	REPORT TO CABINET TO BE HELD ON 18 DECEMBER 2007				
	<table border="0"> <tr> <td>Key Decision</td> <td style="text-align: right;">Yes</td> </tr> <tr> <td>Forward Plan Ref No</td> <td style="text-align: right;">N/A</td> </tr> </table>	Key Decision	Yes	Forward Plan Ref No	N/A
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Corporate Priority – Creating Healthy and Vibrant Communities	<table border="0"> <tr> <td>Cabinet Portfolio Holder</td> <td style="text-align: right;">Councillor David Jeffels</td> </tr> </table>	Cabinet Portfolio Holder	Councillor David Jeffels		
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**REPORT OF: Head of Legal and Democratic Services
HLDS/07/065**

WARDS AFFECTED: ALL

SUBJECT: SCARBOROUGH MUSEUMS TRUST

RECOMMENDATION (S):

That Cabinet agree to enter into the final form of agreements for transfer of the Museums and Gallery Service to the Scarborough Museums Trust as follows:

- (a) a Services Agreement relating to the provision of the entire Museums and Gallery Service by the Trust;
- (b) a Service Level Agreement setting out services the Council will continue to make available to the Trust, and the terms upon which those services will be available;
- (c) a Collections Agreement relating to the management of all collections held by the Council;
- (d) a lease of the Rotunda museum;
- (e) a sub-lease of Wood End (as tenant of the Creative Industries Centre);
- (f) a licence to occupy the Art Gallery, pending consideration of future proposals for enhancement of the building;
- (g) a sub-lease of the Museum Store at Unit 10, Eastfield;
- (h) a short term business lease of Londesborough Lodge to the Scarborough Museums Trust for the period that the Trust will be leasing the building pending completion on comparable terms to those that would have applied had the Trust been able to move into Wood End Museum from 1 January 2008;
- (i) Entry into a loan agreement to the Trust providing the sum of £50,000 repayable over two years to fund fundraising activity being undertaken by the Trust toward continuing operations (agreed by Council on 29 October 2007 report HFS0720);

- (j) entry into an Admissions Agreement with Scarborough Museums Trust and North Yorkshire County Council to enable Scarborough Museums Trust to become an admitted body, and
- (k) agreement to the use of £30k of existing reserves within budgets developed for costs relating to the Transfer of the Service to the Scarborough Museums Trust for the purpose of the opening ceremony

REASON FOR RECOMMENDATION (S):

To effect the decision of the Council of 30 October 2006 to transfer the Museums and Gallery Service to the Scarborough Museums Trust and ensure the effective promotion of the re-opening of the service.

HIGHLIGHTED RISKS: N/a

1. INTRODUCTION

- 1.1 In January 2005 the Council entered into the following agreements with the Scarborough Museums Trust in relation to the transfer of the Rotunda Museum to the Scarborough Museums Trust:
 - (i) an Agreement for a Lease, together with accompanying draft lease for the Rotunda Museum;
 - (ii) a Collections Agreement providing for the management of the Geology Collection; and
 - (iii) a Services Agreement providing for the management of the Rotunda Museum by the Scarborough Museums Trust following re-construction of the building.

- 1.2 On 30 October 2006 Council approved the following recommendations of Cabinet:
 - (i) the transfer of the Museums and Art Gallery Service in its entirety to the Scarborough Museums Trust with effect from the 1 January 2008;
 - (ii) approve revenue growth to commission the Service from the Trust of £7,500 on the budget in 2007/2008 and a further £22,500 in 2008/2009.

- 1.3 In accordance with the recommendation revised agreements have been prepared for the transfer of the service to the Trust and subsequent management of the buildings by the Trust, namely:
 - (a) a Services Agreement relating to the provision of the entire Museums and Gallery Service by the Trust;
 - (b) a Service Level Agreement setting out services the Council will continue to make available to the Trust, and the terms upon which those services will be available;
 - (c) a Collections Agreement relating to the management of all collections held by the Council;
 - (d) a lease of the Rotunda museum;
 - (e) a sub-lease of Wood End (as tenant of the Creative Industries Centre);
 - (f) a licence to occupy the Art Gallery, pending consideration of future proposals for enhancement of the building;

- (g) a sub-lease of the Museum Store at Unit 10, Eastfield; and
- (h) a short term lease of Londesborough Lodge (pending completion of Wood End)
- (i) an admission agreement with North Yorkshire County Council and Scarborough Museums Trust under which Scarborough Museums Trust will become an admitted body and provide pensions to transferring staff on the same terms as presently.

- 1.4 It is proposed that authority be given for the Council to:
- (a) set aside the agreements entered into by the Council in January 2005, and;
 - (b) enter into agreements in the form of the current draft documents;
 - (c) approve the use of monies reserved for the establishment of the Trust to cover costs associated with setting up the Trust and promoting the opening event.

2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN

- 2.1 This report is relevant to the objective of creating healthy and vibrant communities.

