

# Public Document Pack

9 November 2018

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To: Members of the Committee: Councillor Bernard Lovewell, Councillor Julian Cunningham and Councillor Michael Weeks

You are invited to attend a

## **MEETING OF THE CABINET SUB-COMMITTEE (COUNCIL CHARITIES)**

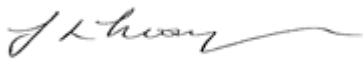
to be held in the

**FIRST FLOOR ROOMS2/3, DISTRICT COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH GARDEN CITY**

On

**TUESDAY, 20TH NOVEMBER, 2018 AT 4.30 PM**

Yours sincerely,



Jeanette Thompson  
Service Director – Legal and Community

## **Agenda** **Part I**

<b>Item</b>	<b>Page</b>
<b>1. APOLOGIES FOR ABSENCE</b>	
<b>2. MINUTES - 6 DECEMBER 2017</b> To take as read and approve as a true record the minutes of the meeting of this Committee held on the 6 December 2017.	(Pages 1 - 4)
<b>3. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether any item(s) raised will be considered.	
<b>4. CHAIRMAN'S ANNOUNCEMENTS</b> Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest, wished to exercise a 'Councillor Speaking Right', must declare this at the same time as the interest, move to the public area before speaking to the item and then must leave the room before the debate and vote	
<b>5. PUBLIC PARTICIPATION</b> To receive petitions and presentations from members of the public.	
<b>6. NORTH HERTFORDSHIRE MUSEUM &amp; HITCHIN TOWN HALL: COUNCIL PROPOSALS TO ACQUIRE 14/15 BRAND STREET</b> To update the Cabinet Sub-Committee on the Council proposals in relation to the North Hertfordshire Museum and Hitchin Town Hall.	(Pages 5 - 38)
<b>7. EXCLUSION OF PRESS AND PUBLIC</b> To consider passing the following resolution:	(Pages 39 - 40)

That under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting on the grounds that the following reports will involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act.

- 8. NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL: COUNCIL PROPOSALS TO ACQUIRE 14/15 BRAND STREET** 41 - 42
- To update the Cabinet Sub-Committee on the Council proposals in relation to the North Hertfordshire Museum and Hitchin Town Hall.

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# Agenda Item 2

## NORTH HERTFORDSHIRE DISTRICT COUNCIL

### CABINET SUB-COMMITTEE (COUNCIL CHARITIES)

MEETING HELD IN THE BROTHERHOOD HALL,  
GERNON ROAD, LETCHWORTH GARDEN CITY  
ON WEDNESDAY, 6 DECEMBER, 2017 AT 10.30 AM

#### MINUTES

**Present:** *Councillors Councillor Bernard Lovewell (Chairman), Ray Shakespeare-Smith and Michael Weeks.*

**In Attendance:** *Ian Couper (Service Director - Resources), Howard Crompton (Service Director - Customers), Steve Geach (Parks and Countryside Development Manager), Marie Searle (Property Solicitor) and Ian Gourlay (Committee and Member Services Manager).*

#### 1 ELECTION OF CHAIRMAN

**RESOLVED:** That Councillor Bernard Lovewell be elected as Chairman of the Sub-Committee for the remainder of the 2017/18 Civic Year.

#### 2 MINUTES - 12 DECEMBER 2016

**RESOLVED:** That the Minutes of the Meeting of the Sub-Committee held on 12 December 2016 be taken as read, approved and signed by the Chairman.

#### 3 NOTIFICATION OF OTHER BUSINESS

There was no notification of other business.

#### 4 CHAIRMAN'S ANNOUNCEMENTS

The Chairman reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

#### 5 PUBLIC PARTICIPATION

There was no public participation.

#### 6 ANNUAL ACCOUNTS AND RETURNS FOR COUNCIL ADMINISTERED CHARITIES

The Head of Finance, Performance and Asset Management presented a report seeking the Sub-Committee's agreement to the returns to the Charities Commission of the four charities/charitable trusts administered by NHDC: the Hitchin Town Hall Gymnasium and Workman's Hall Trust; King George's Fields Trust; Smithson Recreation Ground Trust; and Hertfordshire Yeomanry and Artillery Collection. He advised that the returns for the 2016/17 financial year needed to be submitted by 31 January 2018 to accord with the requirements of the Charities Commission.

The Head of Finance, Performance and Asset Management explained that the accounts and draft annual return for the Hitchin Town Hall Gymnasium and Workman's Hall Trust were attached at Appendix 1 to the report. The building had remained closed during 2016/17 due to the completion of the refurbishment works. There were issues with the fit out of the Museum, as the original contractor went into liquidation, and the ongoing dispute between the Council and Hitchin Town Hall Limited regarding the ownership of 14/15 Brand Street. Appendix 4 to the report was the one report to Cabinet on Hitchin Town Hall submitted in March 2017.

The Head of Finance, Performance and Asset Management referred to the 2016/17 accounts for the Hitchin Town Hall Gymnasium and Workman's Hall Trust, and explained that the balance sheet showed a substantial increase in the value of the building, due its status as a refurbished building and that fact that it not been valued for some time due to the building works. In response to a Member's question, he confirmed that Business Rates were paid by the Trust, but that this was at an 80% reduction, due to the Trust's charitable status.

The Head of Finance, Performance and Asset Management summarised the activities of the King George's Field, Hitchin Trust over the 2016/17 financial year. The site owned by this charity had been maintained open and accessible for public use during the course of this year. Work had continued to facilitate the activities of the Hitchin Rugby Club and other partners on the site. Maintenance work undertaken on site had included grass cutting, maintenance of the playground, litter collection, weed control and renovation of the sports pitches post season. There had not been any changes to the lease arrangements on site.

The Head of Finance, Performance and Asset Management stated that the accounts and draft annual return for King George's Field, Hitchin were attached at Appendix 2 to the report.

The Head of Finance, Performance and Asset Management advised that there had been expenditure on the pavilion and car park during 2016/17. As these generally related to property owned and operated by the Rugby Club, this was shown as revenue expenditure in the accounts and was the reason why the overhead costs for the year were shown as £61,000. As the income figure exceeded the £25,000 threshold, authority was sought for an independent review of the accounts by the Shared Internal Audit Services (SIAS).

In relation to a discussion regarding the car park area, the Trust Lawyer advised that the freehold of the Pavilion was held by the Council, with a 99 year lease to the Rugby Club, and the Club had obligations under the lease to pay towards the cost of any repairs to the car park. Upon a Member's request, she undertook to provide Sub-Committee Members with a copy of the lease, in order to familiarise them with the various obligations of the Council and Rugby Club set out therein.

