

Management Committee

19 November 2018

Portland Town Council – Transfer of Functions and Assets

Appendix 1-Not for publication by virtue of paragraphs 3 & 5 of Schedule 12A, Part 1 of The Local Government Act 1972, as amended. The public interest in maintaining the exemption outweighs the public interest in disclosing it.

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 Act 1972

Purpose of Report

- 1 To provide an update on the requests from Portland Town Council for the transfer of functions and assets that they would like to take over from 1 April 2019 when Weymouth and Portland Borough Council ceases to exist. The requests have been arrived at following the disaggregation of services from the Borough Council to Weymouth Town Council and the devolution agenda.

Recommendations

- 2 That the requests for transfer of Functions and associated assets to Portland Town Council following the disaggregation of Borough Council services is approved.
- 3 That the requests to transfer functions and assets to Portland Town Council regarding devolution is approved, subject to the completion of physical site inspections of assets.
- 4 That Management Committee consider the funding request of £250,000 from Portland Town Council.

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.
- 6 The new Weymouth Town Council will be created on 1 April 2019 and a number of services and assets are proposed to be transferred to them as set out in a report elsewhere on this agenda. As a result there are a number of parts of services delivered in Portland that would transfer to Dorset Council on 1 April following the disaggregation unless Portland Town Council request to take over these services.
- 7 In addition, there are a number of other functions which Portland Town Council are requesting to become responsible for on 1 April 2019 under the devolution agenda

Portland Town Council Requests

- 8 Over recent months, Officers have been working with representatives from Portland Town Council to understand the existing costs of Portland based elements of Borough Council services in order to develop their request for the transfer of functions and assets from the Borough Council.
- 9 As part of these discussions the principles agreed by the Shadow Dorset Executive at its July meeting relating to transfers to Town and Parish Councils have been taken into consideration. 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, Portland Town Council have requested the following functions and assets be transferred from 1 April following the disaggregation of Borough Council services to Weymouth Town Council.

- Greenspaces
- Public Conveniences
- Clocks and monuments
- Civic Regalia

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

Greenspaces

12 All allotments, parks & gardens and play areas & Open Spaces maintained by the Borough Council within Portland is requested to transfer. This would include the Victoria Gardens, Easton Gardens, Grove Road Sports Facility and 6 play areas.

13 The administration and operation of the Cemetery and 1 closed cemetery would also transfer to the Town Council.

Public Conveniences

14 The provision of public conveniences within Portland is requested to transfer to Portland Town Council with the exception of the toilets at Portland Bill. The Town Council feel these should remain with the Unitary Council. This will involve the transfer of 4 sets of public conveniences including Lord Clyde car park toilets which are currently closed.

Clocks and Monuments

15 The management and maintenance of the Clocks & Monuments are requested to become the responsibility of the Town Council involving The Cenotaph, Olympic Rings, Spirit of Portland statue and 2 clocks.

Civic Regalia

16 As Portland Town Council already have their own regalia they are not requesting shares of the Mayoral Chains etc however there are a small number of items that the Town Council would wish to see transferred to Portland. These are:

- The Upham Collection of watercolours
- One of the 2 large Maces
- The Mayors Chair
- The second set of Mayoral Robes (if there is one)

Devolution Agenda

- 17 In addition to the services related to the disaggregation of Borough Council services, there are a number of other functions and assets that Portland Town Council have requested be transferred to them from 1 April 2019 under the devolution agenda.

Car Parks

- 18 There are 6 free car parks on Portland which are requested to transfer. These are:
- Church Ope
 - Easton
 - Fortuneswell
 - Hambro
 - Lord Clyde
 - New Ground
- 19 In addition, Portland Town Council request the Masonic Car Park and Skate Park. Whilst this currently is an income generating car park, the costs associated with operating the car park, including enforcement and cash collection costs as well as rates etc, outweigh the income generated leading to a net cost to the Borough Council.

Other Land and Buildings

- 20 In addition to the assets relating to the functions listed above there is a list of other land and buildings which are requested to transfer to the Town Council. The assets are generally not income generating or have only peppercorn rents. This list, along with the functional assets above, is contained in the confidential Appendix 1.

Basis of Asset Transfer

- 21 The transfer of freehold assets to Portland Town Council will be made under the provisions of the Local Government Act 1972. S123 of the Act requires the Council to achieve 'Best Consideration' when disposing of assets or if transferring at 'less than best' must show that the disposal is likely to improve the economic, social or environmental well-being of persons resident or present in its area. If the total value of assets is in excess of £2m then Secretary of State approval will be required. Valuations of the assets contained in Appendix 1 will need to be made in order to determine if this approval is required.
- 22 The way an asset might be transferred, as indicated below can affect current value, and future control or flexibility. Consideration therefore needs to be taken on the basis of which any transfer takes place, and the extent of asset numbers and values potentially as part of the overall and final decision making process.
- 23 Asset transfers could be made on a freehold unencumbered basis, and this is the preferred method of transfer from PTC. The challenge with this is that while an asset such as green space might be transferred on that basis there would not then be any ability for the conveying council to require it to remain in that use. Redevelopment could then potentially take place, or

some other use than made of land that was transferred. This creates a challenge since any potential hope value for alternative use would need to be factored into the value assessment. That assumes further that the transferring council accepts that such alternative use was not an issue for it for the future.

- 24 Assets transferred on a long leasehold can be controlled with regards to the use to which these are put. Further potential value increases released by redevelopment or other changes can likewise be managed. These controls reduce the value of what might be transferred and thus might assist in facilitating any transfers potentially were they to be on that basis.
- 25 However such asset transfers do not give freedom of use to the PTC that they might wish. Further they do not give the potential for deriving income or capital to manage expenditure costs they incur on managing other non-income producing assets.

Bid for Funding

- 26 In addition to the functions and assets requested by Portland Town Council as detailed above, they have also made a request for funding of £250,000 as set out in Appendix 2. Management Committee are asked to review this request and indicate if they would be minded to support the request. This will need to be referred to the Shadow Executive as it is in excess of both the principles outlined above and the Spending Protocol.

Next Steps

- 27 This report and Management Committee's decisions will be considered by the Shadow Executive to confirm their support for the general direction. The final decision will be made by Full Council in January 2019. The requests for the transfer of functions and assets set out in this report are in accordance with the Shadow Executive's principles for the transfer of assets to Town Councils

Implications

Corporate Plan

- 28 None directly from this report

Financial

- 29 As set out in the report. Any funding approved would need to be funded from reserves.

Equalities

- 30 None directly from this report

Environmental

- 31 None directly from this report

Economic Development

- 32 None directly from this report

Risk Management (including Health & Safety)

33 The project Risk Register is regularly reviewed and updated.

Human Resources

34 None directly from this report although if requests are supported a number of staff will be transferred to the Town Council under the Transfer of Undertakings Protection of Employment (TUPE) regulations

Consultation and Engagement

35 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

36 Appendix 1 – Confidential list of assets

37 Appendix 2 – Portland Town Council request for funding

Background Papers

38 Request from Portland Town Council

Footnote

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

Report Author: Julie Strange

Telephone: 01305 838252

Email: jstrange@dorset.gov.uk

Date: 5/11/18