

DECISION-MAKER:	CABINET		
SUBJECT:	COMMUNITY ASSET TRANSFER STRATEGY		
DATE OF DECISION:	18 JUNE 2013		
REPORT OF:	CABINET MEMBER FOR CHANGE AND COMMUNITIES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
None

BRIEF SUMMARY

This report recommends approval of a Community Asset Transfer Strategy and implementation on a phased basis, starting with a pilot programme focused on youth and community buildings. The council expects a proactive community asset transfer programme to help retain valued local provision, support community empowerment and capacity building through the use of local skills, experience and knowledge. Decisions will be made by Cabinet on a case by case basis and will need to demonstrate financial viability, long term sustainability and external investment.

The drivers are the Localism Act, the council's financial position, commitment to support community development and speculative interest from organisations. Community Asset Transfer is one of the three priorities for the council's Change Programme. Community, voluntary and faith organisations in the City have owned or managed buildings and land for many years. In Southampton this includes buildings owned by the council and leased or licensed to local organisations. As part of its transformation agenda, the council is committed to extending this much further through a proactive work programme on Community Asset Transfer (CAT) over the next five years.

RECOMMENDATIONS:

- (i) To approve the Community Asset Transfer Strategy attached at Appendix 1.
- (ii) To delegate authority to the Communities and Improvement Manager, to progress applications for community asset transfers so that they can be presented for Cabinet consideration.
- (iii) To delegate authority to the Head of Communities, Change and Partnerships, following consultation with the Cabinet Members for Communities and Change, Resources and Children's Services to approve minor amendments to the Community Asset Transfer Strategy in the light of changing council priorities and resources.

- (iv) To delegate authority to the Director of Environment and Economy, following consultation with the Cabinet Members for Communities and Change, Resources and Children's Services to do anything necessary to give effect to the recommendations contained in this report.

REASONS FOR REPORT RECOMMENDATIONS

1. The recommendations detailed in this report are to ensure that the council makes decisions in a consistent, transparent, fair and open way and that such decisions are made on the basis of sustainability and robust financial, property and needs assessments. The council needs a strategy that closely aligns to its property strategy in order to make informed, long term and sustainable decisions.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. Do nothing and continue with the existing process of dealing with assets on a case by case basis. This option was rejected as it could lead to inconsistencies in the council's decision making in the absence of a strategic approach and an agreed process.

DETAIL (Including consultation carried out)

3. Community organisations have owned or managed buildings or land for many years. In Southampton this includes buildings owned and managed by community, voluntary and faith organisations as well as community buildings owned by the council and leased or licensed to local organisations. The council is committed to extending this much further through a proactive work programme on community asset transfer (CAT) over the next five years where it brings benefits and added value to communities, whilst contributing to the council's aims and priorities.
4. The Community Asset Transfer Strategy provides a framework for the council to consider transferring council assets (buildings and/or land), at less than market value to community, voluntary or faith organisations. Community Asset Transfer is one of the three priorities of the council's Change Programme. The strategic drivers are the Localism Act, the council's financial position, commitment to support community development, speculative interest from organisations and maximising opportunities to use and deliver services from local bases, with partners. The transfer may be on a freehold or long leasehold basis (25 – 99 years).
5. While the Community Asset Transfer strategy and the Community Right to Bid (CRTB) legislation contribute to some of the same objectives, there are some significant differences and substantively different mechanisms that communities can use to acquire land and buildings. The key differences are:
 - Community Asset Transfer is the transfer of ownership or management of publicly owned assets, whereas the Community Right to Bid applies to some public and some privately owned assets.
 - Community Asset Transfer is the transfer of management or ownership at less than market value. Community Right to Bid gives a window of opportunity for a community group to compete to buy an asset on the open market.

- Community Asset Transfer is a voluntary process entered into proactively by public bodies. The Community Right to Bid is a pre-emptive legal right pertaining to communities.
- There is a separate process to deal with nominations for listing assets of community value under the CRTB legislation.
- The Community Asset Transfer process deals with physical assets (buildings and land) not services within buildings. The Community Right to Challenge, also brought in as part of the Localism Act 2011, allows communities to challenge how services are run and make a case for services to be run outside the council, by another provider.

Why do we need a strategy?

