

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Policy and Resources
Date:	24 July 2014
Title:	Transfer of the Arts and Museums Service to the Hampshire Cultural Trust
Reference:	5860
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

1.1. On 3 July 2014 the Executive Member for Culture, Recreation and Countryside approved the transfer of the Arts and Museums Service to the Hampshire Cultural Trust. In order for this to take place there are a number of final enabling decisions required by the Executive Member for Policy and Resources and this reports seeks approval for those necessary actions. This decision will remove the Arts and Museums Service from the County Council and place delivery of the Service into the stewardship of an independent charitable trust.

1.2. This proposal has been the subject of a series of Executive Member decision and scrutiny reports as set out below:

Decision making or Scrutiny Body	Date of Decision
Culture, Community & Rural Affairs (CCRA) Select Committee (pre-scrutiny)	20/01/12
Executive Member of Culture and Recreation	20/01/12
CCRA Select Committee (pre-scrutiny)	26/04/12
Executive Member of Culture and Recreation	14/05/12
CCRA Select Committee	21/06/12
CCRA Select Committee (pre-scrutiny)	21/01/13
Executive Member Culture, Recreation & Countryside (CRC)	21/01/13
Executive Member CRC	30/07/13
CCRA Select Committee (pre-scrutiny)	10/09/13

Executive Member CRC	25/09/13
Executive Member Policy and Resources	12/12/13
Executive Member CRC	06/03/14

- 1.3 The County Council will hand over direct control of service delivery in October 2014 and will remain committed to the success of the new organisation. It will retain freehold responsibility for key assets including relevant properties and collections. The initial report seeking in principle approval to progress the necessary property arrangements was presented to the Executive Member for Policy & Resources on 12 December 2013.

2. Introduction

- 2.1. Last September, the Executive Member for Culture & Recreation approved the proposal to establish an independent cultural trust with Winchester City Council to deliver arts and museum services. The actions required to set up the Trust have been undertaken over the interim period (listed in Appendix 1) and were included in the most recent report on 3 July 2014. At that meeting the Executive Member for Culture & Recreation confirmed his approval to proceed subject to appropriate consideration and approval by the Executive Member for Policy & Resources.
- 2.2 In December 2013 the Executive Member for Policy & Resources considered a report on the property issues associated with the proposal and approved the necessary work to progress that proposal. That work has been undertaken and this report highlights the key issues associated with the necessary arrangements.
- 2.3 The drafting of the legal documents including a Management and Funding Agreement (MFA) has been a thorough process. Both the project team and the emerging Trust have engaged independent legal advice to ensure that the interests of all three parties are properly served (legal agreements summarised in section 6 of this report). The Executive Members are now being asked to make a number of decisions, which will confirm arrangements that were previously agreed in principle, leading to the formal transfer of services in October 2014.
- 2.4 The joint working with Winchester City Council during this implementation period, including delivery of a wide range of externally funded projects in collaboration with Southampton City Council, has already led to service improvements. Examples of this include the Big Theme launch commemorating the 1914 Great War, the Artists Rifles exhibition launched at Southampton City Art Gallery in April.

3. Staffing Issues

- 3.1. Staff from both Councils have been closely involved in the development of the Trust, helping to shape the vision and the development of a 5-year business plan. During the implementation phase, staff and union representatives have been kept informed and consulted throughout with regular staff briefings and communications. These have covered the formal TUPE consultation, trust management structure, appointment of Trustees and the overall staff structure along with working arrangements. A small group of staff also had the opportunity to meet with the Shadow Board of Trustees, whilst a working group drawn from both Councils has been exploring arrangements for effective integration for those staff based at the Chilcomb headquarters.
- 3.2. Overall staff feedback is positive and enthusiastic about the Trust with a good understanding of the benefits, risks and challenges it brings.
- 3.3. The existing staff will transfer under TUPE with protected contractual terms and conditions and remain within the LGPS under a pass-through closed agreement with the Hampshire Pension Fund.

4. Governance

- 4.1. The Shadow Board has been established with six Trustees recruited to date (see Appendix 2). The Memorandum and Articles of Association establishing the governance for the Trust have been signed and a summary is included in Appendix 3. The Articles include provision for the two founding local authorities to each appoint a Trustee.
- 4.2. The Trustees recruited bring with them a wealth of skills and experience in a range of fields. They have demonstrated great commitment and vision for the Hampshire Cultural Trust and are keen to establish the Trust on a sound footing. They wish to engage with other stakeholders and partners to develop the profile of the Trust within a dynamic vision for cultural services across Hampshire.

5. Finance and Resources

- 5.1. Hampshire County Council, in proceeding with the transfer of arts and museums services, is committing to a long-term arrangement in terms of operations and assets, within a rolling grant funding agreement. The percentage reductions in cash-limit grant for the first five years were agreed in the approved business case presented to the Executive Member in September 2013 and these will be maintained in the Management and Funding Agreement (MFA). The initial five year Funding Agreement will see a guaranteed and tapering overall revenue grant commitment of £11.15 million from the County Council over that period. There will also be a commitment to maintain key support services for the Trust. A summary of the key Heads of Terms in the MFA are shown in Appendix 4.

