

Name of meeting: Cabinet
Date: 26th July 2016
Title of report: Freehold Asset Transfer of Marsden Mechanics Hall, Peel Street, Marsden, HD7 6BW

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Key Decision - No Private Report/Private Appendix - No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Director</u> & name Is it also signed off by the Director of Resources? Is it also signed off by the Assistant Director (Legal Governance and Monitoring)?	Jacqui Gedman - 15.07.16 David Smith - 14.07.16 Julie Muscroft - 18.07.16
Cabinet member portfolio	Asset Strategy, Resources and Creative Kirklees (Arts) - Cllr Graham Turner

Electoral wards affected: Colne Valley
Ward councillors consulted: Cllr Donna Bellamy, Cllr Nicola Turner, Cllr Robert Charles Walker
Public or private: Public

1. Purpose of report

- 1.1. This report sets out the proposal to transfer the land and buildings on a freehold transfer, for nil consideration, which currently makes up Marsden Mechanics building, Peel Street, Marsden, HD7 6BW to the Marsden Community Trust Limited. The conditions of the freehold transfer will include covenants to ensure that Marsden Mechanics Building is a building that principally remains available for community use.

2. Summary

- 2.1 Marsden Mechanics building has been partially leased to Marsden Mechanics Hall Management Association for a number of years. A second organisation, The Marsden Community Trust has evolved and brought forward plans to seek an asset transfer of the whole building and surrounding land. This paper sets out the background to this request and the Council's proposed response to transfer the building and courtyard at nil consideration but with restrictive covenants in place to protect community use.

This paper also addresses a request from the Trust for an adjacent property, the former Marsden Public Toilets which is currently being developed for additional school play space, to be included in the asset transfer to the Trust so that they can bring forward plans at some point in the future to extend the existing Marsden Mechanics Hall, to provide additional community, school and commercial space.

3. Information required to take a decision

Background

- 3.1. The Marsden Mechanics Building is situated on Peel Street in Marsden. It is a venue that has been used by the community for a number of years and the Meeting Room and Hall has been leased to the Marsden Mechanics Hall Management Association since 1996. The Association are currently holding over on the lease as this contractual term of the lease expired in 2014. The Mechanics Building has seen over the last couple of years an increased interest from members of the community with the sole aim to maintain and develop the building. The building also houses the Marsden Community Supported Library and Information Service and one of the conditions of the transfer will be, that the Trust must grant a leaseback of part of the building to the Council to enable the Council to maintain the provision of this service.
- 3.2. The Marsden Community Trust is a relatively new body and has been set up to potentially take on assets within Marsden beyond the Marsden Mechanics Building. The Trust is a company limited by guarantee and its directors comprise, of many of the officers of the Association. The Association plans to dissolve once the Trust has taken transfer of the Building. Recently members of the Trust have met with Officers of Kirklees Council with a view to taking asset transfer of the Marsden Mechanics Building, the external courtyard and the former public toilets on a freehold basis.
- 3.3. In order to ensure that the Council can continue to provide the Library Service from the building, the Council will be granted a "lease back" of part of the building. Member's attention is drawn to the fact that the Council will be granted a lease and or licence of a term of 5 years at nil rent but that the Council will have the option to terminate the agreement at any time giving one month's notice. This will in essence mean that the Council will be able to run the Library and Information Service from the site for the term of the agreement.
- 3.4. The Association have been managing the Community Space (hall and meeting room) within the Mechanics Hall since 1996. The lease in place leaves the responsibility for the repairs and maintenance of the Mechanics Hall with the Council.
- 3.5. The Building is not used to capacity, however, following on from a pre-feasibility study the Trust has undertaken, they are already changing their pricing and marketing policies to ensure that usage increases in the future.
- 3.6. Marsden Community Trust has submitted a robust application and business plan in line with the requirements of the Asset Transfer Policy, this includes the development of policies and capacity building which have been assessed by the Community and Engagement Team. It also includes financial planning and risk management which has been assessed by Locality, a third party who is also supporting groups working through Asset Transfer. Corporate Landlord has also assessed the building related information the group provided.

The application and business case is assessed using the Asset Transfer Assessment Tool which looks at 5 main areas: financial, community impact, risk, organisation strength and the asset. This has been designed in line with the Hallmarks of an Effective Charity which is written and supported by the Charity Commission. All assessments are satisfactory.

