

## HAMPSHIRE COUNTY COUNCIL

### Officer Decision Record

<b>Decision Maker:</b>	Director of Corporate Resources Director of Culture, Community and Business Services
<b>Title:</b>	Completion of the Transfer of the County Council's Arts and Museums Service to the Hampshire Cultural Trust
<b>Reference:</b>	6165

**Tel:** 01962 847400  
01962 847831

**Email:** [carolyn.williamson@hants.gov.uk](mailto:carolyn.williamson@hants.gov.uk)  
[karen.murray@hants.gov.uk](mailto:karen.murray@hants.gov.uk)

#### 1. The decision:

- 1.1 In July 2014 the Executive Members for Culture, Recreation and Countryside (EMCR&C 3/7/14) and Income and Capital Receipts (EMPR 24/7/14) agreed to the transfer of the County Council's Arts and Museums Service to the Hampshire Cultural Trust (HCT). (Decision Sheets attached). These decisions confirmed delegated authority to the Directors named above to undertake the necessary steps to finalise and implement the agreed recommendations.
- 1.2 On that basis the two Directors have overseen the necessary actions to complete the transfer and now authorise the execution of the necessary legal agreements, these being:
- The Management and Funding Agreement
  - The Collection Loan Agreement
  - The Commercial Transfer Agreement
  - The LGPS Admission Agreement

These agreements and the full transfer of the undertaking will come into effect on 1 November 2014 based upon the terms previously outlined to Elected Members.

- 1.3 The core content and implications of those agreements, including summary heads of terms were set out in previous Executive Member and Scrutiny reports. This decision record confirms those agreements and highlights only those areas where there has been any significant adjustment or further

detail to key elements of the proposal. The following areas are those where appropriate adjustments have been made to enable the transfer to be concluded and for the interests of all parties to be represented appropriately:

- i) The original timeline was modified in light of the need to finalise some complex agreements and to ensure that the legal documentation, charitable status, deeds of delegation, and TUPE implications were dealt with appropriately and in the right sequence. As a consequence the 1 October target date was shifted to 1 November in order to facilitate this. Winchester City Council was in full agreement with this and staff were fully briefed and engaged with this process.
- ii) Following the Executive Member reports the Trust received further advice from the Charity Commission which led to an adjustment to the Charitable Objects as shown in Appendix 2. These were formally agreed by all parties as it was not deemed in any way to affect the ability of the Trust to meet the objectives set by the Founding Partners and Trustees. Charitable status was successfully achieved.
- iii) The original proposal was that 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. Ongoing property repairs and maintenance support by the County Council forms an integral part of the operation of the leases and agreements and as such this support will have to be continued in the longer term. Outside of the property related arrangements, the situation concerning support services has been reviewed in conjunction with the Trust and a mutually agreed decision has been taken to change the original proposal. The County Council will provide full support services during the interim period running from 1 November 2014 until 31 March 2015 after which the Trust will inform the County Council which services they would like the County Council to provide, which the County Council will then consider. In the circumstances, it was decided that it was therefore not appropriate to develop an on-boarding strategy to move the support services onto an IBC type model. This decision was taken on the basis that the scale of investment required to equip the Trust to utilise the system is likely to be disproportionate to the size and nature of business undertaken by the Trust. Over the interim period the Trust will work towards establishing a suitable alternative support services arrangement which will enable the Trust to independently operate in an efficient and effective manner. The County Council will work with and support the Trust if required and requested to do so. These discussions will take place over the next few months and will be the subject of a further and separate Executive Member report that highlights the longer term arrangements, including any financial impacts. This is likely to both reduce the one-off

financial impact upon the County Council and provide the Trust with the wherewithal to operate effectively.

