

# **Management Committee**

## **19 November 2018**

### **Functions and Assets**

#### **For Decision**

#### **Portfolio Holder(s)/ Briefholder**

Cllr A Reed – Corporate

#### **Senior Leadership Team Contact:**

S Caundle, Assistant Chief Executive

#### **Report Author: J Strange, Head of Financial Services**

#### **Statutory Authority**

Local Government and Public Involvement in Health Act 2007, Chapter 3, ss98 and 99

#### **Purpose of Report**

- 1 To provide an update on proposals concerning the setting up of the Town Council. The report details the current position in respect of the main functions and associated assets that it is proposed to be transferred to the Town Council from 1 April 2019.

#### **Recommendations**

- 2 That the proposals set out in paragraphs 12 to 29 regarding the services and associated assets to be transferred to the new Weymouth Town Council are agreed in principal to enable further detailed plans to be developed.
- 3 That the legal basis for the transfer of assets to the Town Council is approved to be freehold unencumbered wherever possible.

#### **Background**

- 5 There are significant changes to Local Government taking place in Dorset with the creation of a new unitary council from April 2019. The creation of the new Dorset Council will mean that Weymouth & Portland Borough Council will cease to exist and all of its functions, services and assets being transferred on the 1 April. In response to this, the Borough Council undertook a community governance review to gauge public opinion on the options of setting up a new Weymouth Town Council.

- 6 The new Weymouth Town Council will be created on 1 April 2019 and a working group of members has been reviewing what services the new Town Council should initially provide. They have been doing this against the background of the spending protocol and principles developed on asset transfers by the Shadow Dorset Council. The Ministry for Housing Communities & Local Government (MHCLG) have stated that if the various bodies fail to cooperate and agree asset and financial transfers they will step in and impose regulations which will limit any transfers to the Town Council. It is envisaged that the provision of other services may be taken on by the Town Council in the future.

## Proposals

- 7 The Task and Finish Group is made up of Councillors representing all of the political parties. They have been working on proposals with the aim of creating a financially sustainable Town Council. The proposals have been shared with all members through a number of Members Briefings. Going forward, the Shadow Steering Group will replace the Task and Finish Group and oversee the remainder of the process to form the Town Council.
- 8 In developing the proposals the Working Group established a number of principles that would be applied in order to develop options that could be agreed with the Shadow Dorset Council and enable the creation of a financially sustainable Town Council. The principles are:-
- Transfer of traditional Town Council Services
  - Transfer of Services not provided by the Unitary
  - Services should support Weymouth rather than a wider area
  - There should be no financial detriment to the Unitary Council
- 9 In addition to our own principles, the Shadow Dorset Executive received a report on potential future asset transfers to Town Councils at its July meeting and agreed a number of principles that it would use in assessing any proposed transfers. These are:
- All assets required for the delivery of Council services and those capable of generating income are transferred to the new unitary Dorset Council, but the unique circumstances of Weymouth Town Council and Portland Town Council will be considered separately.
  - Any resolution prior to 26 May 2018 by sovereign councils to dispose of an asset but not yet legally completed may continue unless it contradicts these principles.
  - Property held as public open space, community buildings, free car parks and public toilets can be considered for transfer to the appropriate town or parish council.
  - Any transfer of assets will usually be by transfer of the freehold to a public or charitable body or via a long lease (25 years minimum). Transfer will also be dependent on an assessment of the capacity of the receiving authority/organisation to take on the asset.
  - Councils can consider asset transfer to community groups other than parish and town councils where appropriate and subject to the same assessment of the capacity of such groups but such transfers are considered to be lower priority because of timescales and capacity.

- Any transfer (other than by a lease) of open spaces will contain overage clauses that will retain the land for public use or, if the land is sold the new Dorset Council will receive a proportion of the proceeds from the sale.
- Where a Council has negotiated the devolution of a service to a town or parish council and asset is transferred to support the delivery of that service, there will be no financial loss to the new Dorset Council i.e. the transfer is cost neutral.
- No financial agreement will be made with a town or parish council, or other receiving body to support the maintenance and running of a transferred asset after 1 April 2019.
- Any asset transfer that could have a financial impact upon the new Dorset Council will be initially assessed by the interim Section 151 Officer and, if it has a significant financial impact, or potential significant impact, seek approval by the Shadow Executive. De minimis levels of £100,000 are proposed in order to avoid the process becoming unmanageable.

10 Against this background, it is proposed to transfer services and the associated assets covering the following areas:-

- Greenspaces
- Public Convenience
- Beach & Esplanade
- Community Development
- Property
- Civic Activities

11 Each of these areas will be examined in more detail below but they all comply with both the Working Group's and Shadow Dorset Council's principles.