The Head of Finance, Performance and Asset Management summarised the activities of the Smithson Recreation Ground Trust over the 2016/17 financial year. Following a public consultation, in 19 December 2016, the Charity Commission ordered a scheme to vary the purpose of this charity so that, rather than restricting the use of the land to use by girls, women and boys under 5, the purpose was now for the provision of a recreation ground for the benefit of Hitchin. Pursuant to this, the charity had continued to work to maintain the recreation ground, keeping it open and accessible for public use and benefit. The planned refurbishment works were completed during the 2016/17 financial year which resulted in resurfacing of the footpaths, the installation of new benches signage and interpretation, tree planting and renovation of shrub borders.

The Head of Finance, Performance and Asset Management advised that the accounts and draft annual return for the Smithson's Recreation Ground, Hitchin were attached in the amended Appendix 3 to the report tabled at the meeting. Reflected in the accounts was the cost of the refurbishment works referred to above.

**Wednesday, 6th December, 2017**

The Head of Finance, Performance and Asset Management informed the Sub-Committee that, consistent with charity's purpose of advancing the education of the public in the traditions of the Hertfordshire Yeomanry and Artillery, the Museum Service had placed key items from the Yeomanry Collection on display in the new North Hertfordshire Museum. The remainder of the collection was in storage, and shown to the public on request. There had been no income or expenditure in 2016/17. No issues had arisen during the course of the year that had required consideration of the public benefit test.

**RESOLVED:**

- (1) That the information required by the Charities Commission for the four registered charities, as set out in the report and appendices 1, 2 and 3 of the report, be approved, so that returns can be submitted prior to the January 2018 deadline; and
- (2) That the requirement for those charities with gross income of more than £25,000 in any financial year to have their accounts independently examined be noted, and that as this applies to King George's Field for 2016/17, the examination of those accounts be undertaken by the Shared Internal Audit Service (SIAS).

**REASON FOR DECISION:** To facilitate the submission of approved returns to the Charities Commission.

The meeting closed at 11.00 am

Chairman

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**CABINET SUB-COMMITTEE (COUNCIL CHARITIES)  
20 NOVEMBER 2018**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL:  
COUNCIL PROPOSALS TO ACQUIRE 14/15 BRAND STREET**

REPORT OF : SERVICE DIRECTOR: CUSTOMERS

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

To update the Cabinet Sub-Committee on the Council proposals in relation to the North Hertfordshire Museum & Hitchin Town Hall including the land owned by the Hitchin Town Hall Gymnasium and Workman's Hall Trust.

**2. RECOMMENDATIONS**

That the Charities Sub-Committee:

- 2.1 Notes the proposal for the Council to acquire 14/15 Brand Street for a purchase price of £550,000.00
- 2.2 Confirms that it has no objections to the settlement agreement referred to in this report.
- 2.3 Authorises the Council to execute the settlement agreement on behalf of the Trust.
- 2.4 Delegates to the Service Director - Customers in consultation with the Trust Lawyer and the Chairman of the sub-committee authority to review the management agreement entered into between the Hitchin Town Hall Gymnasium and Workmans Hall Trust and the Council and to make any minor amendments to take account of the settlement agreement in the event that it is completed

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To ensure that the charitable requirements of the Trust are met in respect of the Council's proposal to enter into the settlement agreement.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The alternative options are considered in the body of this report.

## **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

5.1 There has been no consultation in respect of the recommendations in this report.

## **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 Part of the District Museum and Hitchin Town Hall is held by the Council as trustee for the Hitchin Town Hall Gymnasium and Workmans Hall Trust ('the Trust'). That part of the building ('the Trust Property') is managed by the Council under the terms of a management agreement entered into between the Council and the Trust following Sub-Committee approval of the agreement on 27 July 2010

7.2 On 22 May 2012 the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) considered the proposed scheme for the development of Hitchin Town Hall and District Museum and assessed the impact of the scheme on the Trust Property. As members are aware the development then proceeded and was governed by a development agreement between the Council and Hitchin Town Hall Limited. At its meeting of 22 May 2012, the Sub-Committee authorised the Council to execute the development agreement on behalf of the Trust.

7.3 On 9 October 2012 the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) considered further information in respect of the legal agreements relating to the scheme.

7.4 Revisions to the development agreement were subsequently brought forward and on 22 April 2013 the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) authorised the Council to execute any necessary amendment to the development agreement on behalf of the Trust to give effect to the revisions.

7.5 Following the resolutions of the Cabinet Sub-Committee noted above, a further development agreement was entered into on 9 September 2013 between the Council and Hitchin Town Hall Limited ('the Development Agreement') and this stated:

*"The Trust, acting by the Council as Sole Trustee, enters into this Agreement pursuant to the decisions of the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) made on 22 May 2012, 9 October 2012 and 23<sup>rd</sup> April 2013"*

- 7.6 In broad terms the effect of the Development Agreement insofar as the Trust is concerned was:
- To permit the Council to develop the Trust Property;
  - Conditional upon completion of the development as envisaged by the Development Agreement, to accept from Hitchin Town Hall Limited the land formerly known as 14/15 Brand Street ('14/15 Brand Street') for nil consideration; and
  - Conditional upon completion of the development as envisaged by the Development Agreement, to permit the Council to let part of the Trust Property to Hitchin Town Hall Limited and to enter into an associated management agreement which would bind the Trust Property.
- 7.7 The Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) was decommissioned on 31 December 2013 and the Cabinet Sub-Committee (Council Charities) is now empowered to act on behalf of the Council as Corporate Trustee for all assets of the Council that are held on a charitable trust.
- 7.8 Members of the Sub-Committee will be aware from the Annual Report of the Trust that during the course of the development, there was a breakdown in the relationship between the Council and Hitchin Town Hall Limited ('HTHL') meaning that the development was not completed as envisaged by the Development Agreement. The property formerly known as 14/15 Brand Street is now incorporated into the District Museum and Hitchin Town Hall, but remains within the ownership of HTHL and subject to a charge in favour of Hitchin Town Hall Finance Limited ('HTHF')
- 7.9 The result of the present ownership arrangements is that what was intended to be the entrance to the new museum cannot currently be used. Furthermore, this also restricts access to certain rooms within the Trust Property, which require access over the former 14/15 Brand Street to gain entry. There is an alternative access point, which is being used to gain entry to the Trust Property and therefore the new museum.

## **8. RELEVANT CONSIDERATIONS**

- 8.1 A Part 1 report to be presented to Cabinet on 20<sup>th</sup> November 2018 together with appendices (including the proposed settlement agreement) are supplied with this report as information for Members of the Sub-Committee. The report proposes that the Council enters into the settlement agreement. Members will note that a linked Part 2 report is to be presented to this Sub-Committee on this item to enable consideration of the Part 2 report which will be presented to Cabinet.
- 8.2 The settlement agreement addresses a number of issues namely it:
- Operates as a contract between the Council and HTHL for the purchase of 14/15 Brand Street; and
  - Terminates the Development Agreement; and
  - Binds the Council's future ownership and use of both the part of the District Museum and Hitchin Town Hall registered to the Council under title number HD488762 ('the Council's Land') and 14/15 Brand Street in the manner set out in the agreement.