- 5.2 The intention was to renegotiate a further five year period by Year 4 of the first five year period. Following further work, and in order to give the Trust the best chance of success, it is now proposed that it would be more reasonable to seek to agree funding in Year 3 for a further three years and thereafter on a rolling annual basis, which would see the two Councils then committed for a maximum of five years at any time.
- 5.3 The business case applied a number of important assumptions including an earned income target of 3% year on year. It also relied upon the achievement of Gift Aid and rate relief utilising estimates based on comparisons with other similar sized organisations. The work undertaken has examined the financial assumptions in more detail and in particular considered potential financial risks along with mitigation opportunities to deal with them. The revised financial summary resulting from the work that has been undertaken is shown in Appendix 5 from which it can be seen that there is no significant variation on the figures presented in the original business case. Indeed there has been a small improvement in the underlying position.
- 5.4 A robust financial resilience and sensitivity analysis of the 3 year projected income and expenditure management accounts for the Trust has been carried out to model the anticipated cash-flow. The grant payment schedule has been agreed to support overall financial resilience and start-up cash-flow requirements appropriately. The Trust Board has received an indicative budget based on the agreed grant levels from the local authorities and can achieve a balanced position. There are no fundamental differences from the assumptions made in the original business case.
- 5.5 As part of the arrangements the County Council will agree to meet the pensions liabilities associated with the transferring staff and will also indemnify the Trust from redundancy liabilities for transferred staff for a period of six years. These provisions are in place to give the Trust a sound early start and discussions over such liabilities will be built into planned funding review periods.
- 5.6 Whilst it is anticipated that potential redundancy liabilities will reduce over time, pension liabilities may increase depending on the performance of the Hampshire pension fund. However, the pass through arrangement that is being put in place is designed in a way that means that the County Council's liabilities will be no greater than if the staff remained within its own employment.
- 5.6 An insurance broker has been appointed to provide quotations for the provision of appropriate insurances the Trust will be responsible for, including contents (excluding collections), public liability and professional indemnity. Hampshire County Council will continue to self-insure its collections and buildings.

5.7 a. In terms of significant risk, appropriate levels of earned income and Gift Aid will be crucial to the success of the Trust and the viability of the 3% year on year income target has been assessed. The track record of income performance within the Arts and Museums Service over the last 3 financial years in terms of increasing visitor numbers and income has exceeded this figure through the use of innovative events and activities (such as the Lego inspired events at Milestones Museum, and Big Theme programming with more than £300,000 of external funding for this year's 1914 Big Theme alone). In addition, the business plan allows for specific additional funding in order to help generate the assumed growth in income.

- The year on year income target is a demanding one but in addition to the consistent track record achieved over the last three consecutive financial years, the new Trust will be developing an active Trading Company targeting a commercial approach to key income opportunities. Limited allowance has been made for this contribution in the figures and no allowance has been made for additional grants achieved through the charitable status of the Trust. The current operation generates approximately £300,000 in small grants and contributions and this is expected to rise significantly once the Trust is fully established.
- The year on year increase will also be targeted through product development and in particular the promotion of a series of further Big Theme events based upon the success of the 1914 Hampshire Commemorates collaboration. The successful Digital Platform recently established will be used to drive up digital engagement and promotion as a key strand for the future. This coupled with active reinvestment in marketing, as in recent years, will help efforts by the Trust to meet its progressive income targets.

A combination of further development of recent successful programming; developing a new commercial approach to key income opportunities; investing in marketing and drawing down extra income through the charitable status of the new Trust will all provide a strong basis for delivery of income targets.

b. On top of earned income and the commercial activities of its Trading Company, the Trust will be looking very hard at securing additional grants and philanthropic support. It has been successful in securing HLF/Arts Council England Grant Aid (Catalyst Project) to generate that element of the business with very strong support and engagement from leading figures in that sector.

5.8 The business case is also based on the Trust continuing to access Hampshire County Council's arrangements for key support services, including transactional elements based on development of the recently and successfully launched Integrated Business Centre. Discussions are taking place with the Trust on the best and most appropriate way to

develop and maintain that relationship in the future together with the associated professional support.

- 5.9 One of the main financial risks facing the Trust continues to be the impact of inflation on pay and non-pay expenditure. As a result it would be prudent for the County Council to take inflation into account when agreeing the annual grant for the Trust and in on-going discussions on its business plans.
- 5.10 In overall terms, the 'realistic' business case presented at Appendix 5 has improved slightly since it was first agreed by the Executive Member of Culture, Recreation and Countryside in September 2013 and further work has been undertaken to mitigate some of the underlying risks in the financial forecasts. Whilst sensitivity analysis against the key variables does return a deficit position under a more pessimistic scenario, this would also be the case (and at a higher level) under the 'do nothing' option.
- 5.11 Whilst in theory therefore there are scenarios where the Trust could face financial difficulties, the proposed governance model is a charitable company limited by guarantee and the Trust will be a separate entity from the founding local authorities. Hampshire County Council will not inherit any debts attributable to the Trust should it fail with monies outstanding. It is not anticipated that the County Council will be in a position to provide additional funding should the Trust fall into difficulty, although it will work proactively with the Trust in such circumstances to implement mitigating strategies. It should be noted that grant monies paid in advance by the County Council could be at risk in the event of insolvency.
- 5.12 As a core element of ordinary budgeting procedures, the Trust will be able to anticipate cash flow issues or budget pressures and put mitigation strategies in place to ensure a balanced budget, in discussion with the Board and funding partners.

