

# WESTMORLAND AND FURNESS COUNCIL

## Cabinet

<b>Report Title</b>	Community Asset Transfer Policy
<b>Date of Meeting</b>	12 September 2023
<b>Report Author</b>	Allan Harty, Assistant Director (Corporate Assets, Fleet & Capital Programme) Matt Messenger, Strategic Asset Management Lead
<b>Director</b>	Pam Duke – Director of Resources (Section 151 Officer)
<b>Lead Cabinet Members</b>	Cllr Peter Thornton – Cabinet Member for Highways and Assets Cllr Andrew Jarvis – Cabinet Member for Finance
<b>Why is this a key decision?</b>	1. Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates. For these purposes, savings and expenditure are "significant" if they are equal to or greater than £500,000 and/or (No) 2. Is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the area of the Council (No)
<b>Wards Affected</b>	All
<b>Identify exempt information and exemption category</b>	Not applicable
<b>Appendices (if any)</b>	Appendix 1 – Community Asset Transfer Policy (September 2023).

### 1. Executive Summary

1.1 Council services are producing policies for the work of our newly integrated teams. As part of this process the 'Community Asset Transfer Policy' has been written to set out the principles and recommended approach for the leasehold transfer of council property assets to community groups (excluding service devolution and disposals of the school estate, housing portfolio and highways infrastructure). This policy sets out the process for screening relevant assets for suitability for Community Asset Transfer. Where there is potential for transfer the policy ensures appropriate, timely and transparent judgements in each case.

### 2. Recommendations

**For the reasons set out in this report, Cabinet is recommended to:**

2.1 Adopt the final version of the 'Community Asset Transfer Policy.' attached at Appendix 1.

- 2.2 Delegate the assessment of Community Asset Transfer applications to the Community Asset Transfer Review Group. This group includes three Assistant Directors (Corporate Assets, Fleet & Capital Programme; Safe & Strong Communities; Community Infrastructure) and where required officers from other relevant directorates.
- 2.3 Delegate to the Community Asset Transfer Group the authority to recommend supported applications to Cabinet and to decline those that do not meet the criteria. These recommendations will be made in consultation with the Leader, Cabinet Member for Highways and Assets and Cabinet Member for Sustainable Communities and Localities. Each application for CAT will be assessed on its own merits in the context of the framework set out in the CAT policy. Technical business case assessment by officers will be subject to final review by the Community Asset Transfer Review Group. This group includes three Assistant Directors (Corporate Assets, Fleet & Capital Programme; Safe & Strong Communities; Community Infrastructure); and relevant officers from across two directorates. If transfer is recommended the CAT will then be subject to a Cabinet decision
- 2.4 Request that the Chief Legal and Monitoring Officer make the required amendments to the Constitution.

### **3. Information: the Rationale & Evidence for the Recommendations**

- 3.1 The Westmorland and Furness Council Community Asset Transfer ('CAT') Policy sets out the principles and recommended approach for the transfer of management and custodianship of council property assets to community groups (excluding service devolution and disposals of the school estate, housing portfolio and highways infrastructure). It is relevant to officers, members, community groups and other interested parties.
- 3.2 This policy compliments the Council Plan, Delivery Plan & Performance Management Framework, Constitution, Scheme of Delegation and Property Disposal Policy.
- 3.3 The council's emerging Strategic Asset Management Strategy will drive the focus of the Corporate Assets Team to deliver a modern, effective and fit-for-purpose property portfolio and a healthy working environment to enable efficient delivery of services. This approach involves selling or leasing surplus land and buildings either on the open market, with reinvestment of capital receipts in our frontline services, or through transfers to partner organisations and community groups to achieve Council Plan priorities and wider community wellbeing objectives in compliance with the terms of the Constitution and Legislation.
- 3.4 CAT is one of the ways in which corporate priorities can be achieved. The assets that the council owns in local communities may play an important part in enabling appropriately constituted groups to come together to offer communities a range of activities and services that benefit the social and economic wellbeing of an area. CAT's can provide an opportunity to enable communities to help themselves.

- 3.5 The policy sets out the process for ensuring that relevant emerging property disposals are screened for suitability for CAT. Where there is potential for a CAT the policy ensures that all relevant factors are considered, enabling appropriate, timely and transparent judgements in each individual case to ensure all our communities have equality of opportunity.
- 3.6 An asset is unlikely to be considered suitable for CAT where any of the following circumstances are present:
- The asset remains operational, or the service need for the asset remains under review,
  - There is a significant maintenance backlog,
  - There is a legal requirement to offer the surplus asset to another entity
  - Where sale at an 'undervalue' is not possible (e.g. where an asset is held on 'trust' and sale proceeds must be ring-fenced in accordance with the charitable objectives of the trust),
  - There is potential for a significant capital receipt which outweighs the community benefit from CAT,
  - The level of capital investment is disproportionate to the outcome sought,
  - The proposal would result in significant ongoing holding costs,
  - The asset is incapable of achieving suitability and sufficiency of accommodation for proposed end use,
  - There would be a detrimental viability impact on the community group from transfer and any subsequent use,
  - CAT is likely to result in an ongoing future subsidy requirement from council.
  - Assets which have to be retained for legal, contractual or other reasons.
- 3.7 Where CAT is not ruled out by the above screening factors (see 3.6) the council will consider a CAT where:
- The asset is owned by the council and declared surplus to operational needs,
  - The community group requesting transfer is appropriately constituted, fit and proper with a stable evidenced financial position and track record (e.g. town and parish council, registered charity, community interest company, charitable incorporated organisation, not-for-profit company),
  - The submitted business case meets the Council's Priorities demonstrates community benefits, development plans, financial viability, improved community wellbeing and community support – including from elected members.
- 3.8 Each application for CAT will be assessed on its own merits in the context of the framework set out in the CAT policy. Technical business case assessment by officers will be subject to final review by the Community Asset Transfer Review Group. If transfer is recommended the CAT will then be subject to a Cabinet decision

