately forecast. This full saving may not be achieved in the first year of operation due to any part-year effect or initial set up and related costs.

Site	Current Revenue Expenditure ( including overheads)	Projected Net Expenditure once the new Museum is operational
Hitchin Museum	£192,280	0
Letchworth Museum	£224,170	0
Other Museum	£196,490	£196,490
Management costs		
Hitchin Town Hall	£189,440	£444,940
<b>Grand Total</b>	<b>£ 802,380</b>	<b>£ 641,430</b>

Table 5: NHDC Forecast of Revenue Savings

- 8.8 Table 6 sets out a summary of the estimated ongoing full year efficiencies below.

Efficiencies	£,000
<b>Museums Efficiencies</b>	
Staffing *	£62,330
Buildings	£62,730
<b>Town Hall</b>	
Staffing	£68,000

loss of income	(£32,110)
<b>Total</b>	<b>£160,950</b>

Table 6: Hitchin Town Hall Museum Proposal: Estimated Revenue Efficiencies

\* Includes £24,130 savings already achieved; £38,200 to be identified.

- 8.9 Hitchin Town Hall has been identified as needing significant investment to modernise and refurbish costed in the region of £930,000 when last reviewed in 2007, however no funding to do this has been identified.
- 8.10 HMRC have allowed the Council to breach its VAT partial exemption calculation under their 'occasional breach' guidelines. Without this allowance the Council would have been unable to reclaim all the VAT on the expenditure on this project and on any other exempt activities. While this has relieved the issue for this project the Council will need to be very careful not to breach the partial exemption calculation again, otherwise the breach could be revisited because it would no longer be seen as an 'occasional breach'.
- 8.11 At the conclusion of the project its anticipated that both Letchworth Museum and Hitchin Museum buildings would be declared surplus to requirements in accordance with the Council's Asset Management Strategy. Covenants exist on both buildings which will restrict to differing degrees opportunities for their reuse. However their closure as public venues will significantly reduce the future investment requirements relating to improved access. The Council is aware of interest from the community in the future of these buildings and can confirm that no decisions have been taken at this stage and that future treatment will be dealt with as per the Asset Management Strategy:

Firstly the service department should declare the asset surplus to their requirements. Once a potential site has been identified, Property Services will consult with Statutory service undertakers - Highways, Legal Services, Planning and also raise with other service departments to establish if there are any constraints on the site.

Unless a site is already designated for a specific use in the Local Plan , which is not the case for these sites, the above consultations will indicate the preferred type of development for the site. This will be either:

- (a) Housing - Social
- (b) Housing - Private
- (c) Industrial/Commercial
- (d) Leisure/Community

If a site is identified for (d), then further consultations should be undertaken with the Asset Management Group. For option (c) the possibility of development by the Council is to be considered first.

If development by the Council is not required, then the site may be brought forward for disposal. Disposal includes options for sale and also for leasing. At this point consideration is given to whether this can be at market value or less. Any disposal would be subject to consultation with the Area Committees.

8.12 Officers regularly assess risk and the mitigating actions necessary to control it. The current immediate and significant risks as set out in the Project Risk Log are set out below:

- Risk owing to delay or failure to secure funding
- Failure to agree terms for Development Agreement or adhere to the timetable for the production of documentation
- Failure to secure formal agreement from any of the bodies who would be party to the agreement, namely: Hitchin Town Hall Ltd, Hitchin Gymnasium and Workmans Hall Trust and NHDC
- Risks associated with procurement and mobilisation of a construction contractor, including building costs inflation
- Risk of unforeseen conditions on site, leading to delay and additional costs
- Risks associated with unavailability or capacity of key personnel in both NHDC and at Hitchin Town Hall Ltd
- Absence of contingency for time overrun in outline project plan
- Failure to secure partial exemption from HMRC in respect VAT costs
- Failure to secure Stage 2 lottery funding for the fit out of the museum.

8.13 The Council will be responsible for the management of the Trust Property (see Management Agreement between the Trust and the Council annexed report and paragraphs 5.19-5.21). The Council will be liable for any expenditure relating to the Trust Property, and will bear any loss. However, the Council will be required to pay to the Trust any profit made over a two year rolling period.

8.14 In the event that HTH Ltd cease to exist before the completion of the project then the Council would not receive the funding from Future Builders England towards the cost of construction (£490k) and Council would have to assess the resulting gap in it's budget. If an alternative organisation or community group could not be found to run the Community Facility then the Council could potentially incur additional net revenue costs to run the facility itself.

8.15 Advice has been sought from PricewaterhouseCoopers LLP on the potential Stamp Duty and Land Tax (SDLT) liability in respect of the acquisition by the Trust of the land at 14 Brand Street. The response received is that the Trust is expected to meet all the conditions to be eligible to claim charities relief. However, if within 3 years of the charitable relief being claimed the conditions of the relief are broken then SDLT will become chargeable. The Trust will still need to notify HMRC of the transaction and calculate the SDLT based on the chargeable consideration.

## **9. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

9.1 The Human Resources implications are set out in the Part 2 report.

9.2 The Council recognises the changing nature of equality legislation and incorporates national legislation and regulations into its policies, procedures and services as appropriate, as set out in the Corporate Equality Strategy.