6. Legal agreements

- 6.1 Good progress has been made to date with drafting and agreeing terms for the legal documents that will underpin the Council's relationship with the Trust. (The Heads of Terms are set out in Appendix 4). These are;
- a. Management & Funding Agreement (MFA) – this 25 year Agreement sets out matters relating to the grant payable by the Council to the Trust, and 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 the timing of funding discussions, termination, and payment schedule.
 - b. Collection Loan Agreement (CLA) - this provides clarity about the transfer of the museum collections and art collections to the management (but not ownership) of the Trust and sets standards for their care and display. Lasting for the same period as the MFA, it

also addresses matters such as new acquisitions, disposals, loans to other organisations, and insurance cover.

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 in the future.

This document is now at final draft stage. It has been developed in consultation with the two Councils curatorial teams, and formed the basis of specific discussions with Arts Council England which is now the body responsible for accrediting museums. National Accreditation is the core standard set for the Trust in caring for the collections.

- c. Generic Property Lease (PL) - this sets out the arrangements for the long term lease of appropriate properties to the Trust which currently house museum collections or from which arts and museum services are operated. (see section 7) The two Councils will continue to provide and pay for repairs and maintenance work (as at present) and also utilities.

The leases are to be for a fixed term of 35 years. 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).

The generic lease is now at final draft stage and will form the basis of the lease for each of the individual properties.

- d. Commercial Transfer Agreement (CTA) – this sets out terms for the TUPE transfer, pension arrangements and transfer of other assets. It will include an Asset Register of items used by the arts and museums in delivering the service which will be transferred to the Trust, and which would be returned (original or replacements) to the Council in the event of termination.

- 6.2 The final negotiation of terms is nearing completion. Final drafting will take place over the summer following discussion and agreement of any outstanding details with the Trust Board with the intention that final agreements will be signed by the local authorities and Trust Board in September. The County Council will provide central support services as part of the grant agreement for finance, HR, IT, legal, risk and safety, property repairs and maintenance and marketing and architectural consultancy. A specification of the scope of support in each area is being agreed with the Trust and has incorporated recent changes developed as part of the County Council's new IBC.

7. Estates Management

- 7.1 The Arts and Museums estate comprises sixteen properties, with two sites in shared occupation. Executive Member decision 5358 in December 2013 authorised the principal terms of a generic lease to be granted to the Trust.
- 7.2 The generic lease, as drafted, will apply to six properties, with variations to these terms applied to the remaining properties, reflecting bespoke site specific circumstances.
- 7.3 By way of a schedule to this report, the terms applying to each individual property are set out; whether subject to the terms of the generic lease, or with variation to specific clauses within that lease. These are detailed in the schedule.
- 7.4 This report seeks authority to modify the break clause terms within the generic lease and approval of the bespoke, site specific terms as set out in the schedule attached as Appendix 6 of this report.

Generic lease terms

- 7.5 The principal terms of the generic lease have been subject to continued negotiation resulting in a modification to the proposed break clause.
- 7.6 A five-yearly rolling break had originally been proposed, however, the emergence of the terms of the Management & Funding Agreement, has proven this to be incompatible with ensuring that the Trust could sustain the business in the event of any funding reduction, without the commensurate ability to reduce their property commitments.
- 7.7 It is therefore proposed to create a break clause coinciding with termination, or restructured funding, in the Management and Funding Agreement or Collection Loan Agreement.

Bespoke lease terms

- 7.8 The schedule to this report (Appendix 6) provides details of the specific variations to the generic lease terms that are proposed to apply to the individual properties.
- 7.9 In addition to lease terms reflecting site issues there is also a need to reflect obligations that arise from the County Council's role as Trustee in respect of the Curtis & Allen Museum and Red House Museum & Tumulii. This may preclude the grant of a lease, but require an alternative form of agreement to deliver the principles set out in the generic lease.
- 7.10 Furthermore, at Westbury Manor Hampshire County Council's interest arises from a Joint Management Agreement with Fareham Borough Council, the freeholders. As such the County Council do not a legal

interest in the property and it is proposed to form an alternative agreement which will deliver the principles set out in the generic lease.

- 7.11 The County Council has to obtain consent to subletting of our leasehold properties, which can be time-consuming and a matter out of our direct control. In the event that consent is not finalised in time for the commencement of any such lease, it is proposed to enter into a Tenancy at Will for those properties. This will enable the Trust to take possession, but limits the County Council's liability in the event that there is any difficulty in obtaining consent.