The Trust has submitted a business case which depends upon an element of Commercial use to provide revenue income to support the running of the building. The business case also requests that an area of land which is nearby, the former public toilets, is transferred to the Trust. However, plans are progressing to demolish the toilets and develop this parcel of land as compensatory school play space for Marsden Infants and Nursery School, which is having a Modular Classroom located within the grounds for September 2016 intake, due to rising pupil numbers. The Trust's future business plan proposes this area to be developed with an extension to the Mechanics Building and provision for class space for the school (see 10.3)

Asset Transfer

- 3.7. The Council's Asset Advancement Policy was developed in response to the Quirk Review and subsequent localism agenda and was approved by Cabinet in October 2013. The policy allows for the assets to be transferred with either a long term lease or a freehold transfer, both options will normally also have covenants that restrict use to community use.
- 3.8. Community Asset Transfer involves transferring ownership of land and buildings from a statutory body to a community organisation for 'less than best consideration' - that it is less than its full market value - in order to further social, economic and/or environmental objectives.
- 3.9. The Decision Options for this Asset Transfer are:

- 3.9.1 Refuse the request for transfer. This would mean the Trust would be unable to deliver the community benefit an asset transfer would bring. Also, the Association are currently holding over on an 18 year lease and therefore have a partial leasehold interest of the building, which means they have an entitlement to apply to a court for a new lease which will leave the Council with Landlord Responsibilities for the maintenance and repair of the building, which in turn would continue to be a drain on the Council's resources. The Council would, however, have the option of setting a Market Rent to the new lease.

Officers are of the opinion that this should not be the recommended option on the grounds that the Trust could be held back from developing their plans for the Centre and engaging the local community and this would leave the Council with onerous responsibilities that would cost more for the Council to discharge than any rent that would be received.

- 3.9.2 Transfer the Mechanics Building and the Courtyard only either freehold or leasehold with restrictive Covenants for community use with an exception for up to 30% commercial use, in line with previous asset transfers of public halls but with a requirement for a 'lease back' to the Council at nil rent, an agreed section of the building for the use of the Library and Information Centre.

There is a risk, by not transferring the Public Toilets, that if the school does move towards academisation they may be able to claim the land and therefore this will no longer be available for the Trust.

- 3.9.3 Transfer the Building, the Courtyard and the Public Toilets either freehold or leasehold with restrictive covenants for community use with an exception of up to 30% commercial use in line with previous asset transfers halls but with a requirement for a 'lease back' to the Council at nil rent, an agreed section of the building for the use of the Library and Information Centre. In addition to this there is a further requirement for the Trust to lease back the Public Toilet land to the Council at nil consideration, for school provision until such time that the Trust have the relevant funding and permissions to develop the land alongside the current Mechanics Hall. In doing so the Trust will create additional classroom space for Marsden Mechanics Infant and Nursery School, which will be chargeable to the school at an agreed rate.

Officers are of the opinion that option 3.9.2 is the preferred option as it supports the group in their plans to develop the building and it realises savings from ongoing revenue costs and future capital expenditure. Moreover the Trust would have the option of returning to the Asset Committee at some point in the future when it's plans to develop the extension and area of land, formally the public toilets, comes to fruition allowing them to request a transfer of the land for their development.

- 3.9.4 Transfer the building, either with or without the Public Toilers and without restrictive covenants in place. Whilst this approach has not been adopted before, it is recognised that, subject to approval, this option would fit within the current Asset Transfer Policy, however there is a risk that the buildings future use as a community centre could be lost.

Officers are of the opinion that this should not be the recommended option on the grounds that the future use of the Mechanics Hall could be lost to the local community.

Costs

- 3.10 The building is in a reasonable state of repair; however a 2009 conditions survey identifies works totalling £119,300. The main areas for investment works would be the mechanical services which total £115, 200, the remainder of the costs are split between ceilings and electrical services. The Trust has outlined how they intend to prepare for these ongoing costs as part of their Business Case. In transferring the Building the Council will avoid Capital Repayment Costs circa £8300.
- 3.11 The current revenue running costs to the Council are £25,600 due to the Association holding a partial lease of the Hall which in turn has meant that the Council is responsible for all repairs, maintenance and general running costs for the building. The freehold transfer will result in a £25,600 revenue saving to the Council.

Valuation

Unrestricted Value

The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2), except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the Authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

The unrestricted value of the Marsden Mechanics is: £120,000

The unrestricted value of the Public Toilets is: £25, 000 - £30,000

Restricted Value

The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).