- 8.3 In considering whether it has any objections to the proposed settlement agreement, the Cabinet Sub-Committee (Council's Charities) must take into account the Trust's Charitable Objectives which relate to the Trust Property and 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”.*

- 8.4 The Cabinet Sub-Committee (Council's Charities) must also have regard to the public benefit requirement, namely the duty of the charity trustees to further the purpose of the charity for the public benefit. In this regard, the Sub-Committee is required to have regard to the Charity Commission guidance on public benefit, which is set out in this report where relevant.

#### **Council's purchase of 14/15 Brand Street**

- 8.5 The proposal for the Council to purchase 14/15 Brand Street is not a matter that requires direct consideration by this Cabinet Sub-Committee. The Council is proposing to purchase the property with its own funds and the terms of that purchase may therefore be agreed between the Council and HTHL as the seller.
- 8.6 Clearly in order to sell 14/15 Brand Street to the Council, HTHL must be free from any obligation to transfer the property to the Trust, however that outcome is linked to the termination of the Development Agreement, rather than the Council's purchase of the property.
- 8.7 The Council's acquisition of 14/15 Brand Street is also relevant to the Trust insofar as the Council would be able to use the property in conjunction with the Trust Property to provide a unified District Museum. Therefore in considering the effect on the Trust of the termination of the Development Agreement, members of the Cabinet Sub-Committee may take into account that an intrinsic element of the settlement is the Council's acquisition of 14/15 Brand Street.

#### **Termination of the Development Agreement**

- 8.8 The relevance to the Trust of the termination of the Development Agreement can be considered by reference to the three intended effects of the Development Agreement as set out in paragraph 7.8 of this report.

#### Development of the Trust Property

- 8.9 Despite the dispute in connection with the Development Agreement, the Council progressed the overall development of the District Museum and has completed the refurbishment insofar as it relates to the Trust Property. The Trust Property is now fully refurbished as a working museum, with limited opening to the public at the moment because of the restricted access. It is ready for full opening as soon as the access questions have been resolved. The Development Agreement is therefore no longer required to achieve this outcome.

#### Transfer of 14/15 Brand Street

- 8.10 As is highlighted earlier in this report, the proposed transfer of 14/15 to the Trust was conditional on the other obligations set out in the Development Agreement being met by all parties. Due to the dispute between the Council and HTHL, the pre-conditions in the Development Agreement relating to the transfer have not occurred, meaning that the legal obligation on HTHL to transfer the property to the Trust has not arisen.

#### Lease of part of the Trust Property to HTHL

- 8.11 Equally, the pre-conditions in the Development Agreement relating to the proposed lease of Trust Property (together with Council Land) to HTHL have not occurred. There is therefore no legal obligation on the Council to grant such a lease. However if the settlement agreement were to be completed, this would confirm the termination of the relevant provisions in the Development Agreement and would clarify the position.

#### **Council's future use of 14/15 Brand Street and the Council's Land**

- 8.12 The settlement agreement places a rolling 5 year obligation on the Council to retain the Council's Land and 14/15 Brand Street for the community purpose defined in the agreement. This obligation does not affect the Trust Property and so this element of the settlement agreement does not require direct consideration by the Trust.

- 8.13 As can be seen from the analysis in paragraphs 8.3-8.10 of this report, the main effect of the settlement agreement from the Trust's perspective will be to conclusively terminate the Development Agreement proposals for 14/15 Brand Street to be transferred to the Trust, and for the proposals for the Trust Property to be let to HTHL.

- 8.14 Notionally, it might be argued that the Trust could reject the settlement agreement and attempt to enforce the obligations on the parties in order to gain ownership of 14/15 Brand Street. However in reality that would be entirely impractical and it is not an available option for the following reasons:

- The Trust does not have the financial resources with which to pursue any enforcement action;
- 14/15 Brand Street is subject to a legal charge and any enforcement action would be complicated by the rights of the beneficiary of the legal charge;
- The Council being the corporate trustee of the Trust could not take legal action against itself.

- 8.15 In any event, if the Trust was able in some way to enforce the obligations on the parties under the Development Agreement, then this would require the Council to lease part of the Trust Property to HTHL for nil consideration (as originally envisaged by the Development Agreement).

- 8.16 It is arguable that completion of the settlement agreement will help to further the Trust's Charitable Objectives for the public benefit. The public benefit requirement has two aspects:

#### **The 'benefit aspect'**

To satisfy this aspect:

- a purpose must be beneficial - this must be in a way that is identifiable and capable of being proved by evidence where necessary and which is not based on personal views

- any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the benefit - this is also based on evidence and not on personal views

### **The 'public aspect'**

To satisfy this aspect the purpose must:

- benefit the public in general, or a sufficient section of the public - what is a 'sufficient section of the public' varies from purpose to purpose
- not give rise to more than incidental personal benefit - personal benefit is 'incidental' where (having regard both to its nature and to its amount) it is a necessary result or by-product of carrying out the purpose

8.17 Completion of the settlement agreement and the consequential unification of the building including access to the whole of the Trust Property will further the Trust Objectives of permitting the Trust Property to be used for any other (charitable) purpose. Presently the local studies room and upper floor accommodation which fall on the Trust Property are not in use. If the settlement agreement is completed and the Council acquires 14/15 Brand Street, the Trust Property could then be used by local groups and higher education students as a study area, as a meeting room by local community groups, for craft activities and for pop up community services. These types of use would fulfil the following charitable purposes:

- the advancement of education
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science

8.18 In considering this against the public benefit test:

#### The benefit aspect

8.18.1 Charity commission guidance states that '*When running a charity, the charity trustees do not have repeatedly to demonstrate that the purpose continues to satisfy the benefit aspect of the public benefit requirement*'. Therefore on the basis that the development of the District Museum was determined to be of public benefit as it would lead to the use of the Trust Property for these purposes, it is not necessary to re-establish the public benefit. It is not considered that there is any real or evidenced detriment or harm to the proposal.

#### The public aspect

8.18.2 The Trust Property would be available for use by the residents of North Hertfordshire and this is considered to be a sufficient section of the public to meet the 'public aspect' part of the public benefit requirement. To the extent that either the Council or HTHL benefit from the completion of the settlement agreement, this is incidental to the overall proposal.

- 8.19 In the event that the settlement agreement is completed, it will be necessary to review the management agreement entered into between the Hitchin Town Hall Gymnasium and Workmans Hall Trust and the Council. At the time of entering into the management agreement, it was envisaged that the development would be completed in accordance with the Development Agreement. The management agreement therefore refers to the potential for the Trust Property to be operated and managed by HTHL, and the settlement agreement will formerly terminate this eventuality. The management agreement will therefore need to be updated to remove reference to HTHL and it is proposed that this work is undertaken under the existing delegation of the Chairman of the Cabinet Sub-Committee in consultation with the lead officer for the Trust and the Trust Lawyer.