- iv) The property agreements have been progressed as proposed and for operational reasons Executive Member authorised tenancies at will shall be created pending specific third party approvals to permit the grant of the leases to the Trust. In addition, Heritage Lottery Fund approval to the creation of formal leasehold interests is required for those premises that have been subject to HLF funding (Milestones, Basing House and Bursledon Windmill). As such tenancies at will shall remain in place for these properties until the HLF authority has been confirmed
- v) The agreements concerning those properties where the County Council acts as sole Trustee (The Red House Museum and Curtis and Allen Museums) have taken the form of a Deed of Delegation which enables the County Council to retain its Trustees status but to delegate the related duties to the HCT who have accepted a fiduciary duty in that regard. This meets our legal advice. These deeds of delegation were the subject of a separate decision of the Executive Member for Culture, Recreation and Countryside on 16 September 2014.
- vi) The interim support services costs will be met by Hampshire County Council to enable the Trust to establish itself as will any associated VAT liability incurred over the same period. The Director of CCBS has agreed to meet the VAT cost on the basis of any actual and specific costs incurred.
- vii) The first full year of operation of the Trust will be 2015/16 and to cover the intervening period a grant of £1,904,453 will be paid to the Trust on 3 November 2014. The subsequent payment amounts and schedule has been set out in the MFA and the timing of payment agreed by the EMPR on 23 October 2014.
- viii) The LGPS Admission Agreement will result in the County Council acting as a long term guarantor of pension liabilities relating to the transferred staff. Agreement has been made to enable the Trust to use pension allowances flexibly over the early years to help meet its overall pension provision. This will be reviewed in year 3 and may be adjusted after year 5 as the number of employees remaining in the LGPS falls. Agreement has also been made that should the Trust choose to implement annual pay awards the County Council would make a corporate allowance for that in its funding on the understanding that the Trust awarded it and it was capped to the Nationally agreed terms.
- ix) All the assets involved in running the Arts and Museums Service (excluding the properties, collections and stock) will be gifted to the Trust on the understanding that should the Trust relinquish its

operational role these will be returned to the County Council (this excludes items purchased by the Trust for which the County Council will be given first refusal). Inventory records will be maintained and monitored through a regularly updated inventory process. However, advice received is that enforcement of the provision for assets to be returned to the Council may be difficult and the Council would be unlikely to be able to recover the assets in the event of an insolvency of the Trust.

**2 Reason(s) for the decision:**

- 2.2 The Chief Officer decision and record is needed to meet the requirements and recommendations set out in the Executive Member reports and to confirm that appropriate actions have been taken to conclude the necessary agreements.
- 2.3 Chief Officer authorisation is required to enable the signature of the finalised legal agreements and the payment of the agreed grant to the Trust. These agreements will be signed on 31 October 2014.

**3 Other options considered and rejected:**

- 3.2 In the early stages of the project five alternative proposals were considered against specific criteria. This was subject to Member scrutiny and consultation after which the decision was taken to progress a fully independent charitable company limited by guarantee. The other options, including a do nothing option were rejected on the basis of that process and a business case for the Trust subsequently presented to Elected Members (schedule of reports and scrutiny included in EMCR&C report of 3 July 2014).

**4 Conflicts of interest:**

- 4.2 Throughout the Executive Member decision making process linked to this proposal potential conflict of interest has been managed appropriately in terms of the consideration of reports and confirmation of key decisions. The detailed completion of the legal agreements has not involved Executive Members outside of that formal reporting process.

**5 Dispensation granted by the Head of Paid Service:**

- 5.1 None.

## **6 Equalities Impact Assessment:**

### **6.1 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.

### **6.2 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.

## **7 Supporting Information:**

- 7.1 Executive Member decision records referred to in Section 1 are attached as Appendix 1.
- 7.2 Charitable Objects of the HCT are attached in Appendix 2
- 7.3 The legal agreements referred to are not public documents but all parties will retain a signed and sealed copy of the documents listed.

## **8 Authorisation**

- 8.1 The documents referred to in this report and any associated documents required to enable the implementation of the decision set out in paragraph 1.1 above and which have been drafted to reflect the matters set out above be entered into by the Council

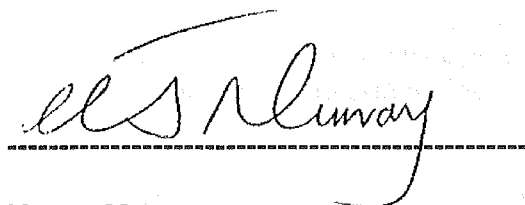
**Approved by:**

**Date:**



**31 October 2014**

**Carolyn Williamson  
Director of Corporate Resources**



**31 October 2014**

**Karen Murray  
Director of Culture, Communities and Business Services**

**HAMPSHIRE COUNTY COUNCIL**

**Executive Decision Record**

<b>Decision Maker:</b>	Executive Member for Culture, Recreation and Countryside
<b>Date:</b>	3 July 2014
<b>Title:</b>	Transfer of the Arts and Museums Service to the Hampshire Cultural Trust
<b>Reference:</b>	5859
<b>Report From:</b>	Director of Culture, Communities and Business Services