The restricted value of the Marsden Mechanics is: £ Nil

The restricted value of the Public Toilets is: £ Nil

Voluntary Conditions

A voluntary condition is any term or condition of the proposed transaction which the Authority chooses to impose. It does not include any term or condition which the Authority is obliged to impose, (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the Authority.

The value of voluntary conditions in the proposed transaction (Marsden Mechanics) is: £ Nil

The value of voluntary conditions in the proposed transaction (Public Toilets) is: £ Nil

Amount of discount given by the Council

The difference between the unrestricted value of the land to be disposed of and the consideration accepted (the restricted value plus value of any voluntary conditions).

The amount of discount in the proposed transaction (Marsden Mechanic Hall) is: £120,000

The amount of discount in the proposed transaction (Public Toilets) is: £25,000 - £30,000

In respect of Local Government Act 1972 general disposal consents (England 2003) disposing of land for less than best consideration, that can be reasonably obtained, the transaction does not require the Council to seek specific consent from the Secretary of State as the difference between unrestricted value of land to be disposed of and the consideration accepted is £2,000,000 or less.

4 Implications for the Council

- 4.1 The Local Government Act 1972 General Disposal Consent means that specific consent is not required for the disposal of any interest in land/buildings at less than best consideration which the Authority considers, will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Following their assessment, the Council are confident that Marsden Community Trust meets the economic and social factors for the Marsden area.
- 4.2 The transfer of the Marsden Mechanics Building will support the community and recognises the benefit of these groups in sustaining the economic, health and wellbeing of the local community.

5 Consultees and their opinions

Marsden Community Trust have met previously with Kirklees Council and Marsden I&N School to discuss the Public Toilet site and it was agreed that Kirklees Council will retain the Public Toilet site until such time that the Trust had the funding in place to progress with the development of the site.

Local Ward Councillors were consulted and the following feedback was received:

Councillor Donna Bellamy - I fully support the asset transfer of Marsden Mechanics to the trust, and I am happy with the proposal of option 2, as suggested by the Council, I am sure the trust will go from strength to strength and proceed to make the mechanics more viable and become a greater community hub than it already is.

Marsden Community Trust were consulted and the following feedback was received:

Marsden Community Trust is grateful for the opportunity to comment on the draft recommendation regarding asset transfer of the Mechanics Hall. We have considered the document carefully and respectfully suggest that some sections would benefit from a shift of tone to recognise more accurately and fairly the spirit of the collaboration that brings us to this critical moment.

As the draft current reads an impression is given that the idea of community control of the building is a recent development but the truth is very different@ from 1978 Marsden Community Association (MCA) was the driving force behind the refurbishment that was completed in 1991 and requested transfer of freehold into community ownership at the that time. That request was denied by Kirklees Council but a compromise was struck in the form of the Marsden Mechanics Hall Management Association (MMHMA) and the attendant lease.

*The capability of Marsden residents to manage under the terms of the lease is evident form the last quarter of a century, remaining in good financial health throughout. There has been a high degree of consistency in the personnel involved ever since then, with lineage connecting MCA through MMHMA to the present Marsden Community Trust (MCT * incorrectly identified in the draft as Marsden Mechanics Trust). Furthermore, discussion has taken place between MMHMA and various representatives of Kirklees Council over several years about the long term control and formation of MCT, which has emerged as a mutually agreed mechanism to work towards community ownership.*

Against this background we feel it is reasonable to request the rewording of the introductory section of the recommendation and the introduction of a fifth option to get around the issue of commercial uses threatening the future of community use [Fifth option reads: Transfer the building with the public toilets with restrictive covenants for community use, with the exception of any amount of commercial use provided that all income generated by such use be expressly for the purpose of sustaining community use of at least the main hall and some meeting facilities in the enlarged building]. This is an option we wouldn't heartily encourage you to recommend. An edited version is attached for your consideration by comparing documents and we would be more than happy to discuss the detail if you so desire.

Finally, you are aware that we are very concerned about the prospect of the toilet site being excluded from the transfer, so a separate submission is attached addressing the case for its inclusion in more detail. Please can this submission be made available to members at the same time as your own report?

6 Next steps

Officers from Physical Resources and Procurement will complete negotiations and agree terms of the transfer and lease back of the Library and Information Centre.