### **Greenspaces**

12 The only statutory duty of a Town Council is the provision of allotments, if there is demand for them. The administration and operation of all 10 sites within the Town would transfer to the Town Council.

13 The provision of parks and gardens such as Greenhill, Nothe and Radipole Park Drive Gardens would transfer to the Town Council. This would also include any café's or other concessions contained within the gardens.

14 All play areas & Open Spaces maintained by the Borough Council within Weymouth would transfer. This would include the Marsh, the open space at Lodmoor Country Park (but exclude the Nature Reserve and existing leases) and 12 play areas. It would not include Redlands Community Sports Hub.

15 It is also proposed to transfer Tumbledown Farm to the Town Council as this has long been an integral part of the future of the Parks service although further work is being undertaken to ensure existing projects can be completed.

16 The administration and operation of all 6 cemeteries and 1 closed cemetery would also transfer to the Town Council. The Crematorium is not

proposed to transfer as it serves a wider area than just Weymouth and would not be cost neutral for Dorset Council.

### **Public Conveniences**

- 17 The provision of public conveniences within Weymouth would transfer to the Town Council. This will involve the transfer of 10 sets of public conveniences. Further consideration will need to be given to whether the new toilets proposed for the Esplanade are handed over as a project with funding and completed by the Town Council or are constructed by Dorset Council and transferred once they are completed.

### **Beach & Esplanade**

- 18 All aspects of the Weymouth beach operation would be transferred to the Town Council including health and safety, deckchairs and lost children etc. The cost of cleaning the beach and litter bin emptying along the Esplanade would also transfer.
- 19 All operational aspects of the Esplanade including all concessions, advertising drums, seafront shelters would transfer. This will also include the new lighting scheme. As the Esplanade is classed as a sea defence, the freehold and all coastal defence responsibilities must remain with the Unitary Authority but a lease will enable the operational aspects to be managed by the Town Council.
- 20 Whilst these proposals do include income generating assets, they are related to the provision of services along the beach and Esplanade and there is still a net cost associated with these functions.
- 21 The Festivals & Events function would also transfer as the majority of activity is supporting events held within the Weymouth area.

### **Community Development**

- 22 The Borough Council currently undertakes inter-agency community planning and community development work in Weymouth & Portland. The main focus of work has been on sharing best practice, networking, joint projects and reducing inequalities focusing on the most deprived communities in the Borough. It is proposed that the regular local community development work within Weymouth is transferred to the Town Council, though the Dorset Council will maintain a strategic overview of community development and partnerships work, and may commission additional work such as that being undertaken for the Melcombe Regis Board.

### **Property**

- 23 Commercial Road would be transferred to the Town Council to become their base within Weymouth. It is assumed that Dorset Council would still wish to continue delivering some of its services from the building therefore access would still be required in order to maintain continuity of service to the public.
- 24 The Crookhill Depot is primarily a Waste Transfer Station therefore would transfer to Dorset Council. However, it is also the base for the Greenspaces Team. It is anticipated that access would be provided to

enable this arrangement to continue for a period of time, potentially in a reciprocal arrangement linked to access at Commercial Road.

- 25 The management and maintenance of the Clocks & Monuments would become the responsibility of the Town Council involving 20 sites across the town including the Jubilee Clock and the King George III bathing hut.
- 26 The Town Centre Management function will also be transferred to the Town Council.
- 27 There are a number of other properties such as garages which are currently not used for operational purposes and cultivation licences which it would seem appropriate for the Town Council to be responsible for. In addition there are a number of other miscellaneous land holdings which do not generate income that are being considered as to whether they should be transferred to the Town Council or Dorset Council.

### **Civic Activities**

- 28 The Town Council will make its own arrangements for its Civic activities such as mayoral functions etc. but the Twinning arrangements will pass to the Town Council to administer.
- 29 Responsibility for the Weymouth Museum Collection will also transfer to the Town Council.

### **Shadow Town Council**

- 30 The Shadow Town Council considered the proposals contained within this report on 18 October 2018. The minutes of that meeting in relation to the proposals are contained in Appendix 1.

### **Process for the Transfer of Assets**

- 31 Following the receipt of specialist legal advice, the process for the transfer of assets to the Weymouth Town Council has been clarified. In particular S.98 of the Local Government and Public Involvement in Health Act 2007 and Regulations made pursuant to s.97 of that Act allow the Reorganisation order to be made.
- 32 Allotments however are covered by Regulation 9 of the Local Government (Parishes and Parish Councils) (England) Regulations 2008 (No. 625 of 2008) require the vesting of the Weymouth and Portland BC allotment sites in Weymouth Town Council. The allotment sites have been identified, inspected and details of them are ready for insertion into the relevant schedule of the draft reorganisation order.
- 33 For transfer of assets that have freehold registered title with WPBC and where these are agreed to be transferred freehold unencumbered then the transfer is relatively straight forward. These will be listed in the detailed order considered in January 2019 and become the property of Weymouth Town Council on 1 April 2019.