## **9. LEGAL IMPLICATIONS**

- 9.1 The Cabinet Sub-Committee has within its terms of reference to act on behalf of the Council as corporate trustee for all assets of the Council that are held on a charitable trust. Also within the committee's terms of reference is 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.
- 9.2 Within the Cabinet Sub-Committee's terms of reference is a delegation to the Chairman in consultation with the lead officer for the trust concerned and the trust lawyer to authorise the entering into any agreement, contract, lease, consent or deed to surrender or termination for administrative or minor matters (including minor amendments).
- 9.3 The Sub-Committee Members are not themselves charity trustees (the Council remains the trustee). They must, however, act in a responsible way so as to ensure that the local authority acts properly as a charity trustee. If Members fail to do this they may be liable to the Council under local government law for any losses it bears as a charity trustee. Members must, on behalf of the trustee, ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains true to the charitable purpose and objects set out there. If trustees act prudently, lawfully and in accordance with the governing document then any liabilities that they incur can normally be met out of the charity's resources. If the trustees act imprudently, or are otherwise in breach of the law or the governing document, the position is different. Here trustees may be responsible for liabilities incurred by the charity or for making good any loss to the charity.
- 9.4 In 2006 Parliament passed legislation for charities which, amongst other provisions, highlighted the requirement for all charities' aims to be, demonstrably, for the public benefit. The Charity Commission is required to publish guidance on public benefit, to which charity trustees must have regard. Every charity, therefore, has to consider the guidance and respond appropriately in its work and its reporting to the public through the Charity Commission.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Once the premises is fully operational, the net expenditure for the Trust is estimated to be £187,000, this includes income from the Café of £41,000 which will be situated on the Trust site, the gross expenditure will be £228,000. So the site will be subsidised by the Council. There is a risk the net expenditure could fluctuate.

10.2 The purchase of 14-15 Brand Street will result in a further spend of £550,000. A loan was made to Hitchin Town Hall Limited of £14,000 which has not been repaid. On the original proposal Hitchin Town Hall Limited were to contribute £490,000 towards the construction and £60,000 towards the kitchen fit out, this contribution had not been made.

## **11. RISK IMPLICATIONS**

11.1 There are no direct risks implications for the Trust.

## **12. EQUALITIES IMPLICATIONS**

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.

12.2 The proposals made in this report do not in themselves alter the overall project design as previously reported, but seek to ensure that in ensuring momentum to the existing contracts etc, a facility to meet the needs of all communities in North Herts can be completed and brought into community use. The report also suggests consideration of management arrangements for the facility which will be subject to the Public Sector Equality Duty. Section 8.15 clearly identifies the community benefits to be derived from the opening of the while site as originally envisaged.

## **13. SOCIAL VALUE IMPLICATIONS**

13.1 The Social Value Act and “go local” policy do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

14.1 The demands of this project have been significant over a long period of time including additional time having to be committed to this project by Chief Officers that has created pressures and delays on other important work programmes elsewhere.

## **15. APPENDICES**

15.1 Appendix A – Part 1 report to Cabinet on 20 November 2018 plus appendices to the report.

## **16. CONTACT OFFICERS**

16.1 Marie Searle, Trust Lawyer  
[marie.searle@north-herts.gov.uk](mailto:marie.searle@north-herts.gov.uk); ext 4315

16.2 Howard Crompton, Service Director: Customers  
[Howard.crompton@north-herts.gov.uk](mailto:Howard.crompton@north-herts.gov.uk); ext 4247

16.3 Senior Policy Officer  
[Reuben.ayavoo@north-herts.gov.uk](mailto:Reuben.ayavoo@north-herts.gov.uk); ext 4212



16.4 Kerry Shorrocks, Corporate Human Resources Manager  
[Kerry.shorrocks@north-herts.gov.uk](mailto:Kerry.shorrocks@north-herts.gov.uk); ext 4224

**17. BACKGROUND PAPERS**

17.1 Management Agreement agreed by the Sub-Committee on 27 July 2010

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**REPORT DUE TO BE CONSIDERED BY CABINET ON 20 NOVEMBER 2018**

**TITLE OF REPORT: NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL:  
ACQUISITION OF 14/15 BRAND STREET**

REPORT OF : THE DEPUTY CHIEF EXECUTIVE

EXECUTIVE MEMBER : COMMUNITY ENGAGEMENT & RURAL AFFAIRS

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

- 1.1 At its meeting on 25<sup>th</sup> September 2018, Cabinet provided a final offer of a settlement agreement to Hitchin Town Hall Ltd (HTHL) and Hitchin Town Hall Finance Ltd (HTHF). On the 30<sup>th</sup> October 2018, HTHL held an extraordinary general meeting (EGM) and their shareholders accepted the Settlement Agreement. This report seeks the formal approval of Cabinet for the Settlement Agreement and purchase of 14/15 Brand Street. The Cabinet Sub-Committee (Council Charities) will also be asked to provide their comments on the settlement agreement in advance of this meeting.

**2. RECOMMENDATIONS**

That Cabinet:

- 2.1 approves the purchase of 14/15 Brand Street for £550,000.
- 2.2 confirms that the Council should enter into the Settlement Agreement at Appendix A.
- 2.3 notes the timeline for the full opening of the North Hertfordshire Museum.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To enable the Council to complete the development of the North Hertfordshire Museum/Hitchin Town Hall project as intended by Council and operate the facility for the benefit of the local community.
- 3.2 To protect the Council's interests and obtain best return from the Council's existing investment and to secure projected income from the facility to offset some of the operational and fixed costs.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The options to open the facility without occupancy of 14/15 Brand Street have been fully investigated. A costed options appraisal considering a number of scenarios for the occupation of the land which the Council currently owns has been undertaken to guide the price offered. The acquisition of 14/15 Brand Street by agreement means that the full facility will be available and it brings an end to the contractual dispute.

## **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 Consultation on the general parameters for seeking to acquire 14/15 Brand Street as authorised by Full Council on 20 January 2016 has been on going with Executive Members prior to engaging in discussions with HTHL and HTHF and throughout those discussions.

## **6. FORWARD PLAN**

- 6.1 This report contains a recommendation on a key decision, which has been notified to the public in the Forward Plan on 22 October 2018.