8. Risk Management

- 8.1. Any new venture of this type will carry risks and these have been carefully assessed in terms of the original business case and further work as part of the implementation plan and reported to the Trust Board. They can be summarised as follows and in all cases should be compared with a "do nothing" scenario. It should also be set against the fact that there are strong indications that government financial support to local government services could continue to decline over the five years of the next Parliament. In addition, local, regional and national arts policy will also change over the same period. By making this decision the County Council creates, in a relatively uncertain landscape, some significant financial certainty for the early years of the Trust. As such this report considers these risks manageable within the context of the recommendation to proceed.
- 8.2 As a new and independent organisation the Trust may face potential cash flow risks, particularly in the early years. Cash flow modelling is under way and both founding local authorities will support the Trust in terms of the timing of appropriate grant payments. The development of a positive trading company cash flow will ease this and there will also be monthly monitoring of receipts and payments to identify potential pressures.
- 8.3 There are inevitably some on-going risks associated with funding from local authorities but these are being mitigated by the negotiation of on-going partnership agreements and commissioning arrangements with the borough and district councils. This is an existing risk and not specific to the Trust model. Indeed it may be eased by opportunities that the Trust brings in terms of future relationships and joint working.
- 8.4 Predictions on income including Gift Aid and non grant related earned income relate to some new areas of activity and as such are untested. However, a prudent approach to modelling these has been taken in relation to both recent income performance and careful comparison with other similar organisations in such new areas of activity. The Trust recognises the need to establish robust systems for financial and performance management in order to monitor risk and to develop appropriate mitigating strategies.

- 8.5 The timeline for transfer remains tight with some final detailed work to be completed. The Trust Board has a considerable number of decisions and agreements to sign off before handover of staff and services to ensure legal agreements, pension arrangements, insurances, leases and policies are in place. In-principle agreement is scheduled for the July Board with sign-off in September. Timeline contingencies are in place but it is important to maintain momentum and remove uncertainty for staff and partners alike.
- 8.6 At the time of writing this report the charitable status of the Trust has not yet been confirmed by the Charity Commission but we have no reason to anticipate that such approval will be withheld.

9. Next Steps and Timetable

July 2014: Decision by Hampshire County Council and Winchester City Council to proceed with the transfer of staff, services and resources (lease for property and collections) to the Trust.

Summer 2014: Communication with staff and unions on the final detail of the transfer

Autumn 2014: Legal agreements final sign-off for Management & Funding Agreement, collections and property lease, and Commercial Transfer Agreement by Trust Board, Hampshire County Council and Winchester City Council.

Transfer of all staff and operations to the Trust and official launch of the Hampshire Cultural Trust

Up to Summer 2015: Transition

- Recruit Full Board
- Recruit Chief Executive

10. Conclusion

- 10.1 Following the in-principle decision to proceed with a Trust model, this report recommends the final transfer to the Hampshire Cultural Trust to secure the long term future of Arts and Museums across Hampshire. This chosen approach builds upon the strong legacy of investment made over many years. The approach will minimise the risk of failure which, if it occurred, would be subject to a clear exit strategy built into the Management and Funding Agreement. This decision will see on-going commitment and support from the County Council, along with its partners, in doing the very best to sustain long term heritage and cultural provision across Hampshire. Overall this approach is likely to give Hampshire the greatest probability of a vibrant local cultural offer with community access to regional arts and museums services. Indeed it is hoped that it will have the potential to grow that into a national offer.

11. Recommendations

11.1 It is recommended that the Executive Member for Policy & Resources notes the decision taken by the Executive Member for Culture & Recreation at the decision day on 3 July 2014 and approves the following actions:

- Notes the detailed financial assessment work undertaken to validate the original business case and the small improvement identified in this report (Appendix 5)
- Acknowledges the financial risks faced by the Trust and efforts to manage them appropriately including agreement that the County Council will consider the impacts of inflation when agreeing the level of on-going financial support for the Trust
- The transfer of staff to the Hampshire Cultural Trust through TUPE regulations and a closed LGPS pass-through agreement
- The loan of Hampshire County Council's museum collections to the Trust, and for the ownership of new Hampshire-focused acquisitions to be held in trust by the new Trust on behalf of Hampshire County Council
- The alteration to the break clause provision in the generic lease, to align the Trust's break clause with the Management and Funding Agreement and Collection Loan Agreement.
- The variations to the terms of the generic lease to be incorporated in the bespoke, site specific leases as detailed in the schedule at Appendix 6.
- Agree the transfer of other assets to the Trust for the operational management of the service and properties (furniture and fittings etc).
- Authorises the Director of Culture, Communities and Business Services and Director of Corporate Resources to undertake any other steps that are reasonably required to finalise and implement the above recommendations including settling the final terms of the various agreements referred to above.

