

CABINET

10 September 2014

THE OVERVIEW AND SCRUTINY COMMITTEE

15 September 2014

PROVISION OF MUSEUM SERVICES BY HAMPSHIRE CULTURAL TRUST

REPORT OF ASSISTANT DIRECTOR (ECONOMY & COMMUNITIES)

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RECENT REFERENCES:

[CAB2129 - Winchester Museums: Opportunities for Partnership Working, 16 March 2011](#)

[CAB2147 – Winchester Museums Reserve Collections, 13 April 2011](#)

[CAB2248 – Winchester Museums: Improving the Long Term Sustainability of the Service, 9 November 2011](#)

[CAB2278 - Integrated Museums Service: Preferred Option for Approval, 18 January 2012](#)

[CAB2335 – Museums Fully Integrated Merger Proposal: Public Consultation Phase, 17 May 2012](#)

[CAB2518 – The Future of the Museums Service: Establishing a Hampshire Solent Cultural Trust, 23 October 2013](#)

PER247 - The Future of the Museums Service: Towards a Cultural Trust, 10 March 2014 (Exempt)

CAB2576 - Establishing a Cultural Trust: Staffing Matters, 9 April 2014 (Exempt)

## EXECUTIVE SUMMARY:

This report updates Members on the progress achieved to date in creating an independent charitable trust (Hampshire Cultural Trust) which will in future deliver Museum Services for the Winchester District.

Members made the decision in principle to proceed with this new arrangement in October 2013 ([CAB2518 – The Future of the Museums Service: Establishing a Hampshire Solent Cultural Trust, 23 October 2013](#) refers), and the Trust is now establishing itself.

This report sets out the key terms of the various Agreements which will need to be entered into between the City Council and the Trust, and seeks delegated authority to allow these Agreements to be finalised and completed in order to enable the transition to proceed.

## RECOMMENDATIONS:

### To Cabinet:

1. That the Heads of Terms of the Management and Funding Agreement (MFA) set out at Appendix 2 be approved;
2. That the Head of Legal and Democratic Services in consultation with the Leader, the Corporate Director and Chief Finance Officer be authorised to finalise and sign the Agreement on behalf of the Council;
3. That the Heads of Terms of the Collection Loan Agreement (CLA) set out at Appendix 3 be approved;
4. That the Head of Legal and Democratic Services in consultation with the Leader and the Assistant Director (Economy and Communities) be authorised to finalise and sign the Agreement on behalf of the Council, ensuring that it reflects the outcome of investigations into the disposal of items from the collection previously approved for disposal by Cabinet in November 2011 (CAB2248 - Winchester Museums: Improving the Long Term stability of the Service - refers);
5. That the Heads of Terms of the generic Property Lease Agreement (PLA) set out at Appendix 4 be approved;
6. That the Head of Legal and Democratic Services in consultation with the Leader, the Chief Finance Officer and the Head of Estates be authorised to finalise and sign the individual leases for the properties owned by the Council which are to be leased to the Trust (as set out in paragraph 2.8 of the Report);

7. That the Heads of Terms of the Commercial Transfer Agreement set out at Appendix 5 be approved;
8. That the Head of Legal and Democratic Services in consultation with the Head of Organisational Development be authorised to sign the Commercial Transfer Agreement to give effect to the transfer of staff to the Hampshire Cultural Trust;
9. That the Assistant Director (Economy and Communities), in consultation with the Leader, the Chief Finance Officer, the Head of Legal and Democratic Services, the Head of Organisational Development, the Corporate Director and the Head of Estates as appropriate, be authorised to take any other steps that are necessary to progress arrangements for the provision of museum services for Winchester by the Hampshire Cultural Trust.

To The Overview and Scrutiny Committee:

10. That notwithstanding the role of client officers and the Council's nominated Trustee and Observer on the Trust, the Committee recommend to Cabinet that provision be made for wider scrutiny of the performance of the new Trust in relation to the legal Agreements with the City Council, potentially through the means of extending the life of the Museums Informal Scrutiny Group for a further two financial years;
11. That the Committee requests through Cabinet clarification for all Members on arrangements for the future care and display of the Civic Silver collection, by means of an information item in the Democratic Services Update in due course.