3.9 Within any ensuing report to Cabinet the economic, social and environmental benefits created will be assessed against the potential 'below market value' sale receipt, to arrive at a net benefit - and so to provide a measure of value for money.

3.10 This policy builds on the CAT knowledge, skills and experience of the predecessor authorities.

#### **4. Link to Council Plan Priorities: (People, Climate, Communities, Economy and Culture, Customers, Workforce)**

4.1 The Council Plan prioritises confident, empowered resilient communities. Where there is scope for community asset transfer to, community groups, town or parish councils such disposals will enable local communities to shape their own destiny and thrive.

4.2 The Council Plan prioritises the provision of leadership in the drive to become net zero in line with its Climate Action Plan. Community Asset Transfers will in some instances attempt to identify disposal opportunities to contribute to biodiversity net gain and broader environmental initiatives.

#### **5. Consultation Outcomes**

5.1 Lead Cabinet members were consulted on an initial draft version of the policy during April and again on 27 June 2023.

5.2 Minor amendments were made to the draft document following these consultations.

#### **6. Alternative Options Considered**

6.1 Option 1 (Recommended): See *section 2*.

6.2 Option 2: Cabinet could request that further amendments are made to the CAT Policy prior to adoption. As the policy was the subject of Cabinet Member Briefings in June it is anticipated that any required amendments will have previously been communicated and implemented.

6.3 Option 3: Cabinet could choose not to support the adoption of a 'CAT Policy.' This is not recommended and would go against the ethos of council services producing policies to provide guidance and transparency to the work of our newly integrated teams. This would also increase the risk of challenges and complaints from stakeholders, particularly those who have been unsuccessful in attempts to take over the management and custodianship of applicable council property.

#### **7. Financial Implications and risk**

7.1 There are no direct financial implications of Cabinet agreeing to the proposed CAT policy, however the policy itself supports the reduction of the Council's property portfolio which could result in the reduction in operational holding costs incurred by the Capital Programme and Assets budgets. It could also reduce the opportunity for generating general purpose capital receipts.

## **8. Legal and Governance Implications**

- 8.1 Legal Services input and involvement will be required to prepare the draft lease/disposal documentation.
- 8.2 S123 of the Local Government Act 1972 provides that (except for a tenancy or leasehold term assignment of less than 7 years) the Council shall not dispose of land for consideration less than the best that can be reasonably obtained. It must obtain “best consideration”, unless the General Disposal Consent (England) 2003 can be applied or a specific consent is obtained
- 8.3 A Council can be found to have breached S123 if it has (1) Failed to take proper advice (2) failed to follow proper advice for reasons that cannot be justified ; or (3) has followed advice that was so plainly erroneous that in accepting it the Local Authority must have known, or at least ought to have known , that it was acting unreasonably.
- 8.4 When determining whether or not to dispose of land for less than best consideration the Council should have regard to a number of factors including its accountability and fiduciary duty to local people, its community asset use and transfer policy, all normal and prudent commercial practices, clear and realistic valuation advice on the asset in question and Subsidy control rules.
- 8.5 The General Consent allows specified circumstances where the consent can be applied:
- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any person's resident or present in its area;
    - i) the promotion or improvement of economic well-being;
    - ii) the promotion or improvement of social well-being;
    - iii) the promotion or improvement of environmental well-being;and;
  - b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
- 8.6 It is acknowledged that a CAT could be at less than best consideration. A disposal at undervalue will be a key decision taken by Cabinet, is to appear on the Forward Plan and the report will be sent to the Chair of the relevant Overview & Scrutiny Committee so that the Overview & Scrutiny Committee can have the opportunity to consider the reason for the disposal at undervalue.
- 8.7 In addition any disposal which is at less than best consideration will require the Council and the relevant party to comply with the Subsidy Control Regime. It is recommended that the Subsidy Control position is clarified prior to a Cabinet decision being made in connection with any CAT.

## **9. Human Resources Implications**

- 9.1 There are no direct human resources implications arising from this report.

**10. Equality and Diversity Implications (including the public sector equality duty, Armed Forces Families, Care Leavers and Health inequalities implications)**

10.1 There are no equality and diversity implications arising from the report.

**11. Background Documents**

11.1 The legacy councils' Community Asset Transfer Policies were consulted in the preparation of the proposed Westmorland and Furness Community Asset Transfer Policy.