CABINET

DATE 21 December 2016

REPORT OF Councillor Matthew Patrick – Portfolio Holder for Finance, Resources and Inclusion

RESPONSIBLE OFFICER Sharon Wroot – Director of Finance

SUBJECT DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Lease of Former Immingham Library, Immingham

STATUS Open

FORWARD PLAN REF NO. Not included on the Forward Plan – to be considered under the General Exception rules as set out in the Constitution.

CONTRIBUTION TO OUR AIMS
The disposal of the subject site by way of a lease will enable the property, which has been vacated as part of the council’s integration of its library provision within the new Civic Centre, to continue to be used for community benefit, in support of the council’s outcomes. A disposal will allow for potential future investment and create a stronger economy and remove a financial constraint which would support our determination to be an efficient and effective council.

The council should take reasonable steps to ensure that any transfer is viable for its intended future use and would not put local communities under undue risk. This project will contribute directly towards the council’s aim of supporting the development of stronger communities by empowering other organisations or groups to take ownership and shape their own future, providing support and opportunities for people within North East Lincolnshire.

EXECUTIVE SUMMARY
This report seeks authority to dispose of the subject property, at Pelham Road, Immingham which has now been vacated and is surplus to the council’s requirements following the relocation of the library provision to the Civic Centre. The purpose of this report is to gain agreement for the proposal from Immingham Town Council which will enable the property to continue to be used for community benefit by way of granting a lease of 25 years at peppercorn rent (£1 per annum, if demanded).

RECOMMENDATIONS
It is recommended that:

1. Immingham Town Council be granted a lease of the subject property for a term of 25 years at peppercorn rent (£1 per annum if demanded); and

2. the Director of Finance, in consultation with the Portfolio Holder for Finance and Resources be delegated responsibility to ensure that all necessary actions are
carried out in order to complete and approve the detailed terms of the disposal;

3. the Solicitor to the council be authorised to complete all requisite legal documentation in relation to the matters outlined in point 1 above.

REASONS FOR DECISION
The subject property, being the Former Immingham Library, Pelham Road, Immingham has been vacated and is surplus to the council as part of the service relocation to the Civic Centre. The property has been identified by the Immingham Town Council, through an identified need to continue to be of use to the Community to provide space for various activities which will be of social, economic and environmental benefit.

1 BACKGROUND AND ISSUES

1.1 The council is the freehold owner of the property – shown edged red on the plan attached at Appendix One. The property has become surplus to the council’s operational property portfolio due to the relocation of the library service to the redeveloped Immingham Civic Centre ‘Hub’.

1.2 The decision to relocate the library was taken by cabinet on the 17 June 2015 which included an identified sum to be allocated for the demolition of the surplus building.

1.3 However, due to the refurbishment of the Civic Centre, the Immingham Town Council has identified, through an agreed Business Case to lease the building at a peppercorn rent for the benefit of the Community.

1.4 Following the redevelopment of the Civic Centre and relocation and vacation of the former library, the Immingham Town Council approached the council to use the space on an interim basis.

1.5 In order to formalise a longer term agreement for use of the building, this report provides further detail of the intentions of the Town Council. An expression of interest has been discussed and is summarised by the Town Council as follows:

1.6 The Hub space has been reconfigured and has taken up all spare capacity, which has resulted in limited space for wider uses. As an example there are upwards of 15 corporate training days in the facility (Co-op, Aldi, Subway, Able Marine etc.), as well as community activities such as Slimming World (a regular weekly booking), the History Society, and further enquiries to use the building as a drop in for those elderly people who are hard to reach (socially excluded/lonely).

1.7 The location of the building makes it ideal as part of complimenting the offer from the Hub. The space within the building can be let out at very reasonable and flexible terms for those groups where it wouldn’t be sustainable for Groups to use the space within the main Hub building. Access can also be managed locally with Groups wishing to use the space as well as the size and configuration of the building (being single storey) resulting in a manageable space for these purposes.
1.8 It is also the intention to erect a partition internally (1/3rd at the back end) to create some additional storage for furniture, and racking etc. This will assist with the requirement of this type of space to compliment the Hub as well as being specific to this building. The Town Council resolved that the use of this building for these purposes is critical to so that the use of the main hall within the Hub is unaffected.