## CABINET

10 September 2014

### THE OVERVIEW AND SCRUTINY COMMITTEE

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### PROVISION OF MUSEUM SERVICES BY HAMPSHIRE CULTURAL TRUST

### REPORT OF ASSISTANT DIRECTOR (ECONOMY & COMMUNITIES)

#### DETAIL:

#### 1 Introduction

- 1.1 In October 2013, Cabinet approved the proposal to work with Hampshire County Council to establish an independent cultural trust to deliver arts and museums services across Hampshire (excluding Southampton and Portsmouth). The decision was reaffirmed by Council at its November 2013 meeting. (CAB2518 – The Future of the Museums Service: Establishing a Hampshire Solent Cultural Trust, 23 October 2013 refers.)
- 1.2 Since then, numerous steps have been taken to establish the new Trust and to prepare the way for services to be provided for the Winchester District and for the county of Hampshire by the new organisation. These steps include:
- a) the appointment of an interim board of six Trustees, including Cllr Southgate as the City Council's nominated trustee. Details of the board can be found at Appendix 1;
  - b) the appointment of a seconded Executive Officer post for 18 months;
  - c) the drafting and signing of the Articles of Association of the new Trust;
  - d) the determining of the name of the Trust, following an externally commissioned branding exercise, as The Hampshire Cultural Trust;
  - e) an application for charity registration currently being considered by the Charities Commission;
  - f) registration with Companies House;
  - g) the drafting of four key legal agreements relating to; the grant to be paid to the Trust; the long term loan of collections to the Trust; the transfer (by way of a lease) to the Trust of property used for delivery of services, and the transfer of staff to the Trust;
  - h) the creation of an organisational structure for the Trust, and alignment of existing job roles within both Council services to posts within that structure;
  - i) tendering for insurance services to the Trust, and
  - j) formal consultation with staff and Unions regarding arrangements for the transfer of services to the Trust.

- 1.3 An Informal Scrutiny Group at the City Council was convened by The Overview and Scrutiny Committee in 2013 (Report OS70 refers). The terms of reference which it adopted were as follows:
- “To support the establishment of the new Cultural Trust during its early implementation phase, and to consider in particular the implications for the Council arising from:*
- a) its relationship with the trust as a registered charity, and*
  - b) the outsourcing of the service.”*
- 1.4 The Group has carefully examined the Articles of the Trust and three of the legal Agreements which will underpin the Council’s relationship with the new organisation (the only exception being the Commercial Transfer Agreement which was not available at the time of the meetings). The Informal Scrutiny Group does not intend to make a formal report to The Overview and Scrutiny as its comments on the Agreements have all been fed into the drafting process. However, it has made two recommendations to The Overview and Scrutiny Committee as follows:
- a) That consideration be given to how Members will receive and monitor information on the performance of the Trust, especially in its early years when it is potentially under greatest pressure.
  - b) That officers confirm the arrangements being made for the ongoing care and display of the Council’s civic silver, which is excluded from the transfer arrangements.
- A full set of papers from the Group’s meetings can be found in the ‘Background Papers’ to this Report.
- 1.5 It is pleasing to note that joint working with Hampshire County Council during this period, including delivery of a wide range of externally funded projects, has already led to local service improvements. For example, the Westgate Museum - which was reduced to weekend-only opening as a result of budget savings in recent times - was open seven days a week from 1 July to 31 August this year thanks to a contribution from one such project.
- 1.6 The drafting of the four Agreements which underpin the Council’s relationship with and expectations of the Trust has been a long and painstaking process, requiring independent legal advice to all three parties at times. Advanced drafts of each Agreement have now been prepared, although these are generic for both Councils at present and will be tailored to suit specific issues and sites prior to signing. However, the Heads of Terms are agreed with the County and the Trust, and this is an appropriate time to ask Cabinet for approval to proceed, whilst delegating the final detailed documentation to officers.
- 1.7 In making their decisions at Cabinet last October and Council last November, Members have already expressed ‘in principle’ approval support for the provision of museum services by the new Trust. The purpose of this Report is therefore to seek the final approvals required for the transfer of staff and services to take place, along with the formal loan of collection materials and the lease of various premises to the Trust. Approval is sought on the basis of

the Heads of Terms of the four Agreements which are set out in Appendices. If Cabinet gives this approval then the actual transfer of services will take place as early as 1 October 2014 but by April 2015 at the latest.

- 1.8 Parallel decisions have already been taken at the County Council, with Reports approved at the Executive Member for Culture, Recreation and Countryside Decision Day and the Executive Member for Policy and Resources Decision Day which both took place in July this year. Copies of these Reports can be found in the 'Background Reading' section.

## 2 Agreements

- 2.1 This Section of the Report gives details of the four Agreements that will underpin the Council's relationship with the Trust.

