

**CABINET
26 JANUARY 2021**

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: HITCHIN MARKET NEW CONTRACT

REPORT OF THE COMMERCIAL MANAGER AND SERVICE DIRECTOR - COMMERCIAL

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR ENTERPRISE AND COOPERATIVE DEVELOPMENT

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES / RESPOND TO CHALLENGES TO THE ENVIRONMENT / ENABLE AN ENTERPRISING AND CO-OPERATIVE ECONOMY

1. EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek approval for the new management contract regarding Hitchin Market. This report demonstrates how the partnership between the Council and Hitchin Markets Limited (HML) will continue.

2. RECOMMENDATIONS

- 2.1 That Cabinet approves the entering into of a new contract with Hitchin Markets Limited (HML) to operate Hitchin Market, for an initial period of one year with the option to extend on a year by year basis for a maximum of three years.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To seek approval of the new contract going forward and to ensure Hitchin Market continues to operate.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 To conduct a tendering exercise regarding the operation of Hitchin Market. However, under Contract Procurement Rules, the Council does not have to legally tender this contract due to the overall value of it. Officers are also confident that HML are best placed to operate this market at this time and have been successful in its operation since 2008. Considerations have also been made surrounding the impact and tendering uncertainty as a result of the Covid-19 pandemic.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member and Deputy Executive Member for Enterprise and Co-operative Development and the Executive Member for Finance and IT have been kept regularly updated on this matter and support the entering into a new contract with HML.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1. The Council agreed to extend HML's contract in July 2020 for eight months from 1 August 2020 to 31 March 2021. The contract was agreed on the same terms and conditions as the previous contract agreed in 2008 for operational purposes, however, included a financial reduction from the management fee to a neutral position.
- 7.2. HML are currently experiencing a financial impact due to operational restrictions as a result of the Covid-19 pandemic. More details regarding this will be covered in the body of this report.
- 7.3. This report outlines the need for a new contract and explains why HML are best placed to continue to operate this market.

8. RELEVANT CONSIDERATIONS

- 8.1. The Council originally tendered the contract for Hitchin Market in 2008. HML were successful and have operated this contract since 1 August 2008. The contract has since been extended and modified.
- 8.2. The Council has worked closely with the team at HML through regular contract meetings and transparent communication. The financial position of HML has been regularly reported to the Council and measures have been explored to mitigate increasing financial pressures. It is important to note that HML were experiencing financial pressures pre Covid-19 pandemic.
- 8.3. Hitchin Market was forced to close on 24 March 2020 as a result of a national lockdown instructed by central government. The market reopened when it was deemed safe to do so on 2 June 2020, however has since partially closed due to further instruction. The market is now (as of 4 January 2021) operating on an 'essential trade' basis only. Both lockdowns have significantly affected HML's financial position.
- 8.4. Hitchin Market will aim to be a key element of the recovery of the town and surrounding District post Covid-19. The Council is confident that HML can support this initiative and ensure that the market provides a safe environment for the local community. The market will also aim to provide new opportunities for those businesses who may have suffered as a result of the pandemic, and to potentially transform the market into an experience destination as well as shopping.
- 8.5. Since reopening, HML have made efforts to ensure the market is a safe destination for traders and shoppers as well as inviting several new traders and increasing the number of speciality markets. The Council encourages and supports this and hopes to see the market grow with the support of HML.

- 8.6. The proposed new contract is a concession contract at zero value. Due to this, the Council do not have to procure this type of contract through a tender process as it falls beneath the procurement threshold. Therefore, the contract will be awarded via the Single Tender reporting process.
- 8.7. Although the proposed new contract will be cost neutral, it must be noted that the future of this market is still unstable and financial support from the Council may be required during the term of the new contract if the market struggles to grow following the impact of the pandemic.
- 8.8. The suggested contracting proposal allows the Council the opportunity to review the financial position of HML on a yearly basis. A decision or amendment/ s to the contract will be made according to the review if required. The flexibility of this contract also supports any future plans regarding the Churchgate premises and the everchanging market environment.
- 8.9. This contract will be for an initial period of one year with the option to extend on a year by year basis for a further two years with a maximum of three years. It will be based on the same terms as the previous contract extension in 2018, with changes to the contract length, financial implications (a cost neutral position) and updates in law. The Council will also continue to maintain an open book accounting approach with HML.
- 8.10. Since the current contract was last extended, officers have been working more closely with HML. To improve transparency and in support of a partnership approach, HML agreed that a Councillor become a board member and an officer attends regular board meetings. This approach has ensured the Council are involved in strategic decision making and enhances the partnership with HML.
- 8.11. The contract proposed is for a maximum of three years, this is to ensure that the Council has enough time to see how the market responds post pandemic and can decide the best way to operate this market going forward. This will include undertaking a full procurement exercise.
- 8.12. Officers have worked closely with HML in recent months to review and understand their financial challenges. Executive Members have also been kept up to date regarding HML's financial difficulty.
- 8.13. A financial check has been carried out on HML as part of the Council's procedure and has reported the company as very low risk (16/12/20). The net worth of HML is £18,195 as at the end of July 2020, this has reduced from the previous year which was £39,679.

