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| DECISION-MAKER: | CABINET |
| SUBJECT: | SOLENT SKY MUSEUM – PROPOSALS FOR RELOCATION OF SERFCA AND USE OF VACATED SPACE |
| DATE OF DECISION: | 4 JULY 2011 |
| REPORT OF: | HEAD OF LEISURE AND CULTURE AND THE HEAD OF PROPERTY AND PROCUREMENT |

STATEMENT OF CONFIDENTIALITY

The Confidential Appendix contains information deemed to be exempt from general publication based on Category 3 of paragraph 10.4 of the Council's Access to Information Procedure Rules. The appendix includes details of a proposed transaction which, if disclosed prior to entering into a Legal contract, could put the Council or other parties at a commercial disadvantage.

BRIEF SUMMARY

This report seeks Cabinet approval to the terms provisionally agreed with the South East Reserve Forces Cadet Association (SERFCA) for the surrender of their accommodation at the Solent Sky Museum. Cabinet authority will enable SERFCA to progress proposals for selecting a suitable alternative site for re-location of the squadron.

Consent is also sought to a change in the terms of the lease of the premises to the Museum.

RECOMMENDATIONS:

- (i) To approve the surrender of the SERFCA accommodation at Solent Sky on the terms set out in this report.
- (ii) To approve the changes in the proposed lease terms of the Museum as outlined in this report; and
 - To delete the existing scheme in the Leisure and Culture capital programme for repairs to the Museum,
 - To add to the Leisure and Culture capital programme a new scheme for £240,000 in 2011/12 for a capital grant to the Museum towards the costs of the repairs; and
 - To approve, in accordance with Finance Procedure Rules, spending of £240,000 in 2011/12.
- (iii) To approve the grant of a lease of the whole premises to the Trustees of the Solent Sky Museum on the terms set out in this report and to delegate to the Head of Property and Procurement authority to undertake all such ancillary acts to complete the lease.

REASONS FOR REPORT RECOMMENDATIONS

1. The terms of surrender are recommended to enable SERFCA to re-locate and the long awaited completion of the lease to take place.

2. The lease of the additional space to the Museum will ensure additional liability for financial outgoings does not fall on the Council.
3. The agreement also has the benefits as set out in the attached appendix.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. Not to agree terms for the re-location of SERFCA – however, this would make it more difficult to re-develop the site when the Museum re-locates.
5. Not to make the vacated space available to the Museum – however, this gives more risk of financial loss to the Council in having to bear empty property rates.
6. The 3rd alternative option is set out in the confidential appendix attached.

DETAIL (Including consultation carried out)

7. The Council constructed the Hall of Aviation (now the Solent Sky Museum) in 1984. Since that date, this 3 storey building has been occupied by the Museum and SERFCA.
8. It was originally proposed that the Museum would take a 40 year lease of the whole premises from the Council from 25 May 1984 and sub-let part to SERFCA for the same term (less 3 days). Due to disputes over repairs and break clauses, the lease and sub-lease have never been completed.
9. The Museum space covers an area of approx. 1000 sq m. It has ancillary offices of 250 sq m. The area occupied by SERFCA provides offices of 616 sq m with parking.
10. SERFCA have been rationalising their services for some time and have now made a proposal to move out of the building if terms can be agreed with the Council and a suitable alternative site identified for the squadron. The Museum has been considering relocating for a number of years. Planning for a sustainable re-location is at an early stage with a 5 year target for the scheme to be implemented. Once the whole building is vacated, the site could be sold by the Council for redevelopment.
11. Upon taking occupation, SERFCA paid a capital contribution to the Council. This has since been held in a joint bank account pending completion of the leases.
12. The terms provisionally agreed with SERFCA are as follows: –
 - (i) SERFCA would require a capital contribution of the sum set out in the confidential appendix towards its relocation. This can be provided from the holding account. The remaining amount would be released to the Council.
 - (ii) The relocation and surrender would take place by July 2012
 - (iii) The proposal will be legally documented asap at which stage the funding would be released to both parties. SERFCA to remain in the premises under a lease agreement until their relocation.