### **Management and Funding Agreement (MFA)**

- 2.2 Both Hampshire and Winchester will be providing grant funding to the Trust, albeit on a reducing basis over time. This 25 year agreement sets out the financial relationship between the Council and the Trust, and the expectations of the Council in relation to the grant. It is not a contract for services and as such does not set out detailed operational requirements. It does address issues such as performance monitoring, the timing of funding negotiations, termination, pension arrangements, insurance requirements and other essential features of the relationship between the Council and the Trust. It will also include an inventory of equipment used by the Museums Team in delivering of the service which will be transferred to the Trust. The Heads of Terms of the Agreement are attached as Appendix 2.
- 2.3 The MFA also describes the process for developing new plans and projects, providing scope for the local authorities to shape an annual business plan as part of a ongoing cycle of monitoring and relation-management meetings with key Trust personnel. Although the Trust will determine its own programme, the Agreement clearly reflects the expectation of the Councils in this respect. The MFA is a blueprint for a strong and fundamental partnership that leads to an excellent customer experience, and a positive reputation for the two local authorities as well as the Trust.

### **Collection Loan Agreement (CLA)**

- 2.4 This Agreement sets out terms for the loan of the museum collections to the Trust and sets standards for their care and display. Lasting for a period of 25 years, it also addresses matters such as new acquisitions, loans to other organisations, insurance cover, display and disposal. The 'inventory' of the Council's collections takes the form of the Accessions Register. This is the most complete record of what is held by the Council, and will be the basis for determining what comes back to the Council, should the Trust cease to operate or the Council choose to withdraw its funding at any point. It is

expected that such assets will continue to be accounted for on each of the respective Council's Balance Sheets throughout. Acquisitions made by the Trust in future would be assigned to one collection or the other at the time of acquisition, based on the collecting policies of the respective Councils as of the present time (ie 2014). In the event that the Trust ceased to operate, these new acquisitions would then be passed to the nominated Council along with the original collections.

- 2.5 The Civic Silver is not included in the CLA and will remain under the management of the Council, although the Council could negotiate support for this collection to be provided by the Trust – or indeed another supplier or internal staff team. The support required will include keeping a proper inventory (currently held as part of the Accessions Register), and providing specialist advice on repairs which may be required.
- 2.6 However, items within the Council's collection and which are on display in the Guildhall, Market Lane toilets, Abbey House and other 'informal' spaces are included in the CLA and will continue to be cared for by the staff transferring to the Trust.
- 2.7 The Heads of Terms of the CLA are set out at Appendix 3 to this report. It has been developed in consultation with the two curatorial teams, and formed the basis of specific discussions with Arts Council England which is now the body responsible for accrediting museums. Accreditation is the core standard set for the Trust in caring for the collections.
- 2.8 Following decisions made by Cabinet in November 2011 (CAB2248 - Winchester Museums: Improving the Long Term stability of the Service - refers) officers have been investigating the potential for disposal of a small number of objects currently held in the collection. These investigations are not yet complete but any necessary amendments will be made to the CLA to reflect the outcome.

### **Property Lease Agreement (PLA)**

- 2.9 This sets out the arrangements for the lease of the properties which the Trust will manage and from which it will deliver its services. For the City Council, this means City Museum, The Westgate, City Space (at Winchester Discovery Centre), a warehouse known as F2 at Bar End and the warehouse on the old depot site (until vacated). The Council will continue to provide and pay for repairs and maintenance work (as at present) and also utilities.
- 2.10 The leases are to be for a fixed term of 35 years, at a peppercorn rent. The Councils will consider the surrender of the leases and grant of a further term of 35 years at the request of the Trust to ensure that at all times there is a term of not less than 25 years as a basis for capital funding bids (e.g. to the Heritage Lottery Fund).

- 2.11 It is anticipated that the collections held at the old depot site will be moved to F2 once the Estates Team can make provision for the re-storing of corporate archives and equipment currently occupying part of the F2 warehouse. Dispersals work is currently in hand with archaeological materials held at the depot in order to ensure to minimise the space required. Details of the financial implications are outlined in the Resource Implications section of the Report.
- 2.12 The generic PLA is now at final draft stage, and the Heads of Terms are set out in Appendix 3. It has been developed largely by the two Estates Teams. The generic PLA will require a site-specific section for each of the properties covered, as arrangements for these vary. For example, F2 is leased by the Council from a third party landlord, whereas the City Museum is wholly owned by the Council. Officers will therefore be seeking to include specific terms – for example, on break clauses to protect the Council’s overall interests, whilst at the same time taking into account the interests of the Trust.
- 2.13 The Council is required, under Section 123 of the Local Government Act 1972, to ensure that it receives “best consideration” for disposals (including long leases such as these), unless the Secretary of State’s consent is required. Under the terms of the 2003 General Disposal Consent 2003, consent is deemed to have been given where the Council considers that the disposal will help to secure the promotion or improvement of the economic, social or environmental wellbeing of the area, and the “undervalue” (between the unrestricted value of the land, and the actual consideration for the disposal) is less than £2M. In this case, the disposal is likely to be at other than best consideration, but it is reasonable to conclude that the disposal will help secure the promotion or improvement of the social wellbeing of the area. The Head of Estates will review the undervalue and a special consent from the Secretary of State will be sought if required.