7 Officer recommendations and reasons

- 7.1 Members are requested to authorise officers to transfer the freehold of Marsden Mechanics Building and Courtyard to Marsden Mechanics Trust for nil consideration, subject to firstly the requirement that there should be a leaseback of part of the building for use of the library and information centre and secondly subject to covenants to ensure that the centre can be used for Community Use with an exception of up to 30% of commercial use in line with previous asset transfers.
- 7.2 Members are requested to note the Assistant Director - Place and Assistant Director Legal Governance and Monitoring have delegated authority to negotiate and agree the terms of the freehold transfer, including the red line boundary, that relate to the transfer of the Marsden Mechanics Building to Marsden Community Trust.

8 Cabinet portfolio holder's recommendations

The Portfolio Holder, Cllr Graham Turner recommends the freehold transfer of Marsden Mechanics Hall and Courtyard to Marsden Mechanics Trust for no premium/nil consideration subject to the restrictive covenants discussed in paragraph 3.9.2 - which states that the proposed asset transfer route, subject to approval is to *Transfer the Mechanics Building and the Courtyard only either freehold or leasehold with restrictive Covenants for community use with an exception for up to 30% commercial use in line with previous asset transfers of public halls but with a requirement for a 'lease back' to the Council at nil rent an agreed section of the building for the use of the Library and Information Centre.*

The Trust would have the option of returning to the Asset Committee at some point in the future when it's plans to develop the extension and area of land, formally the public toilets, comes to fruition allowing them to request a transfer of the land for their development.

9 Contact officer

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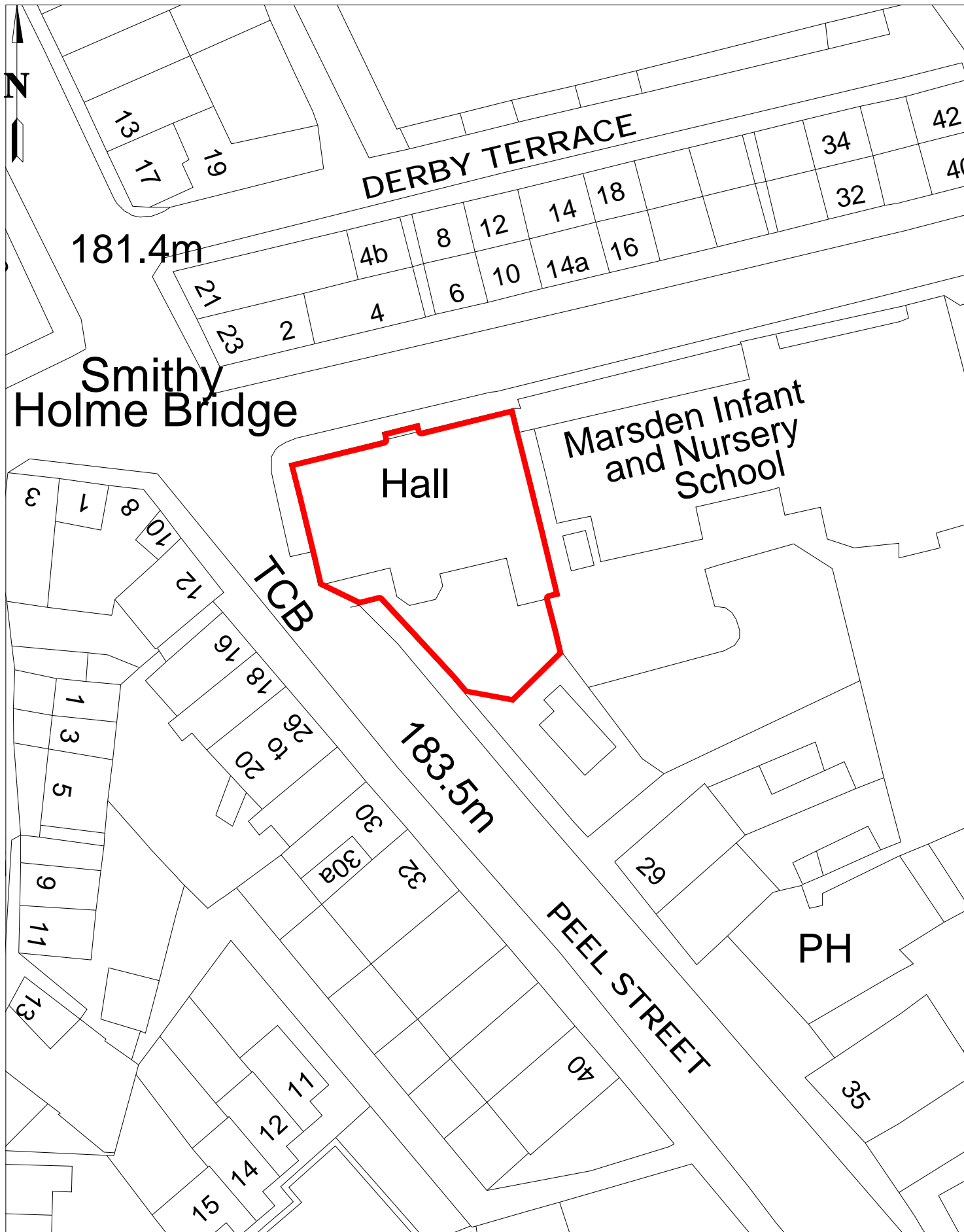
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10 Background Papers and History of Decisions