**Contact name:** Janet Owen

**Tel:** 01962 826704      **Email:** janet.owen@hants.gov.uk

**1. The decision:**

1.1 That the Executive Member for Culture, Recreation & Countryside approves the following recommendations:

- Agrees to transfer the services and funding for the Hampshire County Council Arts and Museums Service to the Hampshire Cultural Trust, in accordance with the terms and arrangements within the Management & Funding Agreement, Collection Loan Agreement, generic Property lease and Commercial Transfer Agreement (Appendix 4 – Heads of Terms)
- Authorises the Director of Culture, Communities and Business to undertake any other steps that are reasonably required to finalise and implement the above recommendation, including finalising on-going partnership and commissioning arrangements with Borough and District Councils.

1.2 That the Executive Member (CRC) recommends the following for approval by the Executive Member Policy and Resources:

- The transfer of staff to the Hampshire Cultural Trust through TUPE regulations and a closed LGPS pass-through agreement
- Agrees to loan 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 lease/sub-lease or license, as appropriate, of the individual properties, under long-term arrangements, with the minimum unexpired term at any time being 25 years so as to support external grant applications by both the Trust and Hampshire County Council.

- The continued management of the Property repair and maintenance by Hampshire County Council in consultation with the Trust. The County Council to continue to bear the insurance risk for the properties and collections where this falls under the corporate self-insurance regime.
- Hampshire County Council corporately provides central support services to the Trust as part of the grant funding agreement.
- 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.

**2. Reason(s) for the decision:**

- 2.1 For the Executive member for Culture, Recreation and Countryside to make a decision about proceeding with the development of a charitable company limited by guarantee (Hampshire Cultural Trust) to run the arts and museum services currently delivered by Hampshire County Council.
- 2.2 The creation of a new Trust with the merger of Winchester City Council Museum service provides the greatest possible long term resilience against the anticipated financial climate as the Trust would have new revenue funding streams, including Tax relief, external grants and philanthropic donations.

**3. Other options considered and rejected:**

- 3.1 An initial review of governance options identified the charitable company limited by guarantee as the preferred model, and in January 2012, three partner authorities (including Southampton City Council) approved preparation of this detailed business case to test the preferred option. Arts Council England (and its predecessor, Museums, Libraries Archives) has provided strategic and funding support throughout this process.
- 3.2 The business analysis considered 3 options for a trust both with and without Southampton City Council:
  - A. A Fully Integrated Merger of the 3 partner authorities into a Hampshire Solent Cultural Trust, working in strategic partnership with the wider cultural heritage sector
  - B. A Partially Integrated Merger of the 3 partner authorities into a Hampshire Solent Cultural Trust, working in strategic partnership with the wider cultural heritage sector

- C. A Fully Integrated Merger of Hampshire County Council Arts and Museums and Winchester City Council Museums into a Hampshire Solent Cultural Trust, working in strategic partnership with the wider cultural heritage sector

The above options have been compared with each Arts, Museums and Heritage Service remaining as a separate local authority service.

- 3.3 During the development of the outline and detailed Business case, Southampton City Council withdrew from a potential merger of cultural services. Following this, in September 2013, the Executive Member agreed to proceed, in principle, with Option C above, a fully integrated merger of Hampshire County Council Arts and Museums and Winchester City Council Museums Service, working in strategic partnership with the wider cultural heritage sector.
- 3.4 All options were compared with a status quo or do nothing position which was rejected due to the very serious service reductions anticipated with that approach.

**4. Conflicts of interest:**

- 4.1. Conflicts of interest declared by the decision-maker:

None.

- 4.2. Conflicts of interest declared by other Executive Members consulted:

None.