### **The Commercial Transfer Agreement (CTA)**

- 2.14 This sets out terms for the transfer of staff under the statutory TUPE protocols, as well as the transfer of other assets (other than the Collections, which are dealt with under the Collections Loan Agreement). The Heads of Terms are set out in Appendix 5.

## **3 Staff Matters**

- 3.1 Staff from both Councils have been involved in the development of the Trust, helping to shape the vision and the development of a 5-year business plan. During this implementation phase, staff and UNISON have been kept informed and consulted with staff briefings and communications, specifically in relation to the formal TUPE consultation, Trust management structure, appointment of Trustees and the overall staff structure and working arrangements. A small group of staff also had the opportunity to meet with the



Board of Trustees, whilst a working party drawn from both Councils has been exploring arrangements for effective integration of the two teams.

- 3.2 Members have already approved in principle the transfer of all staff in the Museums Team to the Trust. Since this approval was given in October 2013, formal consultation with the staff and Unions has taken place about the proposed transfer. Feedback from this consultation was presented to Personnel Committee in March (see PER247 - The Future of the Museums Service: Towards a Cultural Trust, 10 March 2014 (Exempt)) and is not repeated here.
- 3.3 The same Report proposed that the City Council's Museums Team would work as an integrated team with their future colleagues prior to formal transfer. This has been arranged and both Hampshire and Winchester staff are now working within the new Trust organisational structure, in terms of service planning and delivery (although contractually still reporting to a City Council line manager). However, they will continue to be employed by and on the payroll of Council until the formal transfer takes place. If this is earlier than January 2015, staff will either be seconded or suitable alternative payroll arrangements will be made, because this is the earliest date on which the new payroll system for the Trust can be provided by the County Council through its new Integrated Business Centre.
- 3.4 The transfer of staff will take place according to TUPE regulations. Information regarding the current terms and conditions of employment will be passed to the Trust as part of the Commercial Transfer Agreement.
- 3.5 Under TUPE, existing staff who transfer retain the right to the provision of a pension which is comparable to their current terms, and a 'pass through' arrangement was approved in principle as part of the October 2013 Cabinet Report which would see staff currently in membership of the Local Government Pension Scheme (LGPS) continuing in membership, with the Council continuing to fund the employer contributions as it would have done if staff had not been transferred. Funding for these contributions will be included in the grant to the Trust and will be reviewed as part of the ongoing programme of funding reviews. The accounting treatment for the pension liabilities on the respective organisation's balance sheets will be more complex than this and technical advice is being sought.
- 3.6 The Trustees are keen that future employment and reward is based on appropriate external commercial models. They are currently looking at comparator models with a view to determining what is desirable and affordable for new recruits who will not be within the 'TUPE' Regulations. This will include pension arrangements, as the LGPS will not be open to new recruits to the Trust.

#### 4 Financial Arrangements

- 4.1 Details of the financial arrangements between the Council and the Trust will be set out in the MFA. In the Cabinet report of October 2013, Members approved a commitment to grant aid the Trust for a minimum ten year period and specified the actual level of grant for the first five years. Any significant changes to the amounts previously approved (for example because of the delayed start date, changes to pensions assumptions) will be brought forward for further approval as appropriate under the Council's Financial Procedure Rules.
- 4.2 The process for considering and negotiating future funding levels for the Trust in the MFA differs slightly from that previously considered as it is now suggested that it would be more realistic to review in Year 3 for the years 6 – 8 and on then on an annual rolling basis. This mechanism maintains the principle of a five year funding period whilst acknowledging that it is difficult to be certain about local authority funding levels looking far into the future.
- 4.3 Officers have also considered the timing of grant payments, which can be important for managing financial risk to the Council but also play a role for the Trust in managing cash flow. It is proposed that the Council takes into consideration the cash flow requirements of the Trust in determining the grant payment schedule, whilst balancing the financial risk for both the Council and the Trust.