Integral Appendix A**CORPORATE OR LEGAL INFORMATION:
Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Renaissance SE Hub		17/07/2008
Renaissance SE	920	10/09/2009
Hampshire Arts and Museums Service – Planning for the Future	1637	08/07/2010
Hampshire Arts and Museums Service – Planning for the Future	2154	17/11/2010
Hampshire Arts and Museums Service – Planning for the Future		28/01/2011
Hampshire Arts and Museums Service – Planning for the Future		08/03/2011
Hampshire Arts and Museums Service – Planning for the Future	2994	08/07/2011
Hampshire Arts and Museums Service – Planning for the Future	3374	04/11/2011
Hampshire Arts and Museums Service – Planning for the Future	3374	20/01/2012
Hampshire Arts and Museums Service – Update on the Fully Integrated Merger (FIM) Project (Towards a Hampshire Solent Cultural Trust)	4414	21/01/2013
Hampshire Arts and Museums Service – Towards a Fully Integrated Merger with Winchester City Council (museums), establishing a Hampshire Solent Cultural Trust	3637	25/09/2013
Hampshire Arts and Museums Service - Fully Integrated Merger establishing a Hampshire Solent Cultural Trust – Estates and Property management proposal	5358	12/12/2013

Update on the Hampshire Solent Cultural Trust	5630	06/03/2014
Direct links to specific legislation or Government Directives		
<u>Title</u>		<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

Integral Appendix B

IMPACT ASSESSMENTS

1. Equalities Impact Assessment:

Impact for staff transferring to the Trust:

Staff from both Councils have been involved in the development of the Trust. During the implementation phase staff and union representatives have been kept informed and consulted throughout with regular staff briefings and communications. These have covered the formal TUPE consultation and Trust management structure. Staff feedback has been responded to in the design of the management structure and during the implementation the staff from both Councils have been involved where possible in workshops and discussion planning for the future, including visioning sessions.

No staff are being made redundant. All the current staff working within the arts and museums service will transfer to the Trust under their existing terms and conditions and within their current roles. The transferring staff are able to remain within the Local Government Pension Scheme. The Winchester City Council staff will join the headquarters base at Chilcomb but no other staff are asked to change their work location as part of the transfer.

Impact for the public:

There are no plans to reduce opening hours, close venues, or bring in charges to public arts, museums and heritage venues in Hampshire (currently operated by the two founding partner authorities) as part of the transfer arrangements. Therefore there are no known negative impacts perceived on the public and stakeholders associated with this proposal. While current service provision levels cannot be guaranteed in perpetuity there are no proposals to reduce them in this decision and the judgment taken is that the Trust model will offer the best opportunity to sustain them when further significant local authority budget savings are required. Positive impacts to groups of people are likely as a result of the Trust being established. For example, it may be possible to provide events and exhibitions that appeal to a small section of the community, such as a small geographical area, young people, older persons, people with disabilities and to provide better access to cultural services by minority groups.

Charities have a legal duty to comply with the Equality Act 2010 and the Trust will be required to adopt an appropriate equalities policy. It will also be subject to the requirements of grant giving organizations in relation to Equalities.

The establishment of a charitable trust secures the greatest opportunity for resilience of Hampshire arts and heritage services for the long term. The Trust will bring together the two organisations including staff, collections and buildings. The establishment of an independent trust to manage and develop arts, museums and heritage services will attract external investment and develop an organisation with a strong regional and national profile. It is hoped that the Trust will raise the profile of the Hampshire region arts and heritage services and increase audiences through improved quality of public programmes, marketing and the digital offer. Any surplus revenue funding will be reinvested into front line delivery of services. In the long term the Trust will deliver savings to the founding local authorities.

2. Impact on Crime and Disorder:

The County Council has a legal obligation under Section 17 of the Crime & Disorder Act 1998 to consider the impact of all the decisions it makes on the prevention of crime. The proposals in this report have no impact on crime and disorder.

3. Climate Change:

- i. How does what is being proposed impact on our carbon footprint / energy consumption? Not applicable

- ii. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? Not applicable

Developments in line with the recommendations in the Report dated 25 September 2013

- a) The appointment of a founding board and Chair, including Cllr Roy Perry as the County Council's appointed trustee;
- 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 Hampshire Cultural Trust;
- e) An application for registration currently being considered by the Charity Commission;
- f) Registration with Companies House as a company limited by guarantee;
- g) The Trust bank account contract has been set up. A trading subsidiary account will also be set-up once the Trading Company has been established.
- h) The drafting of legal agreements in relation to the long term loan of collections to the Trust and the transfer of property used for delivery of services by the Trust;
- i) The drafting of a Management and Funding Agreement (MFA) setting out the nature of the grant to be paid to the Trust by the two founding local authorities, and the expectations on both sides relating to that grant;
- j) The creation of an organisational structure, and alignment of existing job roles within both Councils services to posts within that structure;
- k) Tendering for insurance services to the Trust, and
- l) Consultation with staff and Unions regarding arrangements for the transfer of services to the Trust.

Hampshire Cultural Trust

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.

Articles of Association of Hampshire Cultural Trust: Objects and Heads of Terms

Objects

4.1 The Charity's objectives are to provide and support educational, arts, cultural and heritage services for the benefit of the public, in particular to the community and visitors of Hampshire and the wider area of the South of England, through:

- (a) the provision of museums, galleries, arts centres, research and other related services for use by the public; and
- (b) the provision or assistance in the provision of facilities for recreation or other leisure time occupation in the interests of social welfare, such facilities being provided to the public at large save that special facilities may be provided to persons who by reasons of their youth, age, infirmity or disability, poverty or social or economic circumstances may have need of special facilities or services; and

such other exclusively charitable purposes beneficial to the public consistent with clause 4.1(a) and (b) above as the Directors shall in their absolute discretion determine (the Objects).