**5. Dispensation granted by the Conduct Advisory Panel: none.**

**6. Reason(s) for the matter being dealt with if urgent: not applicable.**

**7. Statement from the Decision Maker:**

Approved by:

Date:

3 July 2014

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Executive Member for Culture, Recreation and  
Countryside  
Councillor Keith Chapman



# HAMPSHIRE COUNTY COUNCIL

## Executive Decision Record

<b>Decision Maker:</b>	Executive Member for Income and Capital Receipts
<b>Date:</b>	24 July 2014
<b>Title:</b>	Transfer of the Arts and Museums Service to the Hampshire Cultural Trust
<b>Reference:</b>	5860
<b>Report From:</b>	Director of Culture, Communities and Business Services

**Contact name:** John Tickle

**Tel:** 01962 846000

**Email:** john.tickle@hants.gov.uk

### 1. The decision:

- 1.1 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.

## **2. Reason(s) for the decision:**

- 2.1 For the Executive Member for Policy and Resources to make a decision about proceeding with the development of a charitable company limited by guarantee (Hampshire Cultural Trust) to run the arts and museum services currently delivered by Hampshire County Council.
- 2.2 The creation of a new Trust with the merger of Winchester City Council Museum service provides the greatest possible long term resilience against the anticipated financial climate as the Trust would have new revenue funding streams, including Tax relief, external grants and philanthropic donations.

## **3. Other options considered and rejected:**

- 3.1 An initial review of governance options identified the charitable company limited by guarantee as the preferred model, and in January 2012, three partner authorities (including Southampton City Council) approved preparation of this detailed business case to test the preferred option. Arts Council England (and its predecessor, Museums, Libraries Archives) has provided strategic and funding support throughout this process.
- 3.2 The business analysis considered 3 options for a trust both with and without Southampton City Council:
  - A. A Fully Integrated Merger of the 3 partner authorities into a Hampshire Solent Cultural Trust, working in strategic partnership with the wider cultural heritage sector
  - B. A Partially Integrated Merger of the 3 partner authorities into a Hampshire Solent Cultural Trust, working in strategic partnership with the wider cultural heritage sector
  - C. A Fully Integrated Merger of Hampshire County Council Arts and Museums and Winchester City Council Museums into a Hampshire Solent Cultural Trust, working in strategic partnership with the wider cultural heritage sector

The above options were compared with each Arts, Museums and Heritage Service remaining as a separate local authority service.

3.3 During the development of the outline and detailed Business case, Southampton City Council withdrew from a potential merger of cultural services. Following this, in September 2013, the Executive Member for Culture, Recreation and Countryside agreed to proceed, in principle, with Option C above, a fully integrated merger of Hampshire County Council Arts and Museums and Winchester City Council Museums Service, working in strategic partnership with the wider cultural heritage sector.

3.4 All options were compared with a status quo or do nothing position which was rejected due to the very serious service reductions anticipated with that approach.

**4. Conflicts of interest:**

4.1. The Executive Member for Policy and Resources declared an interest in this item and therefore took no part in the discussion.

4.2. In accordance with Paragraph 2.3 of Part 3 of the County Council's Constitution, the Leader deputed Councillor Mel Kendal, the Executive Member for Income and Capital Receipts to act on his behalf.

**5. Dispensation granted by the Conduct Advisory Panel: none.**

**6. Reason(s) for the matter being dealt with if urgent: not applicable.**

**7. Statement from the Decision Maker:**

**Approved by:**

**Date:**

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**Councillor Mel Kendal, Executive Member for Income  
and Capital Receipts**

**24 July 2014**

**(on behalf of the Executive Member for Policy and  
Resources)**



## **Charitable Objects**

The Charity's objectives (the **Objects**) are:

- (a) to promote, maintain and improve the public's understanding and appreciation of the arts, including by:
  - (i) establishing and maintaining museums and art galleries for the benefit of the public;
  - (ii) providing community arts centres and community arts programmes for the benefit of the public; and
  - (iii) by such other means as the trustees may determine; and
  
- (b) to advance the education of the public in the history and heritage of Hampshire and the wider area of the South of England, including by:
  - (i) acquiring, preserving and exhibiting, for the benefit of the public, lands and tenements (including buildings) of beauty or historic interest with a view to educating the public in the historical significance of such lands and tenements in the heritage of the nation and the local area;
  - (ii) preserving, for the benefit of the public, furniture, pictures and chattels of any description having national and local historic or artistic interest with a view to educating the public in the historical significance of such furniture, pictures and chattels in the heritage of the nation and the local area; and
  - (iii) by such other means as the trustees may determine.