#### 5 Next Steps

- 5.1 If Members approve the Report then the arrangements will be made to complete and sign the agreements and to make the practical arrangements for transfer to take place. As mentioned above, it is not possible to be certain when this could take place but it is intended that it will be no later than 1 April 2015. In order to comply with the Council's obligations under the TUPE Regulations, it will be necessary to include in the Commercial Transfer Agreement (Appendix 4 refers) the obligations of the parties in relation to transferring staff.
- 5.2 The establishment of the Trust will represent a new era in arts and museums service delivery in Hampshire. There is every reason for optimism about the ability of the Trust to deliver excellent services, extend the breadth and depth of the services, and increase accessibility.

#### OTHER CONSIDERATIONS:

##### 6 COMMUNITY STRATEGY AND PORTFOLIO HOLDER PLANS (RELEVANCE TO):

- 6.1 The Trust project is the extension of an action in the Economic Prosperity Change Plan for 2011/12, *to assess the benefits of working in new ways with other Hampshire museum services*. The Trust would enable the Council to

provide resilient services in the face of public spending reductions, which supports the corporate outcome of being an 'Efficient and Effective' Council.

- 6.2 The positive impact of the Trust on public awareness as well as innovation and quality of service delivery will enhance Winchester's reputation as a cultural centre and visitor destination. This supports the first outcome of the Council's Economic Strategy for 2010 – 2020.

## 7 RESOURCE IMPLICATIONS

- 7.1 In approving the Cabinet Report last October, Members approved a five year schedule of grant payments to the Trust which will represent year-on-year reductions to the amount being spent on museums services. As mentioned above, any significant changes to the amounts previously approved (for example because of the delayed start date, changes to pensions assumptions) will be brought forward for further approval as appropriate under the Council's Financial Procedure Rules.
- 7.2 In June 2014, the City Council engaged external financial advice to undertake financial due diligence work on the proposals. This identified the key financial risks to the Council and is included in the background documents, although the advice is confidential to the Council.
- 7.3 Where the City Council (and Hampshire County Council) have agreed to retaining responsibility or potential liability for certain costs in relation to transferring staff (such as employer's pension contributions, and early years redundancy costs) this has been agreed on the basis that the Council is put to no greater expense or risk than it would have been if the service continued with the local authority. For the Trust to meet these obligations would be a financial risk it would be unable to manage. It is acknowledged that the Councils could have been willing to establish the Trust only with greater levels of liability and risk being transferred, but this would have introduced more financial vulnerability and less resilience into the Trust's finances. In the long run, a successful Trust will benefit both the local authorities and people in Hampshire.
- 7.4 The Councils will continue to own the collections and property that the Trust will make use of, and in the event that the Trust fails these will be returned. The Councils will then have to decide what type and level of service will be provided and at what cost, a decision effectively no different from that taken in every budget cycle about directly-provided services. A failure of the Trust would not create substantial direct liabilities for the Council (these are excluded by the MFA) but there is no doubt that it would be a painful and difficult process to wind up the Trust and return the services to Council operation.
- 7.5 It is proposed that all equipment currently used in the delivery of the Museums Service (excluding computer terminals) be transferred to the Trust. This would include desks, scanners, cameras, conservation materials, old

exhibition boards and so on. An inventory has been reviewed by the Finance Team.

7.6 The consideration of the impact of the proposals on the Council's Balance Sheet is summarised below:

- *Based on the draft lease agreement, our assessment is that the leases would be classified as operating and as such the assets will remain on the Council's balance sheet. We will, however, need to review the final versions of the agreements for each building and reassess at the point of transfer.*
- *Documentation for the sub-letting of F2 storage space is currently being drawn up and will require review before transfer.*
- *The collections to be loaned would remain in the council's ownership and therefore on the Council's Balance sheet.*
- *The buildings and the collection will continue to be insured by the Council.*
- *The value of the IT assets to be transferred is low and would have no impact on the Council's balance sheet.*
- *The Museums currently hold around £5,000 worth of retail inventory. It is presumed that the Council will invoice the Trust for the stock items transferred.*
- *Items with an estimated value of £477,000 are to be transferred to the Trust (of which part is considered by Estates to be included within the fixtures and fittings of the buildings). These items are varied and include display cabinets, lockers, chairs etc. None is currently held on the Council's balance sheet and, given their individual values, it is likely they were procured through revenue. An up to date inventory will need to be taken at the point of transfer and an assessment undertaken of which items are included in the fixtures and fittings of the buildings. Approval for the disposal of assets will be sought in accordance with the Council's Financial Procedure Rules.*
- *A review of the capital asset register found two museums' related non-building assets; one was not expected to be transferred to the Trust and the other will be fully depreciated by the end of November 2014 and so will have no balance sheet impact if the transfer takes place after this date.*
- *The Trust should consider the fair value of assets it receives from the two parties and the impact on its opening balance sheet, as this may be material to the Trust accounts. Accounting for depreciation should also be considered by the Trust, as this could create an unexpected accounting loss.*

