

# Cabinet

## 27 July 2021

### Asset Transfer Policy

#### For Decision

**Portfolio Holder:** Cllr T Ferrari, Economic Growth, Assets & Property

**Local Councillor(s):**

**Executive Director:** J Sellgren, Executive Director of Place

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**Report Status:** Public

**Recommendation:** That Cabinet: -

1. Agree the Asset Transfer Policy relating to the transfer of Council owned property assets of both Low and High Value to Town & Parish Councils together with Voluntary and Community based (third sector) organisations as attached to this report at Appendices 1 & 2.
2. Delegate to the Portfolio Holder for Economic Growth, Assets and Property and the Portfolio Holder for Customer Services & Communities when acting in agreement with each other the authority to determine and approve all such transfers including those decisions that amount to key decisions. Prior notice will be given in the forward plan for any proposal relating to a transfer amounting to a key decision albeit that the two portfolio holders are identified as the decision makers instead of Cabinet.

#### **Reason for Recommendation:**

Dorset Council recognises that the devolution of assets to local communities, particularly to town and parish councils and voluntary and community based organisations (third sector) can make a significant contribution to enabling them to be stronger, more resilient and sustainable in order to support services within their local areas.

Dorset Council is committed to pro-actively seeking to transfer appropriate assets in order to provide benefits to local communities.

This policy seeks to provide a fair and transparent framework for the transfer of Council owned property assets (land and buildings) to the Community being town and parish councils or third sector organisations as appropriate.

## **1. Executive Summary**

Strong, healthy communities is one of the priorities within the Council Plan requiring, amongst other things, that the Council will:-

- work collaboratively with town and parish councils and communities to identify and deliver what they think is important
- recognise when the voluntary, community and social enterprise sector is better placed to provide a service and support them in their work

The delivery of services by Town & Parish Councils and those of voluntary and community organisations is growing both in terms of scale and importance and as a result the role that these organisations can play in regeneration and delivery of services is increasingly recognised by Government and national policy makers.

The Council recognises the positive contributions that Parish & Town Councils together with those provided by voluntary and community groups (Third sector) to their local areas.

The purpose of this policy is to facilitate and support communities to access Council property assets for this purpose whilst protecting the Council's financial integrity, fiduciary duty, and wider accountabilities such as Health & Safety.

The establishment of clearly defined policies and processes which provides a fair and transparent framework in order to assess, determine and approve the basis of any proposed transfers is required as none is currently in existence.

This report sets out the policy and procedures for Asset transfer namely:-

- those assets valued at £15k or less as recommended by the Corporate Director of Property and determined and approved by the Portfolio Holders for Economic Growth, Assets & Property and Customer & Community Services when acting in agreement with each other.
- those assets valued in excess of £15k as recommended by an Asset Transfer Board consisting of Senior Council Officers and Portfolio Holders and determined by the Portfolio Holders for Economic Growth, Property & Assets and Customer & Community Services when acting in agreement with each other.

The Council is under no obligation to transfer property assets to Town & Parish Councils or Voluntary/Community (third sector) groups and any decision to do so will be taken in the knowledge of alternative disposal options (if any).

## **2. Financial Implications**

As a result of transferring assets to Town & Parish Councils and or to Voluntary and Community groups the Council may decide to forego fully or partially the benefit of rental income or a potential capital receipt in 'lieu' of the social benefits that a transfer may provide.

## **3. Climate implications**

The Council has declared a climate and ecological emergency and is committed to taking direct action to reduce the negative environmental impact of any services it provides.

Organisations applying for an asset transfer will be required to detail how the transfer will benefit the environment.

## **4. Other Implications**

Any disposals will require Legal input in terms of exchanging and completing contracts of sale and ongoing input from Finance in terms of the review of business cases, impact on capital and revenue budgets together with the monitoring and management of capital receipts.

The Council has the discretionary power under the General Disposal Consent (England) 2003 and S123 of the Local Government Act to consider disposals of surplus assets at less than best consideration where such disposal is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the Dorset Council area and its residents provided that the value of the asset is less than £2m.

Should the value of the asset be more than £2m and it is proposed to transfer or dispose of the asset at an undervalue the approval of the Secretary of State is required.

## **5. Risk Assessment**

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

## **6. Equalities Impact Assessment**

It is envisaged that there will be a series of individual transfers that will emanate from this strategy. As individual applications are submitted, and approval given a separate EqIA will be prepared for each.

## **7. Place & Resources Overview Committee**

This policy has been considered by the Place & Resources Overview Committee of the 1<sup>st</sup> June 2021 and the extract minute from that meeting is attached at Appendix 3 for the report

## **8. Appendices**

- Appendix 1- Low Value Asset Transfer Policy
- Appendix 2- High Value Asset Transfer Policy
- Appendix 3 – Extract minute of Place and Resources Overview Committee – 1 June 2021.