Heads of Terms

Members of the charity	Hampshire County Council and Winchester City Council, as subscribers to the Articles are Members of the Charity. There are two classes: Members who are also the Directors of the Charity (excluding Council Appointed Directors); and Hampshire County Council and Winchester City Council (the Council Members).
Trust Board	The Trust Board shall be no fewer than three Directors and no more than twelve, of whom one shall be appointed by Hampshire County Council and one appointed by Winchester City Council. These Directors shall not automatically become Members of the Charity (Council Appointed Directors). The remainder of the Directors shall be appointed by the Board and shall automatically become Members of the Charity.
Term of Directors	All Directors shall serve an initial maximum term of four years from their date of appointment and retirement provisions are set out in the Articles. One quarter of the Directors, shall retire from office as Directors of the Charity at the second annual general meeting of the Charity and at each annual general

	meeting of the Charity thereafter. Directors will retire by rotation and shall be those who have been longest in office since their last appointment. Provision for re-appointment allows a maximum term of eight years subject to the retirement and rotational requirements.
Rotational retirement and re-appointment	The Director rotational retirement provisions shall not apply to Council Appointed Directors and the Chair. Any Director retiring under the rotational requirements shall be eligible for immediate re-appointment to the board of Directors for a further maximum term of four years (Re-appointed Director). Any Re-appointed Director, with the exception of Council Appointed Directors and the Chair, must comply with the rotational retirement process. No Director shall serve a term of more than eight continuous years of service beginning on the date of their appointment. Any Director having served such a period shall be obliged to retire at the next annual general meeting and shall not be entitled to be re-appointed to the board of Directors for one year following this annual general meeting.
Observers	The Directors may allow any one or more individuals selected by the Directors to attend any meeting of the Directors (as selected by the Directors) as observers.

**Summary of Legal Agreement terms between Hampshire County Council,
Winchester City Council and Hampshire Cultural Trust**

Management and Funding Agreement (MFA)

Issue	Summary of clause
Term	25 year agreement.
Termination	At end of the 25 year agreement or after 3 years notice by the founding Local authorities (LAs) or 12 months notice by the Trust.
Termination for default	A variety of situations of default enable termination of the agreement. Provisions for any breach once identified to be addressed with an agreed action plan to prevent termination being invoked.
Grant funding and review arrangements	Funding level agreed 5 years in advance. Reviewed in year 3 and then annually thereafter. Specific funding amounts and payment arrangements confirmed for years 1 – 5 (2015/16 to 2019/20), with a rolling review e.g. arrangements for years 6 -8 confirmed in Year 3.
Monitoring performance	The Trust will report on performance against the Business Plan in the format provided to trustees on a quarterly and annual basis.
Redundancies	The Founding LAs will indemnify the Trust for redundancy costs for transferring staff for a period of 6 years (subject to a business case to justify the redundancy and reimbursement).
Intellectual Property	IPR for Founding LA venue names and brand licensed to the Trust. The Trust will own its own brand and any IP created for it.
Funding LGPS Pensions for TUPE staff	The founding LAs will provide 100% funding to cover the LGPS pension contributions at the point of handover within the grant funding to the Trust.
Pass through of funds from District/Borough Council funding partners	Where the Council continues to fund through Hampshire County Council (HCC), the funding will pass through directly to the Trust in addition to the annual grant funding.
Insurance	The Trust will be responsible for suitable employer's liability insurance. This is a legal requirement along with vehicles insurance and public liability but will not be compelled by the Founding LAs to take out content insurance to cover loss of assets.
Support Services	Hampshire County Council provides central support services to the Trust as part of a grant agreement in line with an agreed specification to include; HR, IT, Finance, Legal, architectural support, Property management, risk and safety, marketing, procurement and facilities management. There is a commitment from HCC to offer these services for the first 5 years and to review in year 3. A schedule for each of the support services will set out the activities included or excluded along with arrangements for service delivery and monitoring.

Collection Loan Agreement

Issue	Summary of clause
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.
Loan of Collections	Collections listed in the Accession Register remain in the ownership of the Local Authorities to be stored, cared for and managed by the Trust.
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 organisations 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 national accreditation as assessed by the Arts Council England.
Insurance	The owning LA will insure the collections to the current standard at its own expense.