- 7.7 Once a solution is identified for the care of the Civic Silver, there may be an additional cost for the Council. Officers will consider the most cost-effective way to achieve this, and are currently working up a full set of care, display and conservation requirements against which to assess future provision.
- 7.8 Given the extent of involvement that the two councils has in the Trust (in terms of membership, and the proportion of directors appointed by the councils, as well as the extent to which the Trust will rely on the councils for funding), it may be necessary for the Council's accounts to be prepared in a specific way to take account of this. Officers are considering the accounting implications, to ascertain the precise consequences of the proposed arrangements.
- 7.9 As noted in paragraphs 2.9 onwards above, consent to the disposal of the properties to the Trust will be required given the fact that best consideration is not being paid by the Trust. However, as explained, this is likely to be covered by the General Disposal Consent 2003, and specific consent should not therefore be required.
- 7.10 The timing of the move of the collections from the old depot will clearly have implications for the future use of the depot site. As F2 is leased to the Council, rather than being owned by the Council as a freehold, the financial consequences in terms of rent and other costs which the Council will be incurring will need to be considered in managing this aspect of the project.

## 8 RISK MANAGEMENT ISSUES

- 8.1 Risks were explored extensively in the Cabinet report in October 2014, and a revised risk assessment for the project itself can be found in the Background Papers. Key risks for the Council arising from the transition period are as follows:

<b>Risk</b>	<b>Likelihood</b>	<b>Severity</b>	<b>Mitigation measure(s)</b>
Timeline to transfer on 1 October may prove too tight, in view of the number of practical and legal activities still to be undertaken	High	Low	Continue to implement a project management approach to identify and address pressures.  Potential to reschedule transfer to a date up to April 2015 if necessary.
Inadequate resourcing of Project Team. Delay or significant errors could arise from: <ul style="list-style-type: none"> <li>• lack of capacity/time</li> </ul>	Medium	High	WCC project team established and transition being run as major project, alongside combined HCC/WCC project team.

Risk	Likelihood	Severity	Mitigation measure(s)
<p>of project team members, and/or lack of capacity/time from key support staff in the Council(s);</p> <ul style="list-style-type: none"> <li>• lack of co-ordination between key support staff in both Councils, and</li> <li>• pressure to complete transition too early,</li> </ul>			<p>High level discussions being convened with County to look at key strategic issues.</p> <p>Timescale for transition continually reviewed.</p> <p>Informal Scrutiny Group was established to review key legal documents.</p>
<p>Legal (or other costs, e.g. for Due Diligence advice) exceeding provision in transition budget.</p> <p>This could mean additional overall project cost and consequent longer payback period.</p>	High	Low	<p>HCC challenging legal costs which appear excessive or unreasonable.</p> <p>HCC managing deployment of external legal advisors.</p> <p>Agreed transition budget was apportioned across the project work streams. The so far unallocated funds for other workstreams indicate that the set-up project will be managed within the overall set-up budget.</p> <p>Agreed apportionment of costs means that WCC will pick up 10%, which will help to keep costs down.</p>
<p>Queries raised by the Charities Commission could delay registration, which in turn would delay transfer.</p>	Low	High	<p>Queries appear to be standard ones, with main focus on the role of local authority appointed Trustees and the potential for conflict of interest.</p> <p>Trust co-ordinated comprehensive response,</p>

Risk	Likelihood	Severity	Mitigation measure(s)
			informed by legal advice, and agreed to change Articles to take Commission's views into account. New Articles already signed by both Councils.
County Council's new Integrated Business Centre not configured in time to provide payroll, HR, finance and other support functions until January 2015.	High	Medium	Temporary work-rounds are being identified by the project team until the IBC is ready.  Potential to delay transfer.
Financial and governance procedures not all produced, finalised and adopted by Trustees or in a way that meets approval of S151 officer.	Medium	Medium	County providing financial support for Trust.  WCC Chief Finance Officer liaising directly with County counterpart.  Documentation is developing/being put in place: high level discussions to determine what WCC can and should expect of the Trustees in finalising this before transfer.
Early financial difficulties of Trust leading to pressure for additional Council funding	Low	High	HCC Finance Team is leading on the development of Trust financial information  Additional due diligence work commissioned by City Council has identified key financial risk areas.  Discussions continuing with Trust to ensure that grant payments are staged in a way which manages Council risk but also supports cashflow pressures on new organisation.