9.3 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General Duty, described in 7.2, that public



bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 9.4 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 9.5 The Museum Fundamental Service Review (FSR) Service Improvement Plan was specifically designed to improve accessibility to Museum facilities and in particular to achieve compliance with the provisions of the Disability Discrimination Act. Upper floors of Hitchin and Letchworth Museums and Hitchin Town Hall are all inaccessible to those unable to negotiate stairs, whether due to a disability or other reasons. The new facility will comply with the latest disability access requirements for a construction/refurbishment of this sort.
- 9.6 Throughout the project the needs of all sections of the population and particularly those with a protected characteristic have been taken in to account.

## **10. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 10.1 Consultation has been carried out on an ongoing basis with Project Board, the Arts, Museum & Heritage Forum, other stakeholders and staff within the relevant service areas and facilities. Regular information notes have been provided to Members via MIS, Cabinet and Hitchin Area Committee .

## **11. CONCLUSIONS**

- 11.1 The innovative nature of this project and the prospective partnership with Hitchin Town Hall Ltd would provide wide-ranging benefits for the district; the preservation and enhancement of an important heritage asset, community benefit and significant inward investment. Further, the project would deliver the objectives of the Museums FSR, provide a 'fit for purpose' museum for North Hertfordshire and significantly reduce revenue costs. Whilst, like any project of this scale, there are risks associated with the development officers are of the view that the economic, environmental and social benefit far outweighs these and therefore recommend approval.

## **12. RECOMMENDATIONS**

Council is recommended, subject to consideration and determination of matters referred to in the corresponding Part 2 report, to:

- 12.1 Enter into the:
- Development Agreement
  - Lease
  - Community Use and Management Agreement with Hitchin Town Hall Ltd
- 12.2 Enter into the Management Agreement with the Gymnasium and Workmans Hall Trust
- 12.3 Note the proposed transfer of 14 Brand Street to the Gymnasium and Workmans Hall Trust.

- 12.4 Delegate to the Strategic Director Customer Services and Corporate Legal Manager authority to agree minor variations to Legal Agreements (referred to in paragraphs 12.1 and 12.2) in consultation with the appropriate Portfolio Holder(s)
- 12.5 Note that authority to determine the new project completion date is already delegated to the Strategic Director Customer Services as Project Executive and;
- 12.6 Note that, if further specific decisions are required beyond minor variations or to meet conditions required by Futurebuilders, a further report will be presented to Council.
- 12.7 Note that progress with the project will also require formal agreement from the Gymnasium and Workmans Hall Trust, Hitchin Town Hall Ltd and Futurebuilders.

### **13. REASONS FOR RECOMMENDATIONS**

- 13.1 To reflect the conclusions drawn from the analysis of the negotiated position with Hitchin Town Hall and their funders following Council's decision on 10<sup>th</sup> November 2010 to take the scheme forward.

### **14. ALTERNATIVE OPTIONS CONSIDERED**

- 14.1 The principal alternative option not to recommend the negotiated position and withdraw from the project would not meet the Council's stated objectives to provide a financially sustainable future for the Museum Service, Hitchin Town Hall or the Trust.
- 14.2 In view of the Council's previous decision to accept the proposal promoted by local community groups, further consideration has not been given to the original Council promoted alternative, previously referred to as 'Gymnasium retained', although this option remains open albeit with significantly higher capital and revenue costs.

### **15. APPENDICES**

- 15.1 Appendix 1: List of previous decisions relating to this project
- 15.2 Appendix 2: Plans
- 15.3 Appendix 3: Detailed report on the terms of the Development Agreement
- 15.4 Appendix 4: Development Agreement
- 15.5 Appendix 5: Detailed report on the terms of the Lease
- 15.6 Appendix 6: Lease
- 15.7 Appendix 7: Detailed report on the terms of the Community Use & Management Agreement between NHDC and Hitchin Town Hall Limited
- 15.8 Appendix 8: Community Use & Management Agreement
- 15.9 Appendix 9: Detailed report on the terms of the Management Agreement between the Council and the Trust
- 15.10 Appendix 10: Management Agreement between the Council and the Trust

## **16. BACKGROUND PAPERS**

- 16.1 Report to Cabinet 23<sup>rd</sup> August 2005 on the Findings of the Review of the North Herts Museums Services.
- 16.2 Draft Collections Centre Business Case submitted to the Museums Project Board, 5<sup>th</sup> March 2008.
- 16.3 Report to Cabinet 27<sup>th</sup> January 2009 on the Future of Museums Services.
- 16.4 Cragg Management Services report on the possible relocation of North Hertfordshire Museums to Hitchin Town Hall- Annex 2, Cabinet 19<sup>th</sup> May 2009
- 16.5 Hitchin Town Hall Museums Feasibility – Options Appraisal Report, 3<sup>rd</sup> September 2009
- 16.6 Report to Council on 3<sup>rd</sup> December 2009: Hitchin Town Hall Museum Feasibility Study Outcomes and Actions Arising
- 16.7 Report to Council on 11<sup>th</sup> February 2010: Hitchin Town Hall/Museum Community Group Proposal
- 16.8 Report to Cabinet on 28<sup>th</sup> September 2010: Hitchin Town Hall/ Museum Proposals
- 16.9 Report to Council on 10<sup>th</sup> November 2010: Hitchin Town Hall/ Museum Proposals
- 16.10 Verbal update to Council on 7<sup>th</sup> April 2011: North Hertfordshire Museum & Community Facility at Hitchin Town Hall
- 16.11 Report to Cabinet on 26<sup>th</sup> July 2011: North Hertfordshire Museum & Community Facility: Project Update

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