3. BACKGROUND AND ISSUES

- 3.1 The Agreements seek to put into Legal effect the terms that have been agreed with the Scarborough Museums Trust.
- 3.2 The Agreements provide for the continuation of the service to at least the same standard as that presently provided within the agreed budget in exchange for payment by the Council to the Trust for those services. In practice, however, the Rotunda Museum and the Art Gallery will open for six days each week instead of the arrangement previously in place under which the three Museums operated by the Council in Scarborough were opened for four days each week. The Trust will close the Museums on Mondays, save where Monday happens to be a bank holiday.
- 3.3 The agreements will result in:
- (a) staff within the Museums and Gallery Service transferring to the Scarborough Museums Trust with effect from 1 January 2008;
 - (b) furnishings and equipment that are currently used by staff, transferring to the Trust on terms that they be replaced from time to time, and if the Agreement is terminated equivalent furnishings and equipment at that time being returned to the Council;
 - (c) stock held by the Council (for example in the Museum Shops) being transferred to the Trust and credit being provided for in the settlement to recognise its value;
 - (d) novation of contracts between the Council and third parties to the Trust;
 - (e) management of the Council's entire Collection by the Trust on terms that provide for it to be maintained and available monies applied for its upkeep;
 - (f) in relation to the properties occupied by the Museums and Gallery Service:
 - (i) lease of the Rotunda Museum to the Trust for a period of thirty years;

- (ii) a sub-lease of sections of the Wood End Museum to the Trust;
 - (iii) a licence to occupy the Art Gallery;
 - (iv) a sub-lease of the Eastfield Store; and
 - (v) in the short term a lease of the Londesborough Lodge to the Trust; the leases provide that maintenance of the buildings will continue to be undertaken by the Council, accordingly the property budgets associated with the buildings have been retained by the Council;
- (g) a guarantee to the Pension fund in the event there is a shortfall in funds for example in the event of premature termination of the provision of the service under the Transfer Agreement by reason of the insolvency, winding up or liquidation of the Trust.
- 3.4 The Trust will continue to provide support to other Museums within the Borough (and Ryedale) while ever funding is provided to the Council externally.
- 3.5 The Agreements provide for the provision of performance reports to enable the Council to monitor the service it is commissioning and require the Trust to provide a service to at least the same standard as that provided by the Council.
- 3.6 The Council has been responsible for drafting all contractual documentation and has shared the professional VAT advice it has received from its VAT advisor. However, the Trust has incurred significant professional costs in the form of Legal Advice, VAT advice and museums and fundraising consultancy advice to enable it to determine whether the terms proposed by the Council are fair and legal, to comment on those terms and to put in hand fundraising arrangements that comply with the law to raise the target sum for renovation of the Rotunda Museum.
- 3.7 Under the existing agreement signed between the Council and the Trust, the Council provided £300,000 to meet the set up costs that would be incurred by the Trust on condition that the Trust met its minimum fundraising target of £1.18m. The sum was intended to meet the costs of establishing its infrastructure including procuring all necessary IT systems to run the new business, employing a Chief Executive to prepare for transfer of the Service to the Trust and all professional legal, accountancy and consultancy costs.
- 3.8 The Trust has now exceeded the minimum fundraising target of £1.18m. This has removed the risk that the Council faced of underwriting a funding shortfall. The renovation of the Rotunda Museum was completed within the contracted timescale and within the tendered cost. The refurbishment of the interior as a museum is progressing well and it is not anticipated at present that the cost will exceed budget. Under the current agreement with the Trust the Council are able to and will draw down the sum of £1.45m to complete renovation of the Rotunda Museum.
- 3.9 However, the cost of establishing the Trust will exceed original expectations. The consequence of this is that there is inadequate provision for all costs associated with the opening event. The Trust have sought a contribution of

£30,000 from the Council toward the opening event as a joint Council/Scarborough Museums Trust event.

4. CONSULTATION

- 4.1 The proposal for transfer of the Museums and Gallery Service to the Trust has been the subject of extensive consideration by the Council since 2002. Staff are aware of and have been consulted upon the proposals.