## **7. BACKGROUND**

- 7.1 The decision making history in relation to this project is extensive and has been reported to both Council and Cabinet on a number of occasions. The reports are available on the website (<https://www.north-herts.gov.uk/home/museums/north-hertfordshire-museum-and-hitchin-town-hall/hitchin-town-hall-museum-proposals> ).
- 7.2 It should be noted that Council has approved in principle the acquisition of 14/ 15 Brand Street to allow the project to be completed in line with the original plans, subject to the financial limits as set out in the Council's Constitution.
- 7.3 Discussions have taken place in the latter part of 2016 and throughout 2017 and 2018 with HTHL and HTH Finance Ltd and it has been made very clear that in order to make a bid for the property the Chief Finance (s151) Officer would need to ensure that it was offering value for money to the Council Tax payer. Given that the agreed amount was considered to be at full market value, this meant it would need to include provisions to resolve the current dispute and that any conditions attached to the purchase could not be too onerous. This approach has also been confirmed with the Council's External Auditor.
- 7.4 The resolution of Cabinet on 25<sup>th</sup> September was:
- 2.2 *That Cabinet agrees to a Settlement Agreement that will be provided as a final offer to HTHL/HTHF. HTHL would be required to fully accept the Settlement Agreement by holding an Extraordinary General Meeting (EGM) by the 31<sup>st</sup> October 2018. Subject to agreement in principle and HTHL having set a date for their EGM, a date would then be arranged for mid-November for an extraordinary Cabinet meeting and a Cabinet Sub-Committee (Council Charities) meeting to consider the final Settlement Agreement.*

## **8. RELEVANT CONSIDERATIONS**

### The Settlement Agreement

- 8.1 On the 1<sup>st</sup> October 2018, the Council received communication from HTHL that they would be calling an EGM for the 30<sup>th</sup> October 2018 that would seek approval from their shareholders for the Settlement Agreement offered by Cabinet.

- 8.2 The EGM took place on the 30<sup>th</sup> October 2018 and the Settlement Agreement was approved subject to one change. This changed the definition of community purpose from “activities which a reasonable person might consider are being carried on directly or indirectly for the benefit of the North Hertfordshire community” to “activities which a reasonable person might consider are being carried on for the benefit of the North Hertfordshire community provided that a reasonable level of commercial use may be carried out in order to provide income to support those activities”. The Council plans to use the facility for a range of purposes that include:
- Lettings to community groups, particularly during the week
  - Private bookings to the North Hertfordshire community, including those with links to the area
  - Events arranged by the Council that will be available to everyone, but it is expected that they will be more likely to be attended by the North Hertfordshire community
  - Some commercial events
- In correspondence from Hitchin Town Hall Limited prior to the EGM it was stated that “indeed in our business model, had HTH run the facility, we too would have had a fair degree of commercial usage”. On the basis of the above it is considered that the Council could agree to the proposed amendment.
- 8.3 The above was communicated to the Council in a letter dated 31<sup>st</sup> October 2018. An e-mail from Hitchin Town Hall Finance Limited on 5<sup>th</sup> November 2018 confirmed that “the letter sent on 31<sup>st</sup> October 2018 by Hitchin Town Hall Ltd has the support of HTH Finance Ltd and on that basis we would sign the proposed Settlement Agreement”.
- 8.4 Following that correspondence, a press release will need to be agreed with the Directors of HTHL and HTHF. At the time of writing this report this was still ongoing. Cabinet are now asked to confirm that they have no objections to the Settlement Agreement at Appendix A. The Executive Member for Community Engagement and Rural Affairs will be consulted on the press release.
- 8.5 Throughout the negotiations on the Settlement Agreement, the Council has been focused on ensuring that it provides suitable resolution of all the issues and that it is appropriately enforceable. Further details on this are provided in the part 2 report.
- 8.6 As well as approval by Cabinet, the proposed Settlement Agreement is also subject to consideration by the Cabinet Sub-Committee (Council Charities). This is because the original Development Agreement was signed by the Council on behalf of the Trust as the development included land owned by Trust. The original Development Agreement would have seen the property at 14/15 Brand Street being gifted to the Trust directly from HTHL. The expenditure that the Council will now incur in acquiring 14/15 Brand Street means that it intends on keeping the property. This is so that the income is retained to balance the impact on the local taxpayer. However the Trust is now in a significantly better position than it was at the start of the project in that it would have a modern museum operating from the buildings that it holds. The Cabinet Sub-Committee are scheduled to meet earlier on the same day as this Cabinet meeting, and will refer any comments that they have on to this meeting.

#### Process required for acquisition of 14/15 Brand Street

- 8.7 The Settlement Agreement operates as a contract for sale. The usual conveyancing procedure will be followed which will result in exchange of contracts and completion of the legal transfer of the property.

- 8.8 Prior to completion the Council will obtain a formal undertaking from the solicitors acting for Hitchin Town Hall Limited that the debt to Hitchin Town Hall Finance Limited will be repaid from the proceeds of sale, and that the charge over the property will be then be removed.
- 8.9 On the completion date, possession and control of the property will be transferred to the Council. An application will then be made to the Land Registry to register the property to NHDC.

#### Full opening of the North Hertfordshire District Museum

- 8.10 The gantt chart at Appendix B shows the estimated programme of works that is required to ensure the building is complete and the Council is able to open the district museum in its entirety. Based on this the anticipated opening date for the full facility is early June 2019. This takes into account works not taking place over Christmas and a small amount of contingency time.

#### History of negotiations

- 8.11 Whilst HTHL and HTHF have asserted in correspondence that they had no objections to negotiations taking place in public, the fiduciary duty placed upon the Council meant that where matters were commercially or legally confidential then they are treated in such a manner. Accordingly the Council has not provided any public comment on these matters. The Council still does not intend to provide a response to the majority of the statements that have been made. However a recent Comet article is relevant to how negotiations have progressed and the decision being made.
- 8.12 An article in the Comet on 3<sup>rd</sup> October 2018, quoted Stephen Pike (Chairman of HTHL) as saying that the Council had backed down in relation to the five-year rolling hold over the town hall and that the Council “have mostly come round to our way of thinking to protect the use of Hitchin Town Hall”. The concept of a 5-year rolling protected period was agreed in October 2017. Although HTHL/HTHF did not originally appreciate the Council’s commitment in regards to this, this was fully clarified in July 2018 and the wording of this clause has not changed.

### **9. LEGAL IMPLICATIONS**

- 9.1 The general power of competence contained within the Localism Act 2011 came into force on 18<sup>th</sup> 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 the area.
- 9.2 The Authority has power under Section 144 of the Local Government Act 1972 to provide or encourage any other person or body to provide, facilities to encourage visitors, for conferences, trade fairs and exhibitions or improve or encourage any other person or body to do so for any existing facilities. It has powers under Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 to provide recreational facilities, buildings, equipment to the extent that these do not cover the current proposals that the general Power of Competence referred to in section 9.1 can be relied upon.

- 9.3 Paragraph 5.6.20 of the Council's Constitution provides that Cabinet's terms of reference include "to approve the purchase or appropriation of land and buildings where the sale price...exceeds £250,000 and does not exceed £2,500,000."
- 9.4 Paragraph 14.6.9 (a) (viii) of the Council's Constitution determines that the Service Director: Legal and Community can "authorise the institution, defence, withdrawal or settlement of any legal proceedings, civil or criminal (other than for Health and Safety proceedings, Council tax, non-domestic rates and sundry debts)."