<b>Risk</b>	<b>Likelihood</b>	<b>Severity</b>	<b>Mitigation measure(s)</b>
Financial Risk if leases are terminated by Trust	Low/medium	Medium	Property lease wording to ensure appropriate control over termination.

#### BACKGROUND DOCUMENTS:

Papers of the Museums Informal Scrutiny Group

Hampshire County Council Executive Member for Culture, Recreation and Countryside [Decision report 3 July 2014](#) and [Executive Decision Record \(Final\)](#)

Hampshire County Council Executive Member for Policy and Resources Decision Day [Report 24 July 2014](#) and [Executive Decision Record \(Final\)](#)

Updated Project Risk Assessment

#### APPENDICES:

Appendix 1 Interim Board of Trustees

Appendix 2 Heads of Terms: Management and Funding Agreement

Appendix 3 Heads of Terms: Collections Loan Agreement

Appendix 4 Heads of Terms: Generic Property Lease

Appendix 5 Heads of Terms: Commercial Transfer Agreement



### **Appendix 1: Founding Board of Trustees**

The Trustees have been selected for their skills and experience in the cultural, heritage and charitable fields and their knowledge and ability to guide and support the setting up of a new charitable organisation. The founding Trustees are:

Alan Lovell (Chairman)	Alan is Vice Chairman of the Mary Rose Trust and chaired the appeal for the new museum. He is a Governor of the University of Winchester and is both a Trustee and Council member of Winchester Cathedral. He was High Sheriff of Hampshire 2010/11
Yinnon Ezra (Vice Chairman)	Yinnon is also a trustee of the Theatre Royal Winchester and Chair of the Test Valley Arts Foundation. Yinnon is the former Director of Culture, Communities & Rural Affairs in Hampshire County Council
Roy Perry	Roy is the Leader of Hampshire County Council and Hampshire County Council's appointed Member as a founding authority. Roy is a Governor of King Edward VI School and Trustee of Test Valley Arts Foundation and of the Friends of St Margaret's Charity.
Mike Southgate	Mike is Winchester City Council's appointed Member as a founding authority. Mike has had a career in the broadcast television industry in a variety of positions, including CEO BBC Resources. He runs his own media consultancy business, is a Winchester District and a Parish Councillor and is involved with a number of local charities.
Rachel Bebb	Rachel is a trained garden designer and established The Garden Gallery in 1994 to encourage people to patronise contemporary artists when seeking to acquire sculpture, ceramics and furniture for their gardens. From 1996 - 2002 Rachel was Chairman of the Hampshire Gardens Trust
Helen Jackson	Helen is an experienced charity chief executive, heritage professional and consultant. Until 2014 she was Chief Executive of the Campaign for National Parks, the independent national charity campaigning to protect and promote the 13 National Parks in England and Wales. From 2001-9, she was Chief Executive of Museums, Libraries and Archives South East (MLA SE)

The Founding Board will be a small Board to oversee the period of transfer of staff and services to the Trust working with Janet Owen as the Interim Executive Officer. In 2014/15 the Trustee Board will seek to recruit the remaining Board members (up to 12) through open competition. In line with the original Business Plan, the maximum duration of the interim board would be between 18 – 24 months.

## Appendix 2: Heads of Terms: Management and Funding Agreement

Issue	Summary of Terms
Term of Agreement as a whole	25 years
Termination	At the end of 25 years or on 3 years notice by LAs or 12 months by Trust.
Default Arrangements	A variety of provisions for the agreement to be terminated if Trust or LAs fail to fulfil their obligations and after failure of other mitigation measures.
Grant Funding	Headline amounts for first 5 years as agreed in October report CAB2518 . Subsequent amounts agreed in Year 3 for additional three years and then rolling forward each year so that 5 years funding always agreed. Two years' notice of a reduction in funding/three years' notice of termination of funding must be given to the Trust.
Monitoring Performance	Business Plan prepared by Trust following prior consultation with councils, to cover five year period and rolled forward throughout term. Trust will be required to provided management and performance information on quarterly and annual basis.
Redundancy	Each LA will cover the cost of redundancy of the staff it previously employed for a limited period and providing the Trust has a business case.
Intellectual Property	The Trust will own its own brand and original creative work.
Funding LGPS pension for TUPE staff	Each LA will provide funding equivalent to the employer pension contributions of transferred staff. The funding will be increased these if employer's contribution is raised by Pension Fund.
Insurance	The Trust will be responsible for arranging employer's liability insurance, motor vehicle policies and public liability. The councils will insure their own collections (self-insuring in Hampshire's case, and with an insurance company for Winchester).
Support Services	HCC will provide support services – legal, HR, finance etc – for five years at least as part of its funding support for Trust.