## **9. Background Papers**

- The Dorset Council Plan 2020-2024

## **10. Background**

- 10.1 Asset transfer relates to town, parish councils, voluntary and community organisations ability to acquire the buildings, either at market value or at a discount, in order to deliver services that meet local needs and is seen as one way in which Local Authorities can support the development of social economy organisations and thereby meet their wider strategies for renewal and improved delivery of services at a local level.
- 10.2 Asset transfers to local communities can be used as a facilitator of social, environmental and community regeneration.
- 10.3 The transfer of assets to town and parish Councils as well as voluntary and community organisations can strengthen confidence and ties with local areas and can sometimes enable new investment to be attracted
- 10.4 The Quirk Review was part of a Government programme for empowering communities and to overcome barriers to more community asset management and ownership, taking account of the need to manage risks. The Quirk Report highlighted the following main points: -
- Any sale or transfer of an asset needs to realise social and/or community benefits and used in the public interest

- Organisations must have capacity to take over and manage the asset in a sustainable way
  - Organisations must be properly constituted and governed
  - Public interest concerns regarding any transfer need to be addressed
  - Community groups should not be overburdened with property asset management
  - Risks should be minimised/managed and benefits must outweigh the risks
  - The Quirk report recommends that guidelines are issued to groups on the transfer of assets and community management and ownership.
- 10.5 The Council reserves the right, however, to transfer low value assets such as roadside patches to organisations that are not legally constituted, for example, local gardeners provided that they satisfy the Council from a due diligence perspective as to their honesty, integrity, trust and capability .
- 10.6 The extent of Asset Transfers can range from an unrestricted freehold sale at full market value, where the Town & Parish Councils or voluntary and community groups are offered first refusal to purchase. Asset Transfers usually involve, however, a sale or lease of Council or other publicly owned assets, at less than full market value as a means to further local social, economic and/or environmental objectives.
- 10.7 An Asset Transfer Policy will serve to inform and guide the Councils support through its management of property assets. It also provides a structure for objectively considering applications, case by case, according to their own merits.
- 10.8 As part of Local Government Re-Organisation c100 assets were previously transferred to Town and Parish Councils and Dorset Council currently lease a further c120 assets to Town & Parish Councils and Community & Voluntary groups.

## **11 Asset Transfer Policy**

- 11.1 The proposed Asset Transfer Policies are included with Appendices 1 &2 to this report.
- 11.2. An option to consider the transfer of a property asset to a Town or Parish Council or a Community, Voluntary sector can be prompted either by the Council identifying a property asset that it decides is surplus to its needs or by a Town or Parish Council or a Community/Voluntary Organisation approaching the Council.
- 11.3. The long term viability and benefits of each proposal for Asset Transfer will be evaluated against other options eg disposal by way of open market sale, commercial lease or alternative Council use and weighted to give due

consideration to any social or other benefits being proposed.

- 11.4 Each Asset Transfer application will be considered on its own merits. For high value asset transfers, applicants may be required to submit a supporting business case.
- 11.5 In considering any Asset Transfer application three objective key tests are applied particularly with regard to high value transfers:-
- 'the organisation test'
  - 'the property test'
  - 'value for money/best value test'
- 11.6 The organisation test considers the following as recommended in accordance with the Quirk recommendations namely:-
- It is a recognised public body or legally constituted group, charity or not for profit organisation
  - It is willing and able to take legal responsibility for the asset/assets to be transferred eg health and safety, running costs etc
  - It has a defined and working governance structure
  - Its funding sources are reliable
  - It is commercially competent
  - It has access to appropriate skills and capacity to safely manage the property
  - There is sufficient alignment between the applicant and the Council's objectives and plans
  - The Council may consider other organisation types such as Local Clubs and Organisations for low value transactions only subject to appropriate due diligence being undertaken
- 11.7 The property test consists of the following:-
- There is no foreseeable need for the property
  - There are no legal or property title impediments to the transfer
  - Property value has been determined for consideration as part of the 'Value for Money' test
- 11.8. The value for money test comprises:-
- For high value asset transfers a business case may be required
  - If the property asset is to be transferred at less than best consideration, the community organisation must demonstrate objectively the benefit of the value of their proposals with social value considerations being weighted against commercial benefits
  - Any asset transfer application must be able to stand scrutiny of any question of State Aid

- The Council is under no obligation to transfer property assets to Town and Parish Councils or voluntary/community groups and any decisions are taken with knowledge of alternative disposal options (if any).

## **12 Basis of the Asset Transfer**

12.1 The general presumption is that all low value asset disposals will be transferred by means of a freehold sale based on the Council's standard sale agreement which are non-negotiable.

12.2 No revenue payments or subsidies will provided to any applicant in relation to any asset transfer.

12.3 The individual circumstances of larger asset transfers will determine the basis of the property transfer which will consider the following main items:-

- Property Interest to be transferred which can range from short term to long term leasehold arrangements and freehold sale
- The use of sub-letting arrangements which would be subject to Council approval
- Use Restriction and clawback/overage which places controls over future use to ensure that profit is not generated on the back of the transfer
- Reversionary clauses to protect against failure and future disposal
- Indemnities on transfer to protect against a failure of the applicant to fulfil responsibilities
- Right of use free of charge should the Council have any limited form of future use

## **13 Process for the Asset Transfer**

13.1 All requests relating to an Asset Transfer must be made using the Standard application form/pack.

13.2 Applications in the first instance should be directed to the Council's Assets and Property Dept who will manage the process within estimated timescales which are provided to act as guidance.

## **14 Summary & Conclusion**

14.1 The establishment of a clearly defined set of policies and procedures which provides a fair and transparent framework in order to assess , determine and approve the basis of any proposed asset transfers is

required as currently there is none currently in existence.

- 14.2. The purpose of the proposed policy is to facilitate and support Town & Parish Councils together with voluntary and community organisations (third sector) to access Council property assets whilst protecting the Council's financial integrity, fiduciary duty and other accountabilities such as Health & Safety.