

Key Decision Required:	No	In the Forward Plan:	Yes
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CABINET

13 JUNE 2014

REPORT OF THE REGENERATION, INWARD INVESTMENT AND ASSET MANAGEMENT PORTFOLIO HOLDER

A.3 COMMUNITY ASSET TRANSFER POLICY

(Report prepared by Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Cabinet is asked to consider the adoption of a policy on transfer of assets to community organisations.

EXECUTIVE SUMMARY

The Council can use its asset base as a driver for the enhancement of services, facilities and community benefits in the District.

Central Government has urged Councils to take a positive approach to facilitating local delivery by transferring underused or redundant assets to the community.

In addition to strict rules on prudent financial management, the Council has discretionary powers to dispose of assets at less than the highest price.

A policy is necessary to ensure that this power is exercised in a consistent way and in accordance with legislation and the Council's financial duties.

A draft policy for Cabinet's consideration is attached as Appendix A.

RECOMMENDATION

That Cabinet adopts the Community Asset Transfer Policy as attached at Appendix A to the report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Community groups offer activities, services and facilities that are significant to the full range of Council priorities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The Council faces a tough economic outlook. The prudent management of its assets is more important now than ever. In coming years, central government funding will continue to reduce and the Council must look increasingly to sustain itself from within its own resources.

The prudent management of assets, other sources of income and resources will become ever more essential to protect and support the delivery of basic services.

Any decisions on the transfer of an asset at a reduced or no price must demonstrate compelling additional economic, environmental or social benefits in proportion to the value to be foregone by the Council.

Risk

There is risk that if the Council does not support community groups they will become unsustainable.

There is a risk that community groups may not deliver the benefits that they propose.

The Policy seeks to manage these risks and to provide a consistent framework for the evaluation of any requests received.

LEGAL

Section 123(1) Local Government Act 1972 indicates that a local authority may dispose of land held by it in any way it wishes so long as (section 123 (2)) the land is disposed for a consideration not less than the best that can reasonably be obtained.

The General Disposal Consent Order (England) 2003 gives consent for disposal at below best consideration reasonably obtainable provided that the undervalue is less than £2m and the proposal enhances the environmental economic and social well-being of the area.

Section 123(2A) of the Local Government Act 1972 indicates that, a local authority may not dispose of land held by it without advertising its intention to do so in the local press.

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law, following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets are for the benefit of the district.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of Crime and Disorder, Equality and Diversity, Health Inequalities, Consultation and Public Engagement and Wards; and any significant issues are set out below.

Wards Affected

All.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Local government is faced with an uncertain future. On the one hand the need and demand for more and better services continues to grow, while on the other the finances available continue to shrink.

The Council can no longer seek to resolve local issues with cash alone. It needs a carefully considered partnership with others and to use all of the resources at its disposal wisely and judiciously. Community Asset transfer may provide the opportunity for real additional non-cash benefits to be delivered in the District.

Recent Governments have been keen to promote the use of underused or redundant public sector assets to drive economic growth and enhance communities and localities.

Legislation has provided potential for the Council to support community groups by transferring assets to them. However, the land and property available to the Council is also finite and it must be sure that it is always achieving the best possible results when disposing of it whether for financial return, community benefit or a combination of both.

A policy is necessary in order to balance these issues.

CURRENT POSITION

The Council faces a tough financial outlook and pressures to improve and extend services and facilities. In addition to monetary resources the Council also has a land holding that can be used in a range of ways to assist with service delivery. This can be through rigorous commercial management at one extreme, by transfer of assets at little or no cost to other organisations at the other extreme – or by a number of alternate approaches which fall between the two extremes.

The Council also needs to carefully rationalise its land holding in order to pare down costs and seek opportunities to gain capital receipts. A balanced approach is needed seeking to dispose of areas that offer no real benefit or utility, establish sources of income and also to gather community benefits where that is appropriate.

In all cases the Council should ensure that it receives full value in financial or community terms or in a combination of these. It must therefore evaluate any Community Asset Transfer requests against a consistent policy.

A draft Policy for considering Community Asset Transfers is attached at Appendix A

FURTHER HEADINGS RELEVANT TO THE REPORT

None

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A – Draft Community Asset Transfer Policy

Tendring District Council

Community Asset Transfer Policy



Martyn Knappett
Corporate Director (Corporate Services)
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Purpose

The purpose of this policy is to set a framework for the consideration of requests for community asset transfer including when transfer is appropriate, options for transfer, safeguards and procedures.

The Council has legal and general duties to the public purse to deal prudently with its finances and resources: where appropriate to maximise income and receipts in order to support services and to reduce taxes and charges.

Property assets are one of the three major resources available to the Council and it is also appropriate for them to be used do drive improvement in services and facilities in the District.