5. ASSESSMENT

- 5.1 The proposed agreements record the parties' current intentions which already have the approval of Council, save in respect of Londesborough Lodge. Copies can be made available for inspection by Members through the Members room.
- 5.2 The addition of the lease of Londesborough Lodge to the previously contemplated agreements at the point of entry into the deed of intent simply provides a short term arrangement to cover the period during which the Trust will be unable to move into Wood End.
- 5.3 The agreements provide appropriate mechanisms for future review should this be required.
- 5.4 The Council has maintained a reserve of unspent revenue funds associated with the Rotunda project. From within that reserve some £50,000 within available funds have been expended by the Council to purchase equipment to ensure that the Service is in a position to operate effectively at point of transfer in addition to expenditure on the Rotunda and Creative Industries Centre. The agreements detail all the equipment transferred to the Trust and require that the Trust maintain and update such equipment and in the event of termination or expiry of the agreement require that the Trust return such equipment to a new provider of the Service or at the Council.
- 5.5 There remain sufficient funds within the reserve to meet the £30,000 contribution sought by the Trust for the opening event. It is proposed to arrange a major event to promote the opening of the Rotunda and generate National and International publicity to aid visitor numbers to the Rotunda (and other Trust Properties) in the first year of operation. The costs associated with this event are anticipated to be £30,000.
- 5.6 Cabinet may consider it to be in the Council's interest to ensure that the Trust is placed in as strong a position as possible to do this as it needs to achieve increased visitor numbers into the future by a strong national presence to meet output requirements under the funding agreements with the Heritage Lottery Fund. It is anticipated that a major public event in the town to publicise the Rotunda Museum and the service generally will significantly assist with this.

- 5.7 However, it is important that the Council's role in bringing about the transition is recognized in publicity associated with the opening and on-going publicity associated with the Scarborough Museums Trust and this will be sought.

6. IMPLICATIONS

6.1 Policy

There are no policy implications to this report.

6.2 Legal

The Legal implications are set out within the body of this report and have been detailed in earlier reports. The agreements provide the framework for the relationship between the Council and the Trust over the next thirty years in which period the Trust will manage the Council's Museums and Gallery Service and its collections.

Scarborough Museums Trust is a charity and a company limited by guarantee regulated by Scarborough Borough Council. As such its accounts will be reported within the Council's accounts until a decision is made on deregulation.

6.3 Financial Implications

- 6.3.1 The Financial Implications were set out in the report which was considered by Council on 30 October 2006. The budget for the Trust comprises the costs associated with the staff structure intended to be implemented by the Trust once they take over the service. At the point of transfer the Museums and Gallery Service are carrying five vacant posts following the departure of staff within the year. The Trust appointed a Chief Executive earlier in the year and it will recruit to posts within a new structure following transfer of the service and the commencement of payments under the Services Agreement.

- 6.3.2 The Council has the sum of £30,000 within existing reserves associated with the Rotunda project which could be used to meet the requested additional contributions to set up costs and the cost of the opening event sought by the Trust. It is important however, that the Council's role in establishing and funding the Trust is clearly recognised.

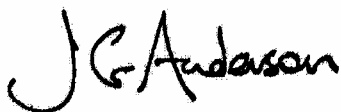
6.4 Human Resources Implications

- 6.4.1 The thirteen Staff currently employed within the service will transfer to the Trust in accordance with requirements under TUPE legislation. There are five vacant posts on the current structure which have not been filled pending transfer of the Service to the Trust and the Trust implementing their new structure for the future management of the Service.

6.5 Property Implications

6.5.1 The following arrangements will be made in relation to properties owned by the Council:

- (a) the Rotunda will be leased by the Council to the Trust on a peppercorn rent on terms that provide for it being open to the public for 6 days each week; the Council will retain responsibility for maintaining the building and the associated budgets;
- (b) the Art Gallery will be the subject of a license on terms that provide for it being open to the public for 6 days each week;
- (c) the property leased by the Council at Unit 10 Eastfield at which elements of the Collection are stored, will be sub-let by the Council to the Trust;
- (d) the Wood End Museum will be leased to the Creative Industries Trust on terms that sections of the building are subsequently sub-leased to the Scarborough Museums Trust;
- (e) in the short term Londesborough Lodge will be leased by the Council to the Trust and the Creative Industries Trust while construction at the Woodend Museum is completed on similar terms to those that would have applied if the Trust had been able to move into the Wood End Museum.



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Background Papers:

The Agreements referred to in this report (available within the Members' room)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Ian Anderson, on 01723 232348 or email ian.anderson@scarborough.gov.uk

Risk Matrix

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Service deterioration following transfer	Undermining of the Council and the Trust	Not likely	Medium	Rigorous assessment of costs required to arrive at realistic Services Agreement Regulation of the Trust by the Council until operating on a secure independent footing Business plan of Trust developed with SBC Fundraising programme of Trust Requirements within Services Agreement for annual report upon activities and performance data Reporting requirements within Agreements to Projects and Partnerships O and S Committee for review Promotion of Trust/re-opening	Not Likely	Low

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Poor museum attendance figures after first year	Damage to reputation of Council/Trust Deteriorating Key Performance Indicators Review of funding by Heritage Lottery Fund Loss of future funding opportunities	Not likely	Medium	Promotion of Trust by SMT/SBC Service specification requiring programme of events/KPI reporting	Not likely	Low
Scarborough Museums Trust becomes insolvent	Transfer of the Service to an alternate body or return to the Council; Pension fund guarantee called upon	Not likely	High	Provisions within the Services Agreements for transfer of the service to a subsequent body/A requirement for continuing assessment of risk	Not likely	Medium