

# CABINET SUB-COMMITTEE (COUNCIL CHARITIES)

27 January 2015

\*PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

**5**

## TITLE OF REPORT: KING GEORGE V PLAYING FIELDS, HITCHIN – CHARITABLE TRUST

REPORT OF THE HEAD OF FINANCE, PERFORMANCE AND ASSET MANAGEMENT

### 1. SUMMARY

- 1.1 To report to the Cabinet Sub-Committee following on from the Cabinet Sub-Committee meeting that took place on the 22 September 2014 at which the Cabinet Sub-Committee authorised completion of the approved Lease and Management Agreement between the Trust and Hitchin Rugby Football Club Limited.
- 1.2 To update the Cabinet Sub-Committee on progress since the meeting on the 22 September 2014.

### 2. RECOMMENDATIONS

- 2.1 That Sub-Committee approves the request from Hitchin Rugby Football Club Limited that the approved Lease and Management Agreement be entered in to between the Trust and Hitchin Rugby Limited and that completion of the approved Lease and Management Agreement is conditional upon Fields in Trust also agreeing to the request.
- 2.2 That the Sub-Committee delegates to the Head of Finance, Performance and Asset Management, in consultation with the Chairman of the Sub-Committee, the authority to agree any necessary minor amendments to the approved Lease and Management Agreement.

### 3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that the Trust is managed in accordance with its regulatory requirements.

### 4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

### 5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 None.

### 6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

## **7. BACKGROUND**

- 7.1 Members will recall at the last Sub-Committee meeting it was resolved that the approved Lease and Management Agreement between the Trust and Hitchin Rugby Football Club Limited be completed between the Trust and the Hitchin Rugby Football Club subject to the approval of Fields in Trust be completed as soon as practical.
- 7.2 The Council's Property Solicitor arranged for the approved Lease and Management Agreement to be produced and these were signed by the Trust and Hitchin Rugby Football Club. The Property Solicitor also obtained the necessary approval of Fields in Trust.
- 7.3 The Council's Property Solicitor repeatedly pressed the Hitchin Rugby Football Club to complete the Lease and Management Agreement with out success.

## **8. ISSUES**

- 8.1 On the 16 January the solicitors for the Hitchin Rugby Football Club Limited wrote to the Council's Property Solicitor reporting that Hitchin Rugby Football Club had applied to Sport England for funding and also been in the process of converting to a charity. The Club were hoping to use the existing company name for the charity. However HM Revenue and Customs required a new company to be formed.
- 8.2 Hitchin Rugby Football Club have formed a new company Hitchin Rugby Limited (company number CRN 091424060)(Charity Registration number 1159772) to comply with HM Revenue and Customs request.
- 8.3 Hitchin Rugby Football Club has requested that the approved Lease and Management Agreement is now entered into by the new company, Hitchin Rugby Limited.
- 8.4 Hitchin Rugby Limited is a new legal separate entity from Hitchin Rugby Football Club and not the same company that the Sub-Committee previously approved.
- 8.5 In order to meet the request the approved Lease and Management Agreement need to be changed by deleting reference to Hitchin Rugby Football Club and replacing it with Hitchin Rugby Limited.
- 8.6 Otherwise the terms of the approved Lease and Management Agreement will remain the same.
- 8.7 The approval of Fields in Trust to the change will be required.

## **9. LEGAL IMPLICATIONS**

- 9.1 The Council remains the Trustee of the property and this Sub-Committee of the Cabinet is the managing committee appointed on behalf of the Council to manage this charitable trust among others.
- 9.2 Members of the Sub-Committee (Council Charities) are referred to as "Trustees" in this report and their powers to deal with all matters relating to the management of King George V Playing Fields Hitchin, as contained in the constitution include: To act on behalf of the Council as Corporate Trustee for all assets of the Council that are held on charitable trust, to consider all matters relating to trusts including the use, operation and

management of all trust assets and the preservation of the objectives of those trusts so instituted and, to consider all proposals and representations from and on behalf of the Council or any third party, in connection with the use, operation, management and ownership of trust assets. Negotiations on the terms and wording of the lease and management agreement in relation to the disposal of this land are therefore matters for the determination of the Trustees.

## **10. FINANCIAL IMPLICATIONS**

10.1 The Council is subject to the following duties in relation to this proposed transfer:

- Fiduciary duty as Trustee of the King George V Playing Fields Trust
- Contractual duty as the nominee of Fields in Trust
- Statutory duty as Charity Trustee
- Statutory duties as a local authority landowner

## **11. RISK IMPLICATIONS**

11.1 There is a risk that the transfer becomes ineffective if the correct procedures are not followed or any of the duties outlined above are breached.

## **12. EQUALITIES IMPLICATIONS**

12.1 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 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 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.

12.3 There will be no loss of public amenity land occasioned by this transfer. Furthermore, the opportunities derived from the proposal will benefit the community by bringing modern changing facilities to users and enabling greater accessibility.

## **13. SOCIAL VALUE IMPLICATIONS**

13.1 The Public Services (Social Value) Act was passed at the end of February 2012; under the Act, public bodies in England and Wales are required to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area. 'Social Value' involves looking at what the collective benefit to a community is when a public body awards a contract. It applies to all public services contracts and those public services contracts with only an element of goods or works. It does not apply to public work contracts or public supply (goods) contracts. The Act requires public authorities at the pre-procurement phase of procuring services to consider how what is being procured might improve the economic, social and environmental well-being of an area and how the authority might secure that improvement through the procurement process itself.

13.2 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 11. The proposal also has obvious benefits

to the economic, social and environmental well being of the North Hertfordshire area and more specifically, Hitchin.

**14. HUMAN RESOURCE IMPLICATIONS**

14.1 There are no human resources implications from this report.

**15. APPENDICES**

None.

**16. CONTACT OFFICERS**

16.1 Andrew Cavanagh, Head of Finance, Performance and Asset Management, 01462 474243, [andrew.cavanagh@north-herts.gov.uk](mailto:andrew.cavanagh@north-herts.gov.uk)

16.2 Property Services, David Charlton, Senior Estates Surveyor, 01462 474320, [david.charlton@north-herts.gov.uk](mailto:david.charlton@north-herts.gov.uk)

16.3 Legal Services, John Fairhall, Property Solicitor, 01462 474218, [john.fairhall@north-herts.gov.uk](mailto:john.fairhall@north-herts.gov.uk)

**17. BACKGROUND PAPERS**

17.1 None.