There are a range of options available to the Council ranging from the highly commercial to the explicitly charitable, with a spectrum of choices between.

In each case the Council must decide which approach to take. It must balance the financial and the environmental, economic and social priorities for the District. Each case will have different costs, different benefits and different objectives. Each needs to be considered on its own merits.

This policy aims to facilitate a balanced and consistent approach to the consideration of these individual cases.

Definitions

Community

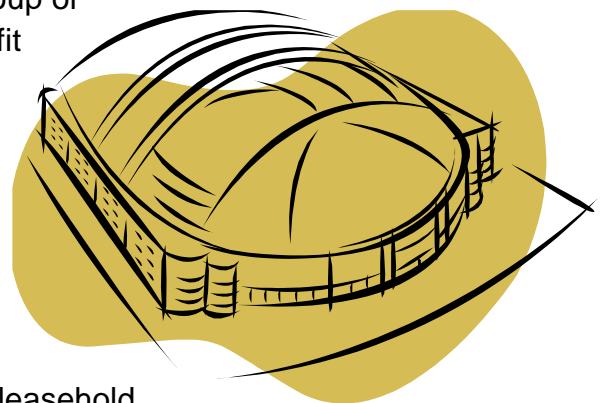
For the purposes of this policy a community group or organisation, a body whose purpose is to benefit or deliver services to the local population. It is not one or more individuals, a company (except registered charitable not for profit companies) or a public body.

Asset

For the purposes of this policy Asset means Land and or buildings including any legal interest in them; typically either the freehold or leasehold ownership.

Transfer

The transfer from the Council of any legal interest in an asset; typically either the freehold or leasehold ownership. Any disposal at full market value can be considered within the Council's ordinary processes. Any proposal to dispose of land or buildings at less than full market value to a community group will be will be assessed in the light of this policy.



Legal Basis

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. The law governing the management of assets is the Local Government Act 1972.

- Section 120 provides power for Councils to acquire land for the benefit of the district. Case law related to this means that the Council is obliged to ensure that the management of its assets is also for the benefit of the district.
- Section 123(1) indicates that, a local authority may dispose of land held by it in any way it wishes so long as:
- Section 123 (2) the land is disposed for a consideration not less than the best that can reasonably be obtained.
- Section 123(2A) Local Government Act 1972 indicates that, a local authority may not dispose of land held by it as Public Open Space without advertising its intention to do so in the local press.

The General Disposal Consent Order (England) 2003 gives consent for disposal at below best consideration reasonably obtainable provided that the undervalue is less than £2m and the proposal enhances the environmental economic and social wellbeing of the area.

Regulations made under the order set out a detailed and specific process for considering this. They include:

- Obtaining of qualified valuer's advice on the maximum price that could be obtained
- A formal decision to accept the proposed terms instead of the maximum
- Specifying, but not valuing, the proposed enhancements to the environmental economic and social wellbeing of the area that justify the decision.

Counsel's advice obtained by the Council concludes that:

- Best consideration should normally be demonstrated by an open marketing and bidding process unless valuer's advice firmly concludes otherwise, perhaps because of a special purchaser situation.
- Best Consideration Reasonably Obtainable means the highest price.
- If a lower price is accepted because of a community benefit then the terms of transfer should legally secure those benefits over time.



In addition to these specific powers and duties the Council has a general fiduciary duty to the public purse.

In the coming years government funding will reduce. This will place an even higher emphasis on the importance of prudently managing the Council's assets and resources.

Any decision not to maximise financial returns must be proportionate to other gains and based on compelling improvements to public services and facilities.

Fiduciary Duty

The Council is also under a general and moral duty to manage its affairs properly and efficiently. For immediate purposes this means that in general it should maximise financial returns in the interest of the district.

Where it accepts non-financial benefits in lieu of financial ones these should be:

- in proportion to the financial return that is foregone.
- Compelling, real and tangible
- in addition to what already exists or is planned
- sustainable and on-going



CAROS

The Council already operates a Community Asset Rent Offsetting scheme. This is a grant scheme that operates to provide a discretionary grant to community groups that lease land or buildings from the Council. The grant level is specific to each piece of land or building and is calculated so as to reduce the net amount paid by the organisation to a threshold. The level of the threshold, and the criteria of the scheme are available for the Portfolio Holder to review each year. The current amount set in the scheme is the higher of £500 or 25% of the open market rent although any organisation whose rent is lower than £500 will pay only the actual rent.

CAROS is set up with the aim of supporting existing community organisations and their existing contributions to the District's community. It allows the Council to balance the financial needs and obligations of the authority with the actual levels of community benefit. The review mechanism allows that balance to be adjusted as circumstances change and in the event that community services are lost or withdrawn.

Degrees of Transfer

The Council can transfer a range of interests in property. These vary in the degree of rights and ownership transferred. The level of interest that the Council should transfer can be related to the nature of the proposals at hand, the extent of the community benefits offered and any limiting factors.

Interest or structure created	Suitability	Control mechanism(s)
Complete transfer of freehold interest direct to an organisation	For large and bold schemes for national or regional quality facilities that don't currently exist. Where a major step change in the level of facility is to be provided.	Claw back provisions ¹ Restrictive covenants ² Buy back provisions ³
Creation of a Charitable trust	For large and bold schemes where more than one organisation is involved and Where a major step change in the level of facility is to be provided.	Rules within the constitution of the trust. Reversion of the asset to the Council in the event of failure or

		discontinuance.
Creation of a special purpose vehicle (company)	For schemes where a number of interests are involved, where potential sale of part of an asset comprises part of the scheme and where the Council wants to retain a controlling or coordinating interest in the asset(s)	Rules within the articles of the vehicle. The control measures within whichever of these transfer mechanisms chosen for the vehicle.
Long lease (eg 99 years)	For ambitious schemes that provide major new facilities. Where a major step change in the level of facility is to be provided.	Use restrictions ⁴ Bar on dealing ⁵ Break clause(s) ⁶
Medium term lease (eg 25 years)	For schemes where an upgrading or renewal of facilities is proposed.	Use restrictions ⁴ Bar on dealing ⁵ Break clause(s) ⁶
Short Term lease (eg 5 years)	For schemes where a refurbishment or repair of facilities is proposed.	Use restrictions ⁴ Bar on dealing ⁵

In all cases a conditional contract may be appropriate. This means the Council and one or more organisations having a contract that looks forward to the transfer of an asset in the event that conditions are met, for instance to grant a lease when a club secures a grant for the work envisaged.

In all cases it must be an obligation on the transferee to actually complete the work (if applicable) to appropriate standards and timescale and to deliver the additional community benefits proposed.



In the case of a lease the Council may elect to set a peppercorn rent, concessionary rent or a stepped rent depending on the circumstances. Where gains to community benefits are limited the Council should set rent at open market levels and allow CAROS to balance objectives, if it is applicable.

Footnotes:

- 1 A contractual requirement to pay to the Council all or the proportion of any sale proceeds or increase in value if the asset is sold or altered in the future.
- 2 A contractual requirement to do or not do particular things on the asset. These can be challenged and are sometimes problematic to enforce.
- 3 A contractual obligation to allow the council to buy back the land if it is no longer needed for the scheme proposed at the original or another value.
- 4 Restrictions in the lease to prevent other uses of the site.
- 5 Restrictions in the lease preventing it being passed on to others or encumbered for example by mortgages or subtenants.
- 6 Contractual clause allowing the Council to end the lease if proposed works are not done or if some other event does or does not happen.

Requirements

The Council has obligations to responsibly manage its assets. It must not be drawn into simply giving them away because organisations do not want to pay rent or because managing them is time consuming. In every case a proposal to be supported by an asset transfer **must**:

- a) Be based on a proposal to provide new or improved community facilities, and;
- b) Include appropriate legal safeguards to ensure that this happens, and;
- c) Be for a project that would not otherwise be deliverable, and;
- d) Be to a community trust, charity or other community organisation, and;
- e) Include details to verify that the proposals are sustainable for the period of the transfer

In every case a proposal to be supported by an asset transfer **should**:

- a) Seek to maximise the benefits to the community
- b) Include appropriate indications of support from planners, funders, regulatory bodies and the like
- c) Include appropriate consideration for any assets that are required.

Limiting Factors

The Council has obligations to responsibly manage its assets. It must not be drawn into the transfer of assets that would prejudice other corporate or community objectives or interests. Limiting factors may include:

- a) Limiting the potential of the Council to deliver on area action or masterplans
- b) Limiting the potential to develop other facilities or services
- c) Disproportionately large effect on the potential or value of adjoining sites
- d) Preventing a current or future disposal of land that would offer a more substantial community benefit

Policy

The Council will transfer land to community organisations where:

- a) All of the mandatory requirements are met, and;
- b) The discretionary requirements are in proportion to the interest and terms proposed, and;
- c) The benefits are in proportion to any limiting factors, and;
- d) The nature and terms of the transfer are proportionate to the community benefits and to any of the limiting factors.

Procedure

The Consideration of requested Community Asset Transfers will take place within the Council's Property Dealing Procedure.

Any Request for Community Asset Transfer will be directed first of all to the Assets Manager in line with the Property Dealing Procedure. The basic feasibility appraisal conducted will include a statement on whether a Community Asset Transfer is proposed and if so whether that proposal includes a clear statement of proposed enhanced community facilities or services that are planned to result.

Any proposal or request for a Community Asset Transfer that does not propose significant additional community benefits or services will be ruled unfeasible.

If the potential disposal is considered feasible the resulting report to the portfolio holder will include an analysis of the proposal relative to any of the requirements or limiting factors to the extent that they are known at the time. The report will also consider whether Council support should be given to the development of groups, proposals or funding bids. The Portfolio Holder will then determine whether to proceed with the matter and if so the level of any Council support to be offered to the community group requesting the transfer and what the objectives of that scheme should be.

In the event that the Portfolio Holder for Regeneration, Inward Investment and Asset Management determines upon the consideration of a disposal in response to a request for a Community Asset Transfer the disposals procedure will be expanded to include:

- the full appraisal of the requirements and limiting factors
- (where authorised) supporting the development of proposals
- Consultation with any similar groups or organisations offering the same or similar facilities/services in the District.
- Consideration of whether a conditional contract would be appropriate
- All of the steps required by the guidance under the General Disposal Consent Order (England) 2003 or other legislative requirements.

In accordance with the Property Dealing Procedure any decision on the fact of or terms for a Community Asset Transfer will be considered by the Council's Cabinet. The Cabinet will determine whether to proceed on the basis of the balance of the interests of the Council and community. The table overleaf is intended as a guide for members' consideration and should not fetter their discretion to balance the various interests as they see fit.

Balancing the Priorities

Mandatory Requirements:

a) The proposal is based on a scheme to provide significant new community facilities or significantly improve existing ones.	Yes/No
b) The proposal includes appropriate legal safeguards to ensure that this happens	Yes/No
c) The proposal is for a project that would not otherwise be deliverable, and;	Yes/No
d) The proposal is to a community trust, charity or other community organisation, and;	Yes/No
e) The proposal includes details to verify that the proposals are sustainable for the period of the transfer	Yes/No

Note: all of these requirements **must** be met in all cases. No report to Cabinet will be submitted unless all of these criteria are met.

Discretionary Requirements:

	A transfer is <u>unlikely</u> to be appropriate	A transfer <u>may be</u> appropriate	A transfer is <u>likely</u> to be appropriate
a) Seek to maximise the benefits to the community	Improvements to facilities/services will be minimal or could be better or more efficiently provided in another way	Improvements to facilities/services will be significant.	Improvements to facilities/services will represent a major new facility of regional value or a step change in district wide provision.
b) Include appropriate indications of support from planners, funders, regulatory bodies and the like	The Project is contrary to a specific Council priority policy or project, or; There is no evidence of support from funders or regulators.	The project is consistent with Council priority policies or projects, and; There is evidence of approvals or support from funders and regulators	The project delivers a specific Council priority policy or project, and; There is evidence of approvals or support from funders and regulators.
c) Include appropriate payment that reflects the nature of the proposals	No, or little, consideration is proposed compared with small benefits.	The level of consideration is in line with the level of community benefits proposed.	The project looks forward towards a real financial return to the Council in the future.
d) Other benefits (insert if required)	For consideration as appropriate		

Limiting Factors:

	A transfer is <u>unlikely</u> to be appropriate	A transfer <u>may be</u> appropriate	A transfer is <u>likely</u> to be appropriate
a) Limiting the potential of the Council to deliver on area action or masterplans	The project would block or hinder the delivery of a Council policy or project.	The project is consistent with the delivery of a Council policy or project.	The project delivers a Council policy or project.
b) Disproportionately large effect on the potential or value of adjoining sites	The project would have a major limiting effect on the potential development (whether for council use or disposal) of adjoining Council land or building.	The project would have a marginal or no effect on the potential development (whether for council use or disposal) of adjoining Council land or building.	The project would have an enhancing effect on the potential development (whether for council use or disposal) of adjoining Council land or building.
c) Prejudice a current or future alternative community benefit service or facility	The project would have a significant detrimental effect on another community or public service or facility.	The project would have a marginal or no effect on another community or public service or facility.	The project would complement or support other community or public service or facilities.
d) Other benefits (insert if required)	For consideration as appropriate		

Any report recommending a Community Asset Transfer will include an assessment of all of the requirements and limiting factors in order to facilitate Cabinet's judgement on the balance of the benefits, effects and priorities.

Any report recommending a Community Asset Transfer will include a degree or type of transfer and terms including safeguards that are proportional to the proposals and in the interests of the Council.

Where significant improvement of community services or facilities is not proposed, or other criteria cannot be met it may still be appropriate for the project to proceed at open market rental levels and subject to CAROS as applicable at the time.