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

	<p>founding LAs confirmed funding includes employer's contributions. The founding LAs will act as a guarantor to LGPS for any deficit in the fund associated with the transferring employees, subject to certain exclusions.</p>
<p>Transfer of assets other than Collections</p>	<p>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.</p>

Generic Property Lease

NB: These terms may vary where bespoke, property specific covenants apply as detailed in Appendix 5

Issue	Summary of clause
Term	<p>The fixed term lease is 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 & bespoke terms.</p>
Termination	<p>The Trust will have a break clause coinciding with termination, or restructured funding in the Management Funding Agreement or Collection Loan Agreement. This is proposed to provide for 12 months formal notice and 12 months notice of intention to serve. HCC have the right to terminate the Lease if the Collections Agreement is terminated.</p>
Rent and utility costs	<p>The Trust to pay a peppercorn rent for the use of the building which includes of usage for utilities, capped to equate to current consumption. Within the lease, the Trust is responsible for business rates, telephones, waste disposal and grounds maintenance.</p>
Repairs and maintenance	<p>The Council will carry out repairs and maintenance to the buildings in accordance with the risk managed policy currently applied to the non-schools estate. Ensure the premises are safe and serviceable for use by the Trust, and undertake cyclical testing and statutory inspections. The Trust has responsibilities for the buildings, akin to a caretaking role.</p>
Insurance obligations	<p>The landlord to retain responsibility for insurance of the building and to replace or reinstate following loss or damage for the Trust to deliver services.</p>
Sub leasing & income generation	<p>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.</p>
Use of buildings	<p>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.</p>
Alterations and additions	<p>The Trust is not to make major alterations or changes to the building unless the landlord agrees. The Landlord is not under any obligation to agree to any major alterations. Permitted minor alterations by the Trust are defined which do not increase the potential liability or cost to the Landlord in respect of the amenities or potential repair.</p>

Appendix 5

Hampshire Cultural Trust proposed financial model (excluding inflation)						
Appendix 3 of business case reported to EMCRC Sept 2013	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£
A. Summary excluding impact of Trust status	0	22,463	83,677	143,666	402,615	420,526
B. Main Impact of Trust						
Additional income		-581,530	-633,230	-677,830	-715,530	-720,075
Additional expenditure		393,000	393,000	393,000	393,000	393,000
B Net benefit of Trust status		-188,530	-240,230	-284,830	-322,530	-327,075
Overall net surplus(-) or deficit (A) + (B)		-166,067	-156,553	-141,164	80,085	93,451
Cumulative position		-166,067	-322,620	-463,784	-383,699	-290,248
C. Other opportunities brought by the Trust:						
Development activity to protect existing & generate + 3% income		125,000	125,000	125,000	40,000	40,000
+3% income per annum		-38,426	-76,955	-115,589	-154,333	-193,189
C Net opportunity		86,574	48,045	9,411	-114,333	-153,189
Total net surplus per Appendix 3 of Business Case (A)+(B)+(C)		-79,493	-108,508	-131,753	-34,248	-59,738
Cumulative position		-79,493	-188,001	-319,754	-354,002	-413,740
Updated July 2014	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£
A. Summary excluding impact of Trust status	0	-37,403	32,735	87,379	355,034	403,212
B. Main Impact of Trust						
Additional income		-440,064	-718,998	-753,598	-781,298	-784,343
Additional expenditure		363,822	463,985	463,985	463,985	463,985
B Net benefit of Trust status		-76,242	-255,013	-289,613	-317,313	-320,358
Overall net surplus(-) or deficit (A) + (B)		-113,645	-222,278	-202,234	37,721	82,854
Cumulative position		-113,645	-335,923	-538,157	-500,436	-417,582
C. Other opportunities brought by the Trust:						
Development activity to protect existing & generate + 3% income		56,300	56,300	56,300	56,300	56,300
+3% income per annum		-32,956	-53,099	-79,759	-115,589	-154,333
C Net opportunity		23,344	3,201	-23,459	-59,289	-98,033
Total net surplus per Appendix 3 of Business Case (A)+(B)+(C)		-90,301	-219,077	-225,693	-21,568	-15,179
Cumulative position		-90,301	-309,378	-535,071	-556,639	-571,818

Schedule of Leases

Property	Existing use	County Council Tenure Freehold/ Leasehold/other	Basis of lease to Trust	Site Specific Terms
FREEHOLD				
Andover Museum & Museum of the Iron Age	Museum	Freehold	Generic lease	
Eastleigh Museum		Freehold	Generic lease	
Rockbourne Roman Villa	Museum	Freehold	Generic lease	
West End Centre	Arts Centre	Freehold	Generic lease	
Ashcroft Art Centre	Arts Centre	Freehold	Generic lease	
Forest Arts Centre	Arts Centre	Freehold	Generic lease	
Basing House, OLD BASING	Museum	Freehold	Generic lease subject to variation to reflect site specific terms	<ol style="list-style-type: none"> 1. Grass-cutting: Agreement of plan for maintenance and responsibilities being finalised and to be clarified in lease. 2. There are 2 HLF projects with liability for management/maintenance running to 2023. Reference to Management Plans to be made in lease, not to further define responsibilities, which will be set out in principal lease terms, but to have visibility of HLF obligations. 3. Condition of flat: Not currently capable of use as flat, but repairs to be limited to being maintained as safe/wind/watertight only. Condition survey being completed. 4. Condition surveys on garden store and timber store also being completed and limited repairing obligations to link to that.