1.9 The Town Council have been provided with costs associated with the operational expenditure of the building and have confirmed sufficient finances are in place to support this proposal.

1.10 As part of the lease proposal, the Town Council will become responsible for all future outgoings in relation to the building. The intention is to improve the condition of the building, which will have a positive effect on the main thoroughfare to the Hub. An earmarked reserve will be created and a maintenance plan put in place, including the surrounding grassed areas and vital repairs to the pathways.

1.11 It is noted that the proposal is supported by the Town Council and recorded within the minutes of the meeting of the Annual Town Council held in the Trinity Church Hall, Pelham Road, Immingham, on Wednesday 18th May 2016 - minute no 11/16.

1.12 The report from the Town Council further highlights that an additional 200 vulnerable individuals will access these facilities provided by the transfer. Whilst the details of how these individuals will benefit from the asset are not outlined in detail, the type of activities to be provided will improve the physical and mental wellbeing of these individuals and it can therefore be assumed that there will be savings in terms of health and social care budgets as the people benefiting from the facilities will not require more intensive and costly interventions by public services. Assuming that the activities in the asset prevent the 200 vulnerable individuals from requiring support from a GP or from Adult Social Care interventions a social cost calculation using the new economy Manchester unit cost database would result in a social return calculation of:

- 200 hours of saved GP time at £121 per hour = £24,200 saving;
- 200 days of intermediate care at £143 per day = £28,600 saving

1.13 Based on these two potential savings alone the total social value would be £52,800 which if realised would offset the income the council could potentially receive from leasing the asset.

2 CONSTITUTIONAL REQUIREMENTS

2.1 The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration ("the Protocol") which contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than best consideration. The report must contain a valuation, undertaken by a Chartered Surveyor (Valuer) setting out the restricted and unrestricted values of the property concerned. The Valuer is required to assess the unrestricted value in capital terms. The unrestricted value should be
assessed by valuing the authority’s interest after the lease had been granted, plus any premium payable for its grant. In other words, it will be the value of the right to receive the rent and any other payments under the lease, plus the value of the reversion when the lease expires. The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is calculated in the same way as unrestricted value. The council’s partner in the provision of estates and valuation services, ENGIE Services Limited, has provided a valuation report from a qualified Chartered Surveyor which contains the following key information. This represents the undervalue of the lease disposal:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property

<table>
<thead>
<tr>
<th>VALUATION</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrestricted Value</td>
<td>£54,500 (Fifty four thousand and five hundred pounds)</td>
</tr>
<tr>
<td>Less Restricted Value</td>
<td>£1,800 (One thousand and eight hundred pounds)</td>
</tr>
<tr>
<td>Equals Discount</td>
<td>£52,700 (Fifty two thousand and seven hundred pounds)</td>
</tr>
</tbody>
</table>

The above figures are based on a market rent over the term of the lease which will not be received by the council if the approval of the lease is given.

(ii) An assessment with supporting evidence of the capital value to the council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e., social, economic and environmental benefits)

The monetary value associated with the capital value of the site is minimal as well as the capital cost of demolition compared to the benefits proposed from use of the property, in non-monetary terms. By securing the future use of community space within the area, this proposed lease is of significant social, economic and environmental benefit to the general public.

(iii) Confirmation that the disposal will contribute positively to the council’s priorities.

A disposal at less than best consideration must demonstrate tangible and measurable social, environmental and economic benefits generated from such a property transaction as is the constitutional requirement of the council. It is considered that the proposals as set out within this report meet these
requirements.

(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the lease takes place at an undervalue rent and confirming that no reasonable alternative means of funding are available to the purchaser.

Waiving the market rent, as is proposed, is insignificant in financial terms compared to the benefits to be gained from the lease.