- (iv) The SERFCA accommodation to be handed back to the Council in its existing condition with neither party being obliged to undertake any further work.
 - (v) SERFCA to remove the aerial structure and plane parts from the site but to leave the rifle range in situ 'as is' but decontaminated of lead by SERFCA.
 - (vi) All utility bills and rates to be covered by SERFCA until they vacate.
13. The space occupied by SERFCA is in a good condition and if vacated could possibly be let for the short term on the open market until redevelopment takes place.
 14. The accommodation could be let on the open market by the Council at the estimated rent shown in the confidential appendix. However, finding a tenant could prove difficult due to the current surplus of office accommodation on the market at present. The short term nature of any tenancy would also deter prospective tenants. There is a possibility that the premises would remain vacant and the Council would become liable for rates on the vacant space totalling approximately £6,500 pa.
 15. The Museum Trustees are keen to retain possession of the whole premises. In doing so, the Museum would have the option of utilising the extra space itself or sub-letting all or part of the additional space. The Museum has advised they are keen to utilise the additional accommodation for Museum purposes whether for restoring, archiving or office purposes. The Museum has the advantage of charity status which will enable it to obtain relief on the payment of rates.
 16. The previously agreed lease terms with the Museum Trustees mean that they only pay a rent of £1200pa to the Council. This will increase in line with the RPI from 2016 onwards. The Museum are also bound to pay a maintenance rent of £3120pa and profit rent – however, both of these sums are only payable if the Museum makes a profit which has not been achievable in the past.
 17. The building is in need of substantial works totalling over £475,000 (December 2008 prices). External repairs which are the Council's responsibility, comprise the majority of these works with most urgent works totalling over £235,000 excluding fees, contingency and VAT. Once the agreed sum is released to SERFCA, approximately £240,000 will remain which could be used towards repairs. The Council and Museum would need to consider how the released funds can be best utilised to provide for repairs at the building whilst bearing in mind the Museum's wishes to relocate. In addition, the Council would need to make provision for any future costs that might arise until the building is vacated.
 18. Although the Museum will be unable to pay a rent for the additional accommodation, it has proposed a change in the repairing responsibilities under the lease which will make the Trustees fully responsible for repairs. It is proposed that the remaining sum in the holding account of approximately £240,000 be released to SERFCA to enable them to undertake the most

urgent and necessary works. An agreed programme of works for the necessary repairs from a health and safety point of view will be agreed with the Museum who will then be able to programme remaining works as necessary in line with the repairing obligations under their lease.

19. These proposals will finally allow the lease of the Museum to be completed. It will take some months for SERFCA to arrange a re-location, therefore there will be an under lease to SERFCA to allow them to occupy until July 2012. The re-location of SERFCA will provide more flexibility with regards to the redevelopment of the site in the future. The proposals ensure the Council is not left with the liability of paying for empty rates costs and other outgoings on the building if a temporary tenant cannot be found for this accommodation, and they ensure the Council's liability in respect of repairs for the building is met.

RESOURCE IMPLICATIONS

Capital/Revenue

20. The proposals mean the Council retains its current rental income from the Museum of £1,200 pa and would also be liable to receive a profit rent if this ever arose. However, once the lease is signed, the Museum would not be liable to pay the £3,120 towards the repairs as they would have taken on all responsibility for those repairs. In theory, SERFCA were also due to contribute £1,560pa towards repairs but this has never been paid as the lease has not been signed. This liability would cease when they move out.
21. The sum currently held in the joint bank account has been ear-marked for many years for necessary works to the Museum and is not able to be used for any other purposes. The proposals to pay a sum to SERFCA and the remaining balance of approximately £240,000 to the Museum, in exchange for them taking on all repairs obligations, will use all the funds in this account and enable it to be closed. Payments will not be made until all necessary legal documentation has been signed.
22. There are no VAT implications in respect of surrender of the lease or the payment of a capital contribution to the Museum towards the repairs.
23. The Leisure and Culture capital programme approved by Council in February 2011, included a scheme for £319,000 for repairs to Solent Sky Museum. This scheme is no longer needed and can be deleted from the programme and a new scheme for £240,000 for a grant to Solent Sky museum added in its place.