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The Council's total capital expenditure on this project currently stands at £5.329m of which £0.874m is funded by the contribution from the Heritage Lottery Fund towards the fit out of the Museum. Following the Cabinet meeting in June, the Leader of the Council took a delegated decision (dated 17th July 2018) to allocate £20k of capital funding for the installation of a platform lift. The currently agreed purchase price for 14/15 Brand Street is £550k, as agreed by Cabinet at its meeting on 18th March 2017. As the purchaser, the Council would also need to pay Stamp Duty Land Tax of £17k, which would also be a capital cost. This was not included within the initial capital budget to avoid confusion over the amount being offered. The additional cost is within the tolerances set out within the financial regulations (sections 5.5 and 5.6).
- 10.2 A decision not to acquire 14/15 Brand Street would provide a compromised offer to the public and would restrict the full income generation prospects of the building. As it seems possible to acquire 14/15 Brand Street for a similar amount to the cost of the most operationally desirable separation works, resulting in the Council owning a building with service provision as originally envisaged and with greater income generation opportunities, this would seem to offer better value for money to local taxpayers.
- 10.3 The Council's external auditor has been kept aware of negotiations as they have progressed.

## **11. RISK IMPLICATIONS**

- 11.1 The risk implications arising from this report are largely:
- Financial – further delay in opening or not being able to open the facility or prevent achievement in the forecasted income, failure to obtain best return from the existing capital investment and would mean that existing museum staff may not be fully utilised. The operation of the town hall may also be compromised because of the difficulties in access (particularly to the first floor) to staff and members of the public.
  - Operational – uncertainty concerning full opening inhibiting marketing.
- 11.2 The North Hertfordshire Museum and Hitchin Town Hall Project is a corporate risk and this is monitored through the Finance Audit and Risk Committee. In addition there is a detailed project risk log that is monitored and discussed by project board.

- 11.3 The intention of the Settlement Agreement is to eliminate the risk of litigation being brought by either the Council, or HTHL, or both. Such litigation is likely to be complex, protracted and expensive and would divert Council resources away from undertaking other activities.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 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.
- 12.2 The proposals made in this report do not in themselves alter the overall project design as previously reported, but seek to ensure that in ensuring momentum to the existing contracts etc, a facility to meet the needs of all communities in North Herts can be completed and brought into community use. The report also suggests consideration of management arrangements for the facility which will be subject to the Public Sector Equality Duty. The purchase of 14/15 Brand Street, will realise the original designs for the museum and town hall. This option will enhance the experience for all visitors, including those with disabilities.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report do not yet 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 paragraphs 12.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 The Human Resources implications arising from this report are associated with the significant additional workload that has been placed on the Senior Officers and Project Team Members. This has been mitigated by the reallocation of resources from less time sensitive projects but this could not be sustained indefinitely.
- 14.2 The uncertainty has been of concern particularly with the Museum staff with the ongoing delay in the full opening of the Museum.

## **15. APPENDICES**

- 15.1 Appendix A- Proposed Settlement Agreement.
- 15.2 Appendix B- Gantt chart of activities required for the full opening of Hitchin Town Hall and District Museum.

## **16. CONTACT OFFICERS**

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Tel 01462 474224

**17. BACKGROUND PAPERS**

- 17.1 As per 7.1.

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**Appendix A – Proposed settlement agreement**



**DATED**

**2018**

**BETWEEN**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**AND**

**HITCHIN TOWN HALL LIMITED**

**AND**

**HTH FINANCE LIMITED**

**AGREEMENT RELATING TO**

**NORTH HERTFORDSHIRE MUSEUM AND HITCHIN TOWN HALL**

## PARTIES

- (1) **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices, Gernon Road, Letchworth Garden City SG6 3JF (**Council**)
- (2) **HITCHIN TOWN HALL LIMITED** a charity incorporated and registered in England and Wales with company number 07974116 whose registered office is at 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire SG5 1JQ and whose registered Charity No. is 1148921 (**HTH Limited**)
- (3) **HTH FINANCE LIMITED** company number 10205544 whose registered office is 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire SG5 1JQ (**Financier**)

## BACKGROUND

- (A) The Dispute has arisen between the Council and HTH Limited.
- (B) HTH Limited is the proprietor of the Brand Street Property.
- (C) The Financier has the benefit of the Charge, the Development Agreement Charge and the Debentures.
- (D) Notwithstanding their differences the parties have agreed terms for settlement of the Dispute and wish to record those terms of settlement, on a binding basis, in this agreement.
- (E) Notwithstanding that the Town Hall Property was originally constructed by Hitchin Urban District Council for Hitchin Residents it is acknowledged that any income generated by the Council will be for the benefit of North Hertfordshire residents.
- (F) Insofar as this agreement relates to the settlement of the Development Agreement, the Council enters into it both on its own behalf and on behalf of the Trust pursuant to a decision of the Cabinet Sub-Committee (Council Charities) dated [XXX].

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

**Brand Street Property:** means the land and buildings sited thereon formerly known as 14/15 Brand Street and registered at the Land Registry under title number HD529274.

**Charge:** means the charge dated 12 September 2013 between HTH Limited and Social Investment Business Foundation the benefit of which is now vested in the Financier and with respect to security granted over the Brand Street Property referred at entry 2 and 3 of the charges register of title number HD529274 as at 23 June 2017 at 07:06:52.

**Community Purpose:** activities which a reasonable person might consider are being carried on for the benefit of the North Hertfordshire community provided that a

reasonable level of commercial use may be carried out in order to provide income to support those activities.

**Debentures:** means a debenture dated 15 October 2012 and a debenture incorporated in the Charge in each case over the assets of HTH Limited and between HTH Limited and Social Investment Business Foundation the benefit of which are now vested in the Financier.

**Development Agreement:** means the Development Agreement dated 9 September 2013 relating to North Hertfordshire Museum and Hitchin Town Hall between the Council and HTH Limited for the refurbishment and redevelopment of Hitchin Town Hall and adjacent property for the purposes of creating a District Wide Museum and improved community facility following which HTH Limited would have been granted a 125 year lease of the Town Hall Property.

**Development Agreement Charge:** means a charge by way of assignment of the interest of HTH Limited in the Development Agreement dated 15 October 2012 and between HTH Limited and Social Investment Business Foundation the benefit of which are now vested in the Financier.

**Domain Name:** means the domain name known as hitchintownhall.co.uk registered with Nominet.

**Dispute:** means the dispute between the Council and HTH Limited relating to a Development Agreement dated 9 September 2013.

**Hitchin Residents:** the inhabitants at any relevant time of the following electoral wards within Hitchin Hertfordshire, United Kingdom as they are constituted at the date of this agreement: Priory; Highbury; Walsworth; Bearton; and Oughton

**Loan Agreement:** means the loan made by the Council to HTH Limited via a letter stating 'to be repaid when funds available' dated XXXX

**Part 1 Conditions** means the conditions in Part 1 of the Standard Commercial Property Conditions (Third Edition) and Condition means any one of them.

**Part 2 Conditions** means the conditions in Part 2 of the Standard Commercial Property Conditions (Third Edition) and Condition means any one of them.

**Project:** means the scheme for the refurbishment and redevelopment of Hitchin Town Hall and adjacent property for the purposes of creating a District Wide Museum and improved Town Hall both for community use.