- 34 Where the asset has no registered title or transfer is on a long leasehold basis then the transfer is likely to be more complex, will take longer to complete, and will require a series of additional steps.
- 35 For long leasehold asset transfers, leases will only be capable of actually being completed, on/after 1 April 2019 as the Town Council will not exist until that date and will thus not be capable of being the recipient of the grant of a lease. It may be possible to conclude negotiations regarding the terms of any such leases before 1 April with a view to them being completed shortly thereafter.
- 36 Depending on the volume of leases to be agreed, it is unlikely that leases will be able to be granted on 1 April 2019. The transfer can happen at a later date in accordance with the provisions of s.99 of the 2007 Act. Seamless continuance of service provision to members of the public while transfer is pending can be achieved by agreement between the parties concerned.
- 37 There is therefore an important consideration for the respective councils to consider now. The majority of town councils in Dorset were passed or acquired assets on a freehold basis with no constraints or claw-backs from the gifting authority. A decision to be made therefore is whether the majority of assets would be transferred freehold with no clawback provisions, or alternatively passed on say a long 125 year lease, with clawback and other restrictions. This is something that would have to be agreed with the Shadow Dorset Council
- 38 From an operational need basis some assets would need still to be long leasehold (i.e for Dorset Council to retain the sub structure of the Esplanade as a sea defence as their responsibility) but these could be relatively few in nature if a freehold unencumbered asset transfer was agreed as the principle for most transfers.
- 39 The Shadow Town Council's view was that assets should be transferred freehold wherever possible and this is reflected in the recommendation in this report.
- 40 Members should be aware that a different statutory regime will apply to any transfer of services and property to Portland Town Council as it is an existing Council to which Part 4 of the 2007 Act does not apply. The proposed transfer of properties to Portland Town Council is the subject of a separate report elsewhere on the agenda.

### **Next Steps**

- 41 This report and comments from the Borough Council Management Committee will be considered by the Shadow Executive to confirm their support for the general direction. These will not be final decisions. The proposals set out in this report fulfil the requirement for setting up a financially sustainable Town Council and also do not adversely impact the Unitary Council.

- 42 The final reports will go to the Management Committee in January 2019 followed by the Shadow Dorset Executive and WPBC Full Council in January.

### **Town Council Budget**

- 43 Alongside the development of the services and asset transfers, work has started on the 2019/20 budget for Weymouth Town Council. Part of these proposals will be setting the level of council tax. For residents this will mainly be offset by a reduction in what was the Borough Council's council tax charge. The budget can be completed once the service and asset transfers have been finalised and will be set by Full Council in January 2019.

### **The Future**

- 44 It is recognised that the successful establishment and functioning of Weymouth Town Council will be an ongoing process. There may be scope for further services to be taken over by it in the future and this may require the transfer of other assets, etc. for which provision is made in the relevant legislation

## **Implications**

### **Corporate Plan**

- 45 None directly from this report

### **Financial**

- 46 As set out in the report

### **Equalities**

- 47 None directly from this report

### **Environmental**

- 48 None directly from this report

### **Economic Development**

- 49 None directly from this report

### **Risk Management (including Health & Safety)**

- 50 The project Risk Register is regularly reviewed and updated.

### **Human Resources**

- 51 None directly from this report although if proposals are supported in January 2019 a number of staff will be transferred to the Town Council under the Transfer of Undertakings Protection of Employment (TUPE) regulations

## **Consultation and Engagement**

- 52 There are a number of member and staff briefings on the proposals. Trade Unions have also been consulted. Their comments are below:

Unison is concerned that any delay in identifying staff who might be transferred will have a detrimental effect on staff wellbeing. Also Unison currently have no agreed approach with management over TUPE arrangements, which again has the potential to impact on management's duty of care to affected staff. Consequently Unison consider that early identification of individuals and agreement over the detailed process of transfer will be critical.

In general Unison expect that affected staff will transfer to the new Council on their existing Terms & Conditions (as already agreed with the unions under an existing collective agreement) with no measures. If there was any thought of the need for measures to make changes, these would need to be identified very soon because we would need to consult with affected staff before any new negotiated agreement, if possible, could be finalised.

## **Appendices**

- 53 Appendix 1 – Minute Extract from Shadow Town Council Meeting 18 October 2018.

## **Background Papers**

- 54 Monthly Member Briefing to all Councillors

## **Footnote**

- 55 Issues relating to financial, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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