Property/Other

24. The payment to SERFCA is considered reasonable in order to obtain vacant possession of this accommodation. In the main, the sum can be seen as a partial refund of the capital contribution originally made by SERFCA as they have only occupied for 28 years of the 40 years originally proposed. Whilst the payment is slightly more than would be proportionally due, this can be seen as reasonable given the benefit to the Council in obtaining possession of the accommodation which would make future re-development more straightforward. The cost to the Council over previous years in trying to agree the lease terms with SERFCA and the Museum trustees, has been significant

and this is an ideal opportunity to help unlock the position and to smooth the way for the eventual re-location of the Museum.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

25. Any surrender of the existing interest in the premises by SERFCA would be a private arrangement made between the Council and SERFCA under contract law and pursuant to the provisions of Section 120 Local Government Act 1972.

With reference to the proposal to let the Museum at less than market rent - the Local Government Act 1972 General Disposal Consent (England) 2003 enables the Council to dispose of land for less than its full market value where the undervalue (ie the value being foregone in the transaction) does not exceed £2 million without the need for obtaining specific consent to the transaction from the Secretary of State. However, in reaching any decision to dispose of land at an undervalue, Members must;-

- (i) take into account their general accountability and fiduciary duty to local people;
- (ii) consider that such disposal will help secure the promotion or improvement of the social economic or environmental well being of the area;
- (iii) have regard to the transaction in the context of the Community Strategy;
- (iv) comply with all normal and prudent commercial practices;
- (v) have clear and realistic professional valuation advice available to verify the actual amount of the undervalue; and
- (vi) comply with EU State Aid Rules. (This proposal complies with EU State Aid Rules).

Other Legal Implications:

26. None

27. The proposals in this report are consistent with the Council Policy Framework Plans

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|----------------|---------|----------------------------------|------|--------------|
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KEY DECISION? No

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| WARDS/COMMUNITIES AFFECTED: | Bargate |
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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

| | |
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| 1. | Confidential Appendix |
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Documents In Members' Rooms

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| 1. | N/A |
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Integrated Impact Assessment

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| Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out. | No |
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Other Background Documents

Integrated Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

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| 1. | N/A | |
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TO BE DETACHED BY DEMOCRATIC SERVICES

REPORT MONITORING FORM

THIS FORM MUST BE COMPLETED FOR ALL REPORTS!

PLEASE ENSURE YOU COMPLETE THE SECTIONS HIGHLIGHTED IN YELLOW NEAR THE END OF THIS FORM.

| | |
|--------------------------|---|
| DATE OF DECISION: | 4 July 2011 |
| DECISION MAKER: | Cabinet |
| SUBJECT/TITLE OF REPORT: | SOLENT SKY MUSEUM – PROPOSALS FOR SURRENDER OF ACCOMMODATION BY SERFCA AND LEASE OF ADDITIONAL SPACE TO MUSEUM TRUSTEES |

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|---|---------------------------------------|-----------------------|
| KEY DECISION? | <input type="text" value="N/A"/> | [TYPE YES, NO or N/A] |
| DATE PROPOSAL INCLUDED IN FORWARD PLAN: | <input type="text" value="May 2011"/> | |
| REGULATION 15 EXCEPTION? | <input type="text" value="No"/> | [TYPE YES, NO or N/A] |
| Date notification given to Scrutiny: | <input type="text"/> | |
| REGULATION 16 URGENCY? | <input type="text" value="No"/> | [TYPE YES, NO or N/A] |
| Date agreement of Scrutiny obtained: | <input type="text"/> | |