**Protected Period:** means an ongoing rolling commitment of five years starting from the date of the Transfer Deed during which the Council undertakes to retain the ownership of the Brand Street Property and the Town Hall Property for the Community Purpose. This Protected Period shall apply until a date not earlier than five years from a Protected Period Review.

**Protected Period Review:** means a review by the Council of its undertaking in respect of the Protected Period as to the future ownership and use of the Brand Street Property and the Town Hall Property. The timing of any such review shall be at the sole discretion of the Council and the Council undertakes to consult the North Hertfordshire community as part of any such review.

**Protected Period Review Outcomes:** means the decision made by the Council following a Protected Period Review. If the Council decides to continue its commitment to retain the ownership of the Brand Street Property and the Town Hall Property for the Community Purpose then the Protected Period continues, subject to any further Protected Period Reviews. If the Council decides to consider alternative ownership or changing the use of the Brand Street Property and/or Town Hall Property, this shall terminate the Protected Period with effect from the date five years after the decision. During the period until the Protected Period terminates the Council shall consider any reasonable proposals put forward by Hitchin Residents and/or the North Hertfordshire community or part thereof for purchase or management of the Brand Street Property and/or Town Hall Property, provided any such proposal meets the statutory requirements governing the Council.

**Purchase Price:** £550,000

**Related Parties:** means and includes only:

- (a) a party's parent and subsidiaries
- (b) a party's directors, or secretary, principals or officers or any individual agents, or other representatives
- (c) A party to whom the benefit of this agreement has been assigned or transferred.

**Released Claims:** means all and/or any actions, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the parties or to the law, and whether in law or equity, that it, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other parties or any of its Related Parties arising out of or connected with:

- (a) the Dispute;
- (b) the underlying facts relating to the Dispute;
- (c) any agreement between or act by the parties or their Related Parties or any of them; and
- (d) any other matter arising out of or connected with the relationship between the Parties concerning the Dispute.

**Town Hall Property:** means the land and buildings sited thereon known as Town Hall, Grammar School Walk, Hitchin and registered at the Land Registry under title number HD488762.

**Transfer Deed:** means a form TR1 in the form of the draft at Annex 1

**Trust:** the Hitchin Town Hall Gymnasium and Workmans Hall Trust (registered charity number 233752) of which the Council is the sole trustee

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.3 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.4 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.5 A reference to **writing** or **written** does not include fax or e-mail.
- 1.6 Except where a contrary intention appears, a reference to a clause is a reference to a clause of this contract.
- 1.7 Clause and paragraph headings shall not affect the interpretation of this contract.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2 EFFECT OF THIS AGREEMENT**

The parties hereby agree that on completion of the transfer of the Brand Street Property to the Council, this agreement shall immediately be fully and effectively binding on them.

## **3 TERMS OF SETTLEMENT**

- 3.1 The parties agree that on the date of this agreement:-
- (a) The Council will pay the Purchase Price to HTH Limited.
  - (b) HTH Limited shall complete the Transfer Deed to transfer the Brand Street Property to the Council unencumbered and with vacant possession.
  - (c) HTH Limited shall redeem the charge to the Financier and the Financier shall release the Charge, the Development Agreement Charge and the Debentures.
  - (d) The Council undertakes to comply with the Protected Period, Protected Period Review and Protected Period Review Outcomes.
- 3.2 The parties hereby agree that the Development Agreement is terminated. For the avoidance of doubt HTH Limited and the Financier agree to release their rights under the Development Agreement and all parties agree to release the other parties from their obligations under the Development Agreement.

- 3.3 The Council hereby agrees to write off in full, including any accrued interest, the sum owed by HTH Limited to the Council in respect of the Loan Agreement.
- 3.4 The Council acknowledges that HTH Limited do not control the Domain Name and that the Council have no claim over the Domain Name, the website or any content displayed.
- 3.5 The parties hereby agree to issue an agreed press statement within five days of the signing of this agreement as set out in Annex 'C'.
- 3.6 The parties hereby agree that this agreement is in full and final settlement of the Released Claims.

#### **4 RELEASE**

This agreement is in full and final settlement of, and each party hereby releases and forever discharges the Released Claims.

#### **5 VAT**

- 5.1 Each amount stated to be payable by the Council to HTH Limited under or pursuant to this agreement is exclusive of VAT (if any).
- 5.2 If at any time Her Majesty's Revenue and Customs (HMRC) levies a charge against HTH Limited in respect of VAT connected with works undertaken on the Brand Street Property then the Council agrees to pay to HTH Limited a sum equivalent to that VAT on demand.

#### **6**

- 6.1 The Part 1 Conditions are incorporated in this contract so far as they:
- 6.1.1 apply to a sale by private treaty;
  - 6.1.2 relate to freehold property;
  - 6.1.3 are not inconsistent with the other clauses in this contract; and
  - 6.1.4 have not been modified or excluded by any of the other clauses in this contract.
- 6.2 The Part 2 Conditions are not incorporated into this contract.

#### **7 AGREEMENT NOT TO TAKE PROCEEDINGS ETC**

- 7.1 Each party agrees, on behalf of itself and on behalf of its Related Parties not to sue, commence, prosecute, finance or cause to be commenced or prosecuted against the other parties or their Related Parties any action, suit or other proceeding concerning the Released Claims, in this jurisdiction or any other either directly or indirectly via third parties. In respect of any third party litigation in relation to the Project each party agrees that it will not actively encourage or engage other third parties to pursue litigation and each party shall be limited to supplying documents and/or witness statements in response to a request from the third parties' legal representatives..



- 7.2 Clause 4 and Clause 7.1 shall not apply to, and the Released Claims shall not include, any claims in respect of any breach of this agreement or prevent or restrict the participation of any party in any public examination or enquiry.

## **8 COSTS**

The parties shall each bear their own legal costs in relation to the Dispute and this agreement.

## **9 WARRANTIES AND AUTHORITY**

- 9.1 Save as referred to in this agreement, each party warrants and represents that it has not sold, transferred, assigned or otherwise disposed of its interest in the Released Claims.

- 9.2 Each party warrants and represents to the others with respect to itself that it has the full right, power and authority to execute, deliver and perform this agreement.

## **10 INDEMNITIES**

- 10.1 Each party hereby indemnifies, and shall keep indemnified, the other parties against all costs and damages (including the entire legal expenses of the parties) incurred in all future actions, claims and proceedings in respect of any of the Released Claims which it or its Related Parties or any of them may bring against the other party or its Related Parties or any of them.

## **11 NO ADMISSION**

This agreement is entered into in connection with the compromise of disputed matters. It is not, and shall not be represented or construed by the parties as, an admission of liability or wrongdoing on the part of any party to this agreement or any other person or entity.

## **12 SEVERABILITY**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

## **13 ENTIRE AGREEMENT**

- 13.1 This agreement and the documents annexed to it constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 13.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

#### **14 NO CONFIDENTIALITY**

13.1 The parties hereby agree that there shall be no confidentiality obligation in respect of this agreement.

13.2 The parties hereby agree that this Agreement shall not prevent or restrict the participation of any party in any public examination or enquiry relating to the Project.

#### **15 GOVERNING LAW**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

#### **16 JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

#### **17 CHARITIES ACT 2011**

The land to be transferred pursuant to this agreement is held by Hitchin Town Hall Limited, a non-exempt charity, and the transfer will not be one falling within section 117(3) of the Charities Act 2011, so that the restrictions on disposition imposed by sections 117-121 of that Act apply to the land.

#### **18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties agree that the terms of this agreement are not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

#### **19 CO-OPERATION**

The parties shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary, and shall take any other action reasonably requested by the other party for the purpose of putting this agreement into effect.

#### **20 VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **21 TRUST**

The parties acknowledge that the liability of the Council under this agreement or otherwise in respect of the Trust is limited to the assets of the Trust from time to time.

This agreement has been entered into on the date stated at the beginning of it.

Executed by affixing the common seal of **NORTH HERTFORDSHIRE DISTRICT COUNCIL** in the presence of:

.....  
Authorised Signatory

Signed as a deed by **HITCHIN TOWN HALL LIMITED** acting by two Directors:

.....  
Director

.....  
Director

Signed as a deed by **HTH FINANCE LIMITED** acting by two Directors:

.....  
Director

.....  
Director

HM Land Registry  
Transfer of whole of registered title(s)

TR1

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

Give full name(s) of all the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) of the property: HD529274
2	Property: Land at North Hertfordshire Museum, Brand Street, Hitchin, SG5 1JE
3	Date:
4	<p>Transferor: Hitchin Town Hall Ltd</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 07974116</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
5	<p>Transferee for entry in the register:</p> <p>North Hertfordshire District Council</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
6	<p>Transferee's intended address(es) for service for entry in the register:</p> <p>Council Offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF</p>
7	The transferor transfers the property to the transferee

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
  - in the first box, or
  - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to [Joint property ownership](#) and [practice guide 24. Private trusts of land](#) for further guidance. These are both available on the GOV.UK website.

insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

## 8 Consideration

- The transferor has received from the transferee for the property the following sum (in words and figures):

Five hundred and fifty thousand pounds (£550,000)

- The transfer is not for money or anything that has a monetary value

- Insert other receipt as appropriate:

## 9 The transferor transfers with

- full title guarantee  
 limited title guarantee

## 10 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants  
 they are to hold the property on trust for themselves as tenants in common in equal shares  
 they are to hold the property on trust:

## 11 Additional provisions

11.1 The land transferred is held by Hitchin Town Hall Limited, a non-exempt charity, and this transfer is not one falling within section 117(3) of the Charities Act 2011 so that the restrictions on disposition imposed by sections 117-121 of that Act apply to the land.

11.2 The directors of Hitchin Town Hall Limited being the persons who have the general control and management or its administration, certify that they have power under its trusts to effect this disposition and that they have complied with the provisions of the said sections 117-121 so far as applicable to this disposition.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to [Joint property ownership](#) and [practice guide 24: private trusts of land](#) for further guidance.

Remember to date this deed in panel 3.

## 12 Execution

Executed as a deed by  
**HITCHIN TOWN HALL LIMITED**  
acting by two directors or a  
director and the company secretary

.....  
Director

.....  
Director/Secretary

Executed as a deed by  
affixing the seal of **NORTH  
HERTFORDSHIRE DISTRICT  
COUNCIL** in the presence of:

.....  
Authorised Signatory

### WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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**ANNEX B – Agreed Press Release**

To be agreed.

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NORTH HERTS MUSEUM MOBILISATION PLAN		w.e 04/11/2018	11/11/2018	18/11/2018	25/11/2018	02/12/2018	09/12/2018	16/12/2018	23/12/2018	30/12/2018	06/01/2019	13/01/2019	20/01/2019	27/01/2019	03/02/2019	10/02/2019	17/02/2019	24/02/2019	03/03/2019	10/03/2019	17/03/2019	24/03/2019	31/03/2019	07/04/2019	14/04/2019	21/04/2019	28/04/2019	05/05/2019	12/05/2019	19/05/2019	26/05/2019	02/06/2019					
Lift Lead Time																																					
Lift Shaft Construction																																					
Lift Installation																																					
<b>LIFT</b>																																					
Catering Manager Post Advertised																																					
Catering Manager Post Interviews																																					
Catering Manager Post Award																																					
Catering Manager Anticipated Notice Period																																					
Catering Manager Start Date																																					
<b>CATERING MANAGER</b>																																					
Café Furniture Ordered																																					
Café Furniture Arrival																																					
Café Menu Agreed																																					
Café Suppliers Sourced																																					
Café Stock Arrives																																					
Café and shop POS procured																																					
Café Operational Training Completed																																					
Café Ready for Business																																					
<b>CAFÉ FURNITURE</b>																																					
Catering Assistant Post Advertised																																					
Catering Assistant Post Interviews																																					
Catering Assistant Post Award																																					
Catering Assistant Anticipated Notice Period																																					
Catering Assistant Start Date																																					
<b>CATERING ASSISTANT</b>																																					
Visitor Services Assistants Post/s Advertised																																					
Visitor Services Assistants Post Interviews																																					
Visitor Services Assistants Post Award																																					
Visitor Services Assistants Anticipated Notice Period																																					
Visitor Services Assistants Start Date																																					
<b>VISITOR SERVICES ASSISTANTS</b>																																					
Nick Alexander to prepare/build shop and reception fit out furniture																																					
Nick Alexander to install shop fit out furniture																																					
Shop Stock to be ordered																																					
POS to be ordered																																					
Shop to be stocked																																					
Staff to be trained on POS																																					
SHOP and reception ready to open																																					
Conservation by Design lead time for graphics and showcases																																					
Conservation by design to install showcases and graphics																																					
<b>RECEPTION AND SHOP</b>																																					
Museum Services Office Relocation																																					
Upstairs Gallery Clearance/Tidy																																					
Upstairs Gallery Wayfinding and Panels Agreed																																					
Upstairs Gallery Wayfinding Installed																																					
Upstairs Gallery Cases Installation																																					
Upstairs Gallery Case Vinyl Applications																																					
Upstairs Gallery Interpretation Completed																																					
Upstairs Gallery Preparation and Collection Installed																																					
Upstairs Galleries Open to the public																																					
<b>OPENING OF GALLERIES</b>																																					
<b>FULL OPENING OF MUSEUM</b>																																					

DEADLINE

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**CABINET SUB-COMMITTEE (COUNCIL CHARITIES)  
20 NOVEMBER 2018**

**\*PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: EXCLUSION OF PUBLIC AND PRESS**

To consider passing the following resolution:

That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act.

[Note: The definition of Paragraph 3 referred to above is as follows:-

- "3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)."]

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

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