9. LEGAL IMPLICATIONS

- 9.1. Concession Contracts of this value do not need to be competitively tendered for under The Concession Contracts Regulations 2016.
- 9.2. Rule 3.11 of the Council's Contract Procurement Rules (CPRs) [Part B, Section 20 dated 16 January 2020] states that these rules do not apply to Concession Contracts.
- 9.3. Legal will prepare the new Contract and will arrange for it to be executed by the parties.

- 9.4. Cabinet's terms of reference include at 5.6.36 the power, by recommendation "to determine those procurement matters reserved to Cabinet by the Contract Procurement Rules."

10. FINANCIAL IMPLICATIONS

- 10.1. The contract management fee with HML under the previous contract, was previously £28,100 which was paid directly to the Council. This fee was removed in 2020/21 to enable the market to continue to operate as a result of financial difficulty and increasing pressures related to the Covid-19 pandemic. There will be a permanent loss of income of £28,400 to the Council as the management fee will be reduced to a neutral position.
- 10.2. As explained above, the future of this market is unstable and financial support from the Council may be required during the term of the new contract. Any financial support will seek the approval of relevant Service Directors, Executive Member of Finance and IT, Executive Member of Enterprise and Cooperative Development as well as further approval from Cabinet if required.

11. RISK IMPLICATIONS

- 11.1. The main risk associated with this report is regarding the financial impact of Covid-19 on HML. There is a risk the Council will have to provide financial support to HML, however this is subject to HML income levels which are dependent on trader and shopper behaviour.
- 11.2. However, generally, this report is considered relatively low risk due to the fact the Council is currently receiving no income from the existing contract, is maintaining an established working relationship with HML and has the flexibility to change circumstances bearing in mind the duration of the new contract.

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. There are no direct equality implications arising from this report, however, further consideration may need to be made in future as efforts are made to transform the Market into an experience destination. If as per 8.10 this includes new opening times and days, and the attraction of speciality markets, such consideration may pay attention, for example, to issues of accessibility for all areas of the community. Furthermore, as outlined in 12.1, efforts should ensure that opportunities to foster good relations between community groups are maximised.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. None identified.
- 13.2. As the recommendations in the report relate to a contract below £50,000 the "go local" policy has been applied. Hitchin Markets Limited is a locally based company that operates from Hitchin and is made up of local board members.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known direct Environmental impacts or requirements that apply to this report. However, further consideration may be required in the future, such as around the disposal of waste as the Market is transformed into an experience destination.
- 14.2. Furthermore, as we approach the attraction of new traders and speciality markets, we should be mindful of how these businesses' practices align with the Council's ethos on Climate Change and plastic.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 None identified.

16. APPENDICES

- 16.1 None identified.

17. CONTACT OFFICERS

- 17.1 Chloe Gray, Commercial Manager
chloe.gray@north-herts.gov.uk; ext 4223
- 17.2 Steve Crowley, Service Director – Commercial
steve.crowley@north-herts.gov.uk; ext 4211
- 17.3 Tim Everitt, Performance and Risk Officer
tim.everitt@north-herts.gov.uk; ext 4646
- 17.4 Georgina Chapman, Policy and Community Engagement
georgina.chapman@north-herts.gov.uk; ext 4121
- 17.5 Shah Mohammed, Group Accountant
shah.mohammed@north-herts.gov.uk; ext 4240
- 17.6 Isabelle Alajooz, Legal Commercial Manager
isabelle.alajooz@north-herts.gov.uk; ext 4346

18. BACKGROUND PAPERS

- 18.1 None identified.