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| OTHER LEGAL IMPLICATIONS: | Paragraph number/comment: | |
| Human Rights Act 1998: | <input type="text"/> | |
| Race Relations Act 1976 (as amended): | <input type="text"/> | |
| Disability Discrimination Act 1995 | <input type="text"/> | |
| Crime & Disorder Act 1998(specifically s.17 duty): | <input type="text"/> | |
| Proceeds of Crime Act 2002(Money Laundering): | <input type="text"/> | |
| Freedom of Information Act 2000: | <input type="text"/> | |
| European "State Aid" Guidance: | <input type="text" value="Yes"/> | Para 25 |

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| POLICY FRAMEWORK PLANS: | | |
| Annual Library Plan | <input type="text"/> | Adult Learning Plan |
| Best Value Performance Plan | <input type="text"/> | 14-19 Strategy |
| Community Strategy (Including Local Agenda 21 Strategy) | <input type="text"/> | Economic Development Strategy |
| Children & Young Peoples Plan (CYPP) | <input type="text"/> | Health and Well-Being Strategy |
| Plan & Strategies which together comprise the Development Plan | <input checked="" type="checkbox"/> | Crime & Disorder Reduction Strategy |
| Youth Justice Plan | <input type="text"/> | Local Transport Plan |
| Medium Term Plan Economic Development | <input checked="" type="checkbox"/> | |
| Housing Strategy (inc HRA Business Plan) | <input type="text"/> | |

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| KEY AREAS TO BE ADDRESSED/CONSIDERED: | |
| Organisational Development/Human Resources Issues | <input type="text"/> |
| Report Tracking | |

VERSION NUMBER:

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| |
| 08 June 2011 |
| SB |

DATE LAST AMENDED:

AMENDED BY:

PEOPLE WHO HAVE BEEN CONSULTED IN THE PREPARATION OF THE REPORT

Authors who fail to carry out adequate consultation resulting in deferral will be required to provide reasons.

| Name | Departments that MUST be consulted | Date consultation Issued | Date comments Received |
|---------------|---|--------------------------|------------------------|
| Mark Heath | Legal Services | 13 June 2011 | 13 June 2011 |
| Kim Day | Democratic Services | 13 June 2011 | 13 June 2011 |
| Andy Lowe | Financial Services | 14 June 2011 | |
| Andrew Elliot | Property and Procurement Services | 06 June 2011 | 06 June 2011 |
| Sarah Dennis | If the proposal within the report touch on any staffing or IT resource issues consultation will also include the Head of Organisational Development and IT | | |

Others who have been consulted:

| Name | Division/Portfolio | Date consultation Issued | Date comments Received |
|-----------------|-----------------------------------|--------------------------|------------------------|
| Paul Barber | Legal Services | 27 May 2011 | 07 June 2011 |
| Rodger Hawkyard | Property and Procurement Services | 27 May 2011 | 2 June 2011 |
| David Singleton | Financial Services | 27 May 2011 | 6 June 2011 |
| Mike Harris | Leisure Services | 27 May 2011 | 27 May 2011 |
| Nicky Turner | Financial Services | 27 May 2011 | 07 June 2011 |
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Approval by Executive Member:

Name:

Cllr Hannides

Date:

13/06/2011

Approval by Level 1 Manager:

Name:

John Spiers

Date:

13/06/2011

Approval by Executive Director/ Policy Coordinator:

Name:

Mark Heath

Date:

13/06/2011

FOR DEMOCRATIC SERVICES USE ONLY:

DATE AND TIME REPORT RECEIVED:

Date

Time:

LEGAL CLEARANCE:

[TYPE YES or NO]

Name: Richard Ivory

FINANCIAL CLEARANCE:

[TYPE YES or NO]

Name:

POLICY CLEARANCE:

[TYPE YES or NO]

Name: