

Key Decision Required:	No	In the Forward Plan:	No
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**REPORT FOR CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)
RELATING TO THE CLACTON COUNTY HIGH SCHOOL AND TENDRING EDUCATION
CENTRE LAND SWAP TRANSACTION– LAND AT VISTA ROAD AND JAYWICK LANE
CLACTON-ON-SEA ESSEX**

25 November 2022

(Report prepared by Saira Mahboob and Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To authorise completion of transfer of freehold land at Vista Road Clacton-on-Sea Essex to Essex County Council ("ECC") for £1.00 in exchange for transfer of freehold land at Jaywick Lane from ECC to the Council for £1.00 and completion of associated documents to facilitate the extension of the sixth form facility at Clacton County High School ("CCHS") and improvement of public open space at Rush Green and add further open space land adjoining ("TEC") Site at Jaywick Lane.

EXECUTIVE SUMMARY

This report is supplemental to the Cabinet Reports dated 11 October 2019 and the decisions agreed by Cabinet on 11 October 2019 in both parts A and B of that Agenda.

The Council owns the freehold land at Vista Road which includes Clacton Leisure Centre and Vista Road Recreation Area. The land adjacent to CCHS shown on the plan annexed to the cabinet reports to be initially transferred to ECC with the intention that it will transfer the land to be transferred to the Sigma Trust. CCHS is an Academy school under the umbrella of Sigma Trust ("ST"), to accommodate additional 11-16 year old pupils at the Academy school.

In exchange for the transfer of land at Vista Road, ECC will transfer land at Jaywick Lane Clacton-on-Sea adjacent to the TEC to create a new sixth form facility at the TEC site.

The Transfer of land at Vista Road from TDC to ECC includes standard rights granted for the property and reserved for the retained land owned by the Council which includes the:

- i) Right of support and protection for the property from the retained land
- ii) Right to enter the retained land to carry out necessary works to the property transferred.
- iii) Right to connect to existing service media
- iv) Right to connect to additional service media

Upon completion of the Transfer ECC will simultaneously transfer the land to ST. ST will have to comply with the following covenants:

- a) Not to use the land for any purpose other than a playing field.
- b) Not to carry out any development of the Property which would change the use or designation of the Property from school playing fields other than to support formal sports on the Property for use primarily by the adjacent school situated on the CCHS Land.
- c) Covenants i) and ii) will automatically cease upon the expiration or early

determination of the joint use agreement between the Council and ST (“JUA”).

The Transfer of land between Rush Green and Jaywick Lane from ECC to TDC contains standard rights granted for the Property and reserved for the land owned by ECC which includes the:

- i) Right of support and protection for the property from the retained land
- ii) Right to enter the retained land to carry out necessary works to the property transferred.
- iii) Right to connect to existing service media
- iv) Right to connect to additional service media

Rights i) –iv) are granted subject to obligations that ECC is required to observe/perform under a Private Finance Initiative Contract (“PFI”) with a third party made between ECC (1) QED Clacton Limited (2) dated 4 November 2003 relating to the construction of and provision of services to various buildings and services on the retained land and any variation or renewal of such agreement). ECC have declined to provide details of the obligations under the PFI Contract on the basis that the contract as a whole is commercially sensitive and therefore, reference to it cannot be made to it in the CCHS Land Swap Contract nor in the Jaywick Lane Transfer to the Council. Requests for a copy of the PFI Contract or a summary of the contractual obligations which the Council is expected to observe/comply with, to be included in a side letter have been declined. As a result of this, indemnity insurance cover cannot be obtained and ECC have also declined to indemnify the Council for any breach of the “unknown contractual obligations.” The PFI Contract will expire in 2035 and until then the obligations under the PFI Contract remain enforceable.

This part of the agreement creates some unknowns but risks to TDC only arise if it seeks to enforce access rights onto the PFI site during the course of the PFI contract. There is a very limited likelihood that TDC would need to exercise these rights and would have some potential alternative options in the event. On balance it is better to have the rights. There is no risk or cost unless TDC decides to take or incur them.

The Council has granted rights of access under a licence to ECC and ST for construction of general access, installation and use of services in the car park and access roads adjoining the Leisure Centre and School site.

The Council and ST will enter into a revised joint use agreement with ST currently related to the football changing room to encompass:

- (a) revised arrangements in relation to the changing room;
- (b) regulate the use and management of the car park and access;
- (c) to facilitate public use of the area transferred to ECC at Vista Road outside of school hours; and
- (d) to facilitate the use, by ST during school hours, of the all-weather pitch owned by the Council.

Under a funding agreement, which replaces the umbrella agreement mentioned in the Cabinet decision, ECC will transfer a sum of money as previously agreed by the Cabinet to the Council to part fund the replacement of the all-weather pitch and fund the various of

the improvement works at both of the locations as indicated on the plans save for the potential multi-purpose building and tennis, skate and play areas.

The Council would be obliged to procure and carry out the key deliverables as referred to in the Cabinet report previously and would at its discretion use the remaining funds to carry out the other improvements indicated on the plans.

RECOMMENDATION(S)

That the Corporate Director (Operations and Delivery) and Deputy Chief Executive in consultation with the Portfolio Holder for Finance and Governance note the contents of this report and authorise:

- a. The freehold disposal of land at Vista Road, Clacton on Sea as identified in the previous Cabinet Decision for the purposes of educational provision, relying on the General Consent Order for the reasons set out within the Cabinet Report dated 11 October 2019;
- b. the freehold acquisition of land at Rush Green/Jaywick Lane Clacton on Sea as identified in the Cabinet report, for the purposes of public open space;
- c. the revision and extension of an existing joint use agreement related to changing rooms to include grass and artificial pitch areas;
- d. entering into a funding agreement with ECC, essentially replacing the umbrella agreement approved by the cabinet previously to secure funding from ECC for various improvement works in return for the various rights granted and the Council's undertaking to procure and carry out key improvement works at the Vista Road site.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Corporate priorities include:

- Delivering quality environment
- Balance annual budget
- Use assets to support priorities
- Facilitate improved qualification and skills attainment
- Effective partnership working
- Engagement with the Community
- First rate leisure facilities

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

As referred to in the Cabinet Report dated 11 October 2019

Risk

As referred to in the Cabinet Report dated 11 October 2019

LEGAL

In coming to decisions in relation to the management or procurement 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.

Section 32 of the Housing Act 1985 together with the General Housing Consent 2013, Consent A gives the Council discretionary power to dispose of land held under Part II of the Housing Act 1985 that has not been developed/is vacant. In this case the land is held under Pt II of the Housing Act 1985. It includes no dwellings and accordingly Secretary of State consent is not necessary because the General Housing Consent 2013, Consent A applies.

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. Details of the proposed terms are set out in the Cabinet Report dated 11 October 2019.

The Corporate Director (Operations and Delivery) has the delegated powers to make this decision on the terms set out in the Cabinet Report of the Leader of the Council in accordance with paragraph (b) of minutes numbered 142 of the Cabinet Decision dated 19 October 2019.

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/Public Engagement and Wards; and any significant issues are set out below.

None

Ward

St Pauls and Bluehouse

BACKGROUND INFORMATION/ PAPERS FOR THE DECISION

The Council owns the freehold of land including Clacton Leisure Centre and Vista Road Recreation Area. It has been used as public open space since acquisition in 1935. The land lies adjacent to Clacton County High School.

The Council owns the freehold of land including Rush Green Bowl and Rush Green Recreation Area at Jaywick Lane. The land is currently open space and recreational but has been used as landfill in the past. The land lies adjacent to the Bishops Park site.

ECC approached the Council with a proposal to expand and improve secondary education in Clacton and in the District by expanding Clacton County High School to accommodate additional 11-16 year olds pupils. The proposal includes the construction of additional buildings on the existing school site and additional recreational space.

ECC proposed to create a new sixth form facility at Jaywick Lane using existing buildings. In order to meet space requirements at the school ECC needs to expand the CCHS site.

In order to facilitate this project ECC requested that an area of land is transferred to it.

Access at the CCHS site is restricted and for many years the Leisure Centre car park has been used for pick up and drop off and for visitor parking. No agreement for such use has been in place. Separately ECC has been granted access for construction purposes and additional easements for services to the potential new construction.

The existing Council owned all-weather pitch is in need of renewal and upgrading. There

are other features at the site which are in need of repair and upgrading. The existing changing pavilion to the North West of the current school site is subject to a joint user agreement. ECC has proposed that in order to mitigate the loss of public open space an area of land to the West of Rush Green, complete with access off Jaywick Lane, is transferred to the Council.

The Portfolio Holder for Corporate Finance & Governance initiated the process in relation to the acquisition and disposal on 05 July 2019.

Cabinet Report dated 11 October 2019 authorised Council Officers to initiate negotiations and authorise the Deputy Chief Executive and Corporate Director (for Operations and Delivery) in consultation with the Portfolio Holder for Corporate Finance and Governance authority to enter into the necessary legal agreements to deliver this project.

APPENDICES
None