### Appendix 3: Heads of Terms: Collection Loan Agreement

Issue	Summary of Terms
Term	Hampshire County Council and Winchester City Council agree to loan their collections to the Trust for 25 years
Accession register	This is the definitive list of the collection objects owned by the Local Authority. Other assets not included on this register will be listed on the asset register covered in the Commercial Transfer Agreement.
Acquisitions	Items may be acquired by Trust and added to Council's Collection, in accordance with Acquisitions Policy, with prior consent required where adverse effect on insurance/storage requirements.
Loan of Collections	Collections listed in Accession Register remain in the ownership of Local Authorities, but are to be loaned to the Trust who will then store, care for and manage them.
Disposal of an object	A proposal to be made by the Trust for agreement by the owning LA providing that this fits with the Collections Policy and meets ACE Accreditation, having due regard to the Museums Association Code of ethics. Proceeds to be held by the Trust for reinvestment as directed by the owning LA.
Display of collections in LA offices	The Trust will permit the loan of collection objects to the owning Council for display purposes in the Council's offices or buildings.
Inter museum loans	The Trust is permitted to make arrangements to loan Collection items to other appropriate organisations for display, research, analysis, or conservation. It may receive collection objects from other individuals and organisation but is responsible for the safe keeping, security, transport, care and conservation of both in coming and out-going loans with appropriate insurance in place.
Accreditation of collection	The collection objects to be maintained to a suitable standard in order to retain accreditation as assessed by the Arts Council England.
Insurance	The owning LA will insure the collections to the current standard at its own expense.

#### Appendix 4: Heads of Terms – Generic Property Lease

Issue	Summary of Terms
Term	The fixed term lease is for 35 years. The Council will consider the surrender of the leases and grant of a further term of 35 years at the request of the Trust to ensure there is a term of not less than 25 years to support grant funding bids. Each building will have a separate lease to include both generic and bespoke terms.
Termination	The Trust may use break clauses to terminate any lease with a 12 month notice period and hand back a specific building to the landlord if it is no longer required (subject to site-specific provisions for specific properties as appropriate)..
Rent and utility costs	The Trust to pay a peppercorn rent for the use of the building which includes a capped level of usage for utilities. The Trust to be responsible for waste disposal and grounds maintenance.
Repairs and maintenance	The LAs will carry out reasonable repairs and maintenance to the building to ensure fit for purpose and use by the Trust, and will undertake cyclical testing and statutory inspections of the building, fixtures and fittings.
Insurance obligations	The landlord local authority to retain responsibility for insurance of the building and to replace or reinstate following loss or damage for the Trust to deliver services.
Sub leasing & income generation	The Trust may sub-let the building to its trading arm and charge for room hire but is unable to sub-let any parts of the building to another employer, unless specific written consent is obtained.
Use of buildings	The Trust to use the buildings exclusively for delivering its charitable objects and to apply for and hold any licenses required e.g. alcohol or public entertainment etc.
Alterations and additions	The Trust is not to make major alterations or changes to the building without approval of the landlord. Permitted minor alteration by the Trust are defined which will not increase the potential liability or cost to the Landlord in respect of the amenities or potential repair.

### Appendix 5: Heads of Terms – Commercial Transfer Agreement

Issue	Summary of clause
TUPE	A list of the transferring staff and their contractual terms and conditions will be set out with provision for the transfer of staff in accordance with TUPE regulations.
Provision of equivalent pension	The Trust must comply with Best Value Direction and provide LGPS or an equivalent pension scheme to transferring staff. New Trust staff will not be eligible to join LGPS.
Trust pension scheme	The Trust will set up a separate pension scheme for new staff. It is likely the Trust pension scheme will have a defined employer contribution. Under auto-enrolment regulations, the Trust is required to enrol eligible staff in a pension scheme.
Trust as Admitted Body to LGPS to include LGPS rules of membership	The Trust will be a combined entity with the founding LAs through the operation of the pass-through arrangement in relation to pension costs. It will be a closed scheme and new employees of the Trust will not be entitled to join the LGPS. The founding LAs confirmed funding includes employer's contributions and the founding LAs will act as a guarantor to LGPS for any deficit in the fund associated with the transferring employees within LGPS which is not capped but will be subject to certain exclusions.
Transfer of assets other than Collections	The Founding LAs will transfer the assets listed in an inventory to the Trust at nil cost on handover to deliver the services. The Trust will maintain the items in good state of repair and keep the inventory up to date and replace any items as necessary.