(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.

There has been no tender exercise undertaken, as the property was identified for demolition. Due to the interest by the Immingham Town Council and due to its proximity to the adjacent Civic Centre Hub, it is appropriate to support these proposals and potential benefits to form an ancillary space for Community use, to compliment the Hub.

(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic and environmental wellbeing of the area.

NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy

The proposal will impact positively on the well-being of residents of the Borough through the provision of these facilities, by empowering the Town Council to take on premises in support of the Hub for Community benefit.

(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.

See Section 9 of this Report “Legal Implications”

(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium Term Financial Plan.

There must demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value

See Section 8 of this Report “Financial Implications”

2.2 PROPERTY AND ASSETS BOARD - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration. The proposal has been considered by the Board.
2.3 **STATE AIDS RULES** - The Protocol further requires that the council ensures that the nature and amount of any undervalue complies with the European Commission’s State Aid Rules and does not create a state aided subsidy for a commercial organisation. That requires the application of the follow tests:

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3.1 Is the value of the benefit below the threshold set by the De Minimis Aid Regulations?</td>
<td>Yes</td>
</tr>
<tr>
<td>2.3.2 Do the General Block Exemption Regulations apply to the proposal?</td>
<td>No</td>
</tr>
<tr>
<td>2.3.3 Does the proposal meet any of the following 5 State Aid criteria?</td>
<td></td>
</tr>
<tr>
<td>2.3.4 Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute State Aid:</td>
<td></td>
</tr>
<tr>
<td>Is the measure granted by the state or through state resources?</td>
<td>Yes</td>
</tr>
<tr>
<td>Does it confer an advantage to an undertaking?</td>
<td>No</td>
</tr>
<tr>
<td>Is it selective, favouring certain undertakings?</td>
<td>Yes</td>
</tr>
<tr>
<td>Does it distort, or have the potential to distort, competition?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is the activity tradable between member states?</td>
<td>No</td>
</tr>
</tbody>
</table>

2.4 Irrespective of whether the exemption applies, it is clear that not all of the State Aid criteria in section 2.3 above are met and therefore there would be no breach of State Aid rules if the council were to accept the proposal and dispose at peppercorn consideration.

3 **RISKS AND OPPORTUNITIES**

3.1 The risk to the council in progressing a lease with this the Town Council is considered minimal. To protect both parties however, an option to include relevant break clauses for both tenant and landlord could be considered. This would allow, in the scenario that the use is no longer sustainable, the option to relinquish the property back to the council to seek alternative opportunities and avoid the property being unused.

3.2 All future risks will be divested through the lease to the Town Council in respect to ongoing costs in maintaining the property to an acceptable standard. The use and ongoing maintenance liability will be outlined as per a full repair and insure (FRI) lease.

3.3 There are no identifiable environmental sustainability implications as a result of the disposal, as it is the intention that the property will be improved on the basis of its use for community based activities. The council has provided a licence for
use and if agreed, a lease will allow the Town Council to occupy and undertake further improvements to the property which will result in a positive reflection to the street scene within this part of the Borough and remove all financial commitments of the council.

4 OTHER OPTIONS CONSIDERED

4.1 To do nothing is not considered a viable option as the current license does not indemnify the council against all costs in relation to the building. The council would remain wholly liable for the property together with all future associated expenditure. This is not considered a viable option.

4.2 To implement the current decision of cabinet and demolish the building would not give the Town Council the opportunity to provide a much needed facility within available property. The council will also save the demolition costs and direct this capital funding elsewhere. This is not considered a viable option.

4.3 The freehold disposal of the property is not considered appropriate at this time given the proposal received from the Town Council is of benefit to the new adjacent Hub. The opportunity to save the capital required to demolish the building and support the proposal with accommodation already in the ownership of the council resulting in the benefit to the community. As the proposal is for lease, should the property become vacant and unused in future, the council retains an element of control in respect to future action to prevent any unauthorised uses, and be in a position to progress demolition or a freehold disposal in future.