- 10.1 Red Line Boundary – Without Public Toilet Land
- 10.2 Red Line Boundary – With Public Toilet Land
- 10.3 Marsden Mechanics Trust – Extension Plan

11 Assistant Director responsible

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Smithy
Holme Bridge

Hall

Marsden Infant
and Nursery
School

TCB

183.5m

PEEL STREET

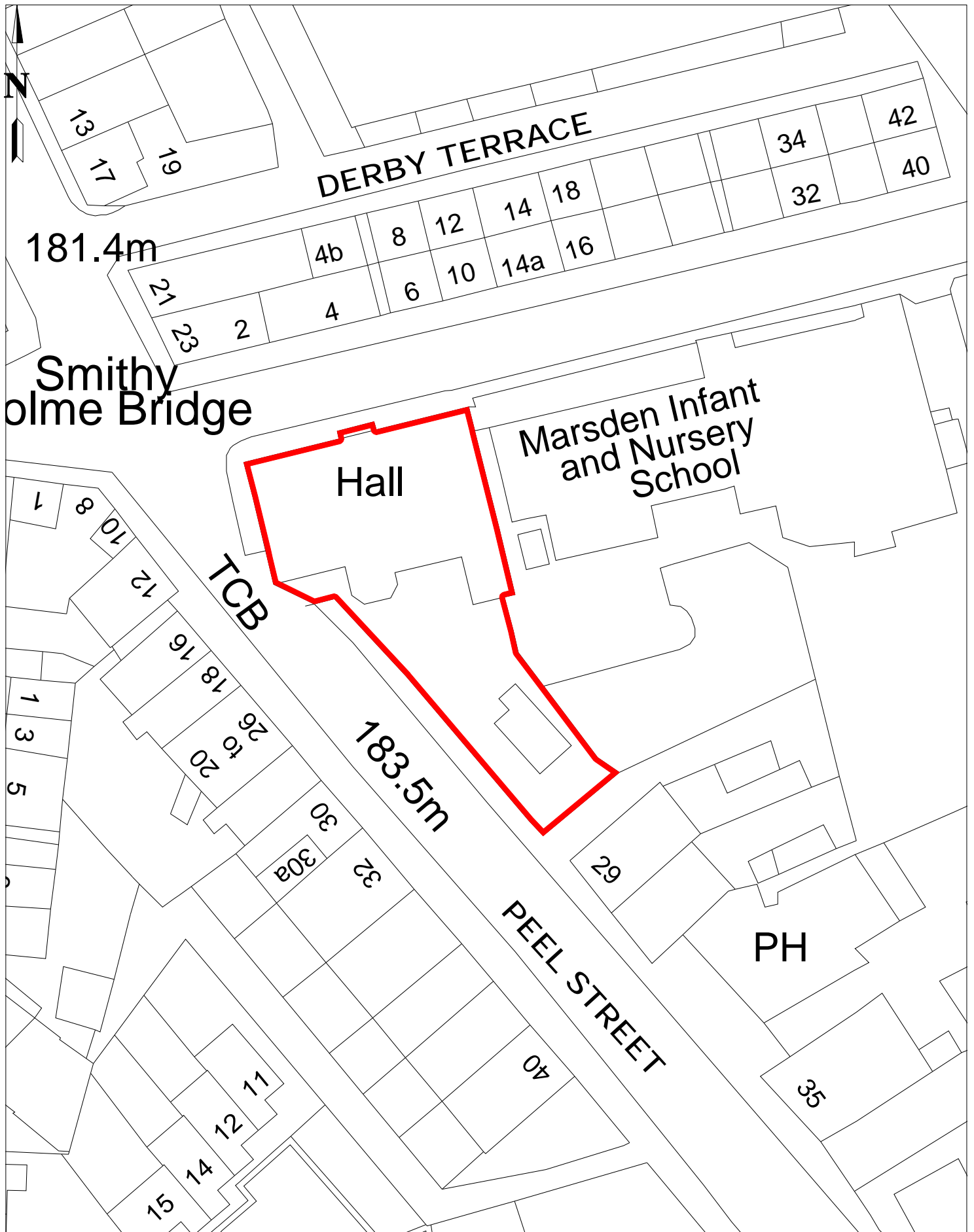
PH

181.4m

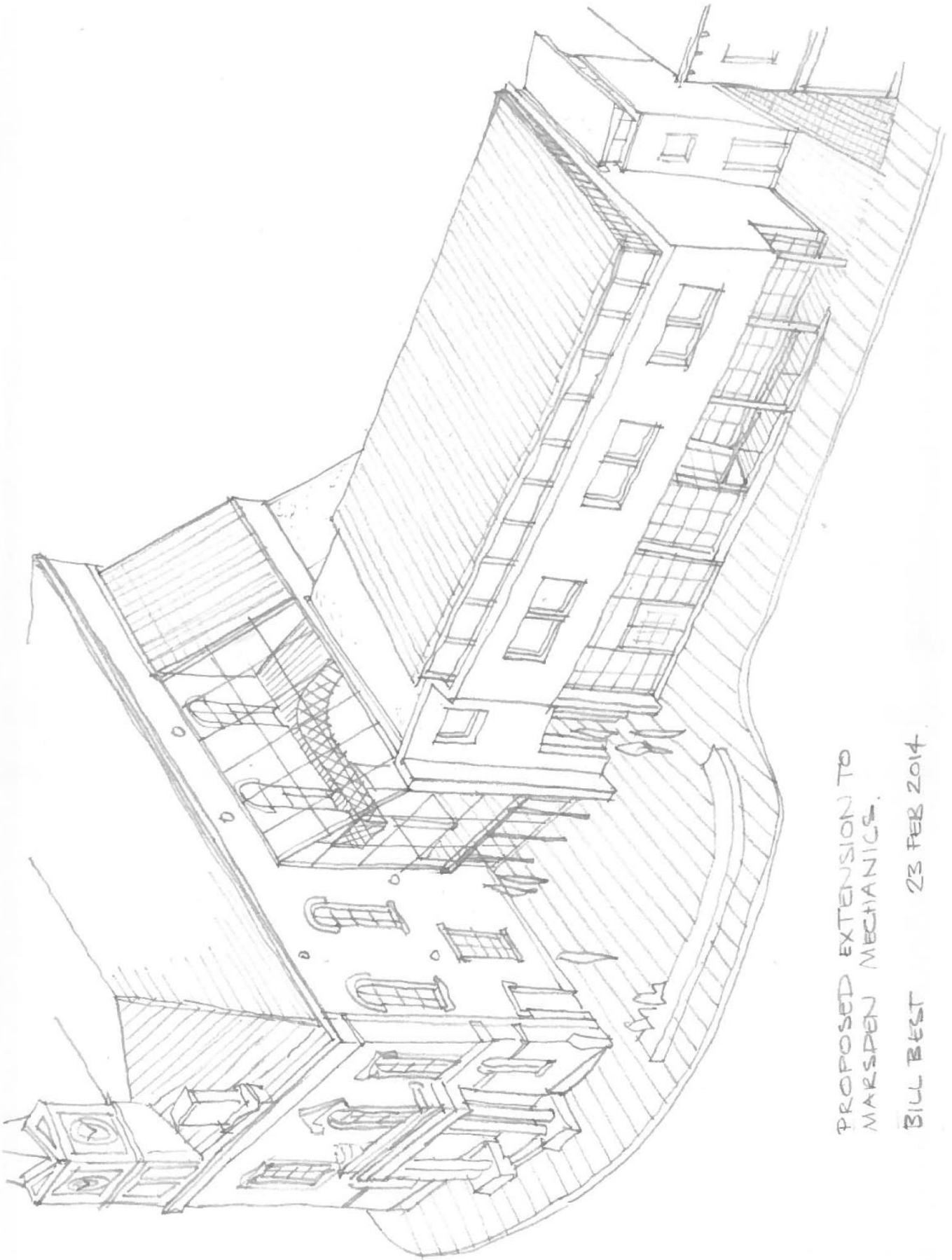


**PHYSICAL RESOURCES
& PROCUREMENT**
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Appendix 6



PROPOSED EXTENSION TO
MARSPEN MECHANICS.

BILL BEST 23 FEB 2014