<p>Chilcomb House and Hampshire Wardrobe, WINCHESTER</p>	<p>Storage facility and offices</p>	<p>Freehold</p>	<p>1. Generic lease subject to variation to reflect site specific terms 2. 35 years subject to break clause</p>	<p>1. Break clause to be included in lease to reserve HCC options for the site, to be subject to re-provision of suitable equivalent alternative storage and office facility. Operation of break to be subject to minimum two years notice.</p>
<p>LONG LEASE</p>				
<p>Milestones, BASINGSTOKE</p>	<p>Museum</p>	<p>Leasehold: 150 years from 25 Nov 2000 (Peppercorn rent) BDBC break any time after 35 years (2035) on 18 months notice</p>	<p>1. Generic lease subject to variation to reflect site specific terms 2. Subletting - Requires Landlord's consent 3. Potential for initial Tenancy at Will if consent to subletting delayed</p>	<p>1. Principal repair issues relating to roof, lights, building management system and blinds - Repairing obligation to capture reasonable basis of response to repairs to reflect cost-effective current practices - e.g. lighting. Principal is therefore 'make do and mend' especially with lights and heating, until critical mass justifies broader repair solution. NB this will link with business interruption priorities in lease to protect business operation. 2. Break clause in favour of HCC in to take back undeveloped 'green' site for inclusion in emerging development proposals with Basingstoke and Deane, reflecting redevelopment options arising from Basingstoke and Deane's proposals for the leisure park. 3. Such break to be subject to 12 months notice of termination, and a prior 12 months notice of 'intent to serve'. 4. Break clause in favour of HCC coinciding with break clause in headlease from Basingstoke and Deane which is operable by superior landlord from 2035 5. Break clause to be subject to 17 months notice.</p>

Willis Museum	Museum	Leasehold	<ol style="list-style-type: none"> 1. Generic lease subject to variation to reflect site specific terms 2. Subletting for 35 years requires Landlord's consent 3. Potential for initial Tenancy at Will if consent to subletting delayed 	1. Sublease on basis of generic terms will be created
OCCUPATIONAL LEASE				
Aldershot Military Museum, ALDERSHOT	Museum	Leasehold: 25 years expiring 28th February 2025 (£200 per annum) HCC break on 12 months notice.	<ol style="list-style-type: none"> 1. Generic lease subject to variation to reflect site specific terms 2. Premises held on a lease expiring 25th February 2025. 3. Subletting - Requires Landlord's consent 4. Potential for initial Tenancy at Will if 	<p>Lease held by HCC runs to 25th February 2025, sublease to Trust, therefore reflecting these terms, and otherwise in accordance with terms of the HCC lease from MOD. Lease to Trust to be for same period, less 3 days (so term certain of 11 years)</p> <p>NB: the Landlord may terminate the lease by giving 6-12 months notice in accordance with s57/58 of the L & T Act 1954 (if it is in the public interest i.e. for security reasons.).</p>

			consent to subletting delayed	
Bursledon Windmill, BURSLEDON	Museum	<p>Leasehold</p> <ol style="list-style-type: none"> 1. Existing lease expires March 2015, but Landlord agreeable granting a new lease. 2. HLF funded works currently in hand. The terms of this grant creates an obligation to ensure delivery of a management plan for a period of 11 years, which will consequently be the minimum term of the new lease. 3. Other terms in accordance with expiring Full repairing lease. 	<ol style="list-style-type: none"> 1. Generic lease subject to variation to reflect site specific terms 2. Subletting - Requires Landlord's consent 3. Potential for initial Tenancy at Will if consent to subletting delayed 	<ol style="list-style-type: none"> 1. Sublease reflecting terms of HCC lease, for an equivalent period less 3 days

JOINT MANAGEMENT AGREEMENT				
Westbury Manor Museum, FAREHAM	Museum	<p>Original 25 year JMA expired 4 Nov 2010.</p> <p>New agreement from year to year.</p> <p>Either party to terminate on 31st March subject to 12 months notice</p>	<p>JMA to be granted on same terms as that held from FBC, i.e. from year to year.</p>	<p>DTJ establishing detail of JMA structure with CDJ & KH</p>
TRUSTEES				
Red House Museum (plus tumulii), CHRISTCHURCH	Museum	<p>HCC sole trustees on behalf of Charity Commission from 1975.</p> <p>it is specifically required that any lease granted must contain covenants on behalf of the lessor to pay rent and other usual and proper covenants applicable to the property.</p>	<ol style="list-style-type: none"> 1. Generic lease subject to variation to reflect site specific terms 2. Consent from Charity Commission will be needed to grant a lease as the generic lease does not conform to the requirement for 'proper covenants' and the payment of rent. 	<p>Short term solution is for licence to occupy while Charity Commission consent is being sought.</p>

Curtis annex	Museum	Freehold		Awaiting interpretations and feedback from Dentons about Trust interpretation
Allen Gallery	Art Gallery	Freehold		Awaiting interpretations and feedback from Dentons about Trust interpretation
LICENCES				
Gosport Discovery Centre, GOSPORT	Museum	Licence	Licence for occupation to be granted, in line with similar grants to 3rd parties	Licence to occupy in line with other Interdepartmental Letting agreements and agreements with 3rd parties
Winchester Discovery Centre, WINCHESTER	Museum	Licence	Licence for occupation to be granted, in line with similar grants to 3rd parties	Licence to occupy in line with other Interdepartmental Letting agreements and agreements with 3rd parties