5 REPUTATION AND COMMUNICATIONS CONSIDERATIONS

5.1 There are potential positive reputational implications for the council resulting from this decision, as the primarily use of this property will continue to support services for and use by the community. If necessary, an action plan will be agreed with the council’s communications service, covering all information requirements, through utilisation of the most appropriate communication channels.

6 FINANCIAL CONSIDERATIONS

6.1 The proposal outlined within this report supports the council’s key outcomes of a stronger community, by enabling the Town Council to increase community space within an area that provides services linked directly to these outcomes, and will enable a council owned surplus property to be used for delivery rather than being demolished.

6.2 The proposal will be financed through the provision funding from the Town Council and will result in a saving of capital agreed for demolition. The net effect on council reserves over the life of the project will be removed as all maintenance responsibility of the property will transfer to the Town Council under a full repair and insure lease agreement.

6.3 On an ongoing basis the proposal will lead to no further revenue spend which is consistent with the council’s policy to contribute to improved value for money and
supports the financial objective and our determination to be an efficient and effective council.

7 CONSULTATION WITH SCRUTINY
7.1 No consultation has taken place with Scrutiny at this stage.

8 FINANCIAL IMPLICATIONS
8.1 As outlined in the report, the council would lose a sum, estimated at £52,700, as a result of less than best consideration, which is outweighed by the positive social, economic and environmental benefits of the proposal.

8.2 Further, the council would be no longer liable for the running costs of the premises, which would result in savings, estimated at £12,000 per annum and would also no longer incur the estimated costs of demolition of £30,000, which is currently allocated within the Council’s Capital Investment Programme.

9 LEGAL IMPLICATIONS
9.1 The background to this report can be found, in part, in the report presented to Cabinet on June 17 2015. As a consequence of that report, Cabinet resolved (see minute CB11) to demolish the existing library building when vacated (subject to Planning approval). Cabinet also approved capital funding amounting to £30k for the subsequent demolition of the Library. The report described the building as “a cramped facility in an ageing building with very limited public access”. In paragraph 3.1 of the report the ‘Do Nothing’ option was considered. The report provided that “To do nothing would result in the Library remaining in an old, small building with unknown future maintenance costs and the inability to achieve the service levels and outcomes required from a corporate ‘core’ library.

9.2 Paragraph 8.4 of the report to Cabinet on June 17 2015 advised that a thorough approach to working in partnership with, and building on existing partnerships between the Council and the Immingham Town Council could offer mutual benefit for all. That advice remains relevant.

9.3 The demolition of the existing library building when vacated resolved by Cabinet has not been implemented. It is understood to be the case that a planning permission application to demolish has not been submitted.

9.4 This report seeks to reverse the Cabinet decision on June 17 2015 and instead grant a lease of the building in question to Immingham Town Council for a 25 year term. Legal services will ensure that the terms and conditions of such lease, if approved, protect the Council’s interests by removing all on-going liability from the Council in relation to this building to the greatest extent possible.

9.5 The Council’s Constitution includes a Protocol on Disposal of Land for Less than Best Consideration. This protocol requires a statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent. It is confirmed that the disposal in question is considered capable of falling within the terms of the General Disposal Consent.
10 HUMAN RESOURCES IMPLICATIONS
10.1 There are no direct HR implications arising from the contents of this report.

11 WARD IMPLICATIONS
11.1 This proposal directly impacts on the Immingham Ward.

12 BACKGROUND PAPERS
12.1 Immingham Town Council minutes - number 11/16.

13 CONTACT OFFICERS

<table>
<thead>
<tr>
<th>Service Manager - Assets</th>
<th>Technical Advisor – Development and Regeneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wendy Fisher</td>
<td>George Lewis</td>
</tr>
<tr>
<td>NELC</td>
<td>ENGIE</td>
</tr>
<tr>
<td>01472 323132</td>
<td>01472 324670</td>
</tr>
</tbody>
</table>

Councillor Matthew Patrick
Portfolio Holder for Finance, Resources and Inclusion