6. The council will need to significantly change the way it works in the future and this will need to be in partnership with a range of organisations to reshape the way in which services are delivered. The council needs a strategy that closely aligns to its property strategy in order to make informed, long term and sustainable decisions so that it can:
 - Be open and transparent;
 - Review, with relevant partners, the use and management of some physical assets that provide local facilities, services and amenities within an area;
 - Make decisions about the future of some assets which local communities value and may lend themselves to being managed differently;
 - Consider which of the assets present liabilities that the council cannot afford any longer but may give other stakeholders opportunities to develop and fund in ways not open to the council. This will enable the assets to be of enhanced benefit to local communities, sometimes in very different ways to the current offerings;
 - Consider which of its assets are required for other purposes and which assets it would like to transfer, retain or sell at market rates;
 - Identify clearly those assets that the council will not transfer (detailed later in this report);
 - Ensure it meets its statutory obligations relating to specific services (e.g. early years facilities) and complies with external funding requirements where assets have been purchased or enhanced using non-council funding;
 - Ensure it maintains specific services that have been developed to meet the needs of vulnerable groups (e.g. Day Services); and
 - Protect the future use of the assets through the relevant legal measures.

What will it deliver?

7. This strategy sets out to deliver better outcomes for local communities through the retention and enhancement of some assets within local communities and reduce future asset based liabilities for the council. These are assets that the council can no longer afford to manage whilst giving other stakeholders opportunities to develop and fund them in ways not open to the council. This will enable the assets to be of enhanced benefit to local communities, sometimes in very different ways to the current offerings.

How will it be implemented?

8. The strategy will be implemented through the application of a process described in the strategy. The process to approve community asset transfers will allow both for speculative enquiries and for the council to proactively seek expressions of interest. The appraisal process will be informed by an analysis of the facilities, needs and potential developments in defined geographical areas. Applications for community asset transfers will be considered through a two stage process, led by the Communities and Improvement Manager, in consultation with relevant officers and partners. This will include consideration of expressions of interest and detailed application forms as well as consultation with the ward councillors in which the property is located and other consultees including relevant council officers, unions, representatives from partner agencies and community representatives as appropriate. It is therefore recommended that authority is delegated to the Communities and Improvement Manager, to progress applications for community asset transfers for Cabinet consideration.
9. The appraisal process will comprise of the following two stages:
 - Initial expression of interest
 - Detailed application, including a 5 year business plan.
10. The Change Programme Board has approved the establishment of two interconnected projects for 18 months covering, in the main, 21 youth and community buildings. This is to ensure that there is adequate resourcing to respond to the level of interest this has already generated:
 - Project covering the inner city, including community and youth facilities
 - Project covering the rest of the city with a focus on council owned community centres.

How will success be measured for assets that are transferred?

11. Success will be measured against the desired outcomes identified in paragraph 1.2 of the Community Asset Transfer Strategy, attached as Appendix 1. The evaluation process will be based on the principle that it should not be overly complex or resource intensive.

Consultation process

12. A comprehensive consultation process has been carried out on the draft Strategy and associated Policy and Toolkit from 25th February to 19th May 2013 and the details are attached at Appendix 2. This 12 week process comprised consultation with key stakeholders including Members, existing leaseholders and wider stakeholders.
13. Key points highlighted in the consultation include:
 - The need for a transparent and easy to understand process, with an assigned officer for each transfer, including disclosure of competing interests;
 - Support for applicants (guidance notes, training, signposting to other organisations, provision of online resources);
 - The role of the council as 'broker' to encourage collaborative bidding in the case where several organisations are interested in one asset;
 - The need to protect assets once transferred for community use;

- Extending the suggested timeframes to allow sufficient time for organisations to consider if they want to apply, to have discussions with the council and for the council to make its decision;
 - The need for the council to provide what information it holds on an asset e.g. repairs and maintenance costs at the start of the process;
 - Ensuring that the application and appraisal process enables both existing organisations and those formed solely for the purposes of taking on an asset are eligible to apply.
14. The following changes were therefore made to the draft Strategy and process as a result of consultation feedback:
- Disclosure of competing interests;
 - Commitment to provide guidance notes, increase online content and explore if partners can provide relevant training;
 - Extension of timeframes – 3 months for an initial expression of interest and 4 – 8 months to allow for appraisal of applications and brokering of collaborative bids;
 - 7-11 months to support and facilitate a smooth transition;and
 - Provision of information about an asset where the council already holds it.
15. A number of organisations have expressed an interest in exploring community asset transfer further and several organisations have also expressed an interest in working with the council to establish an umbrella body that could take over some building management responsibilities and ease the burden on volunteers.

RESOURCE IMPLICATIONS

Capital/Revenue

16. The specific resource implications highlighted in this report refer solely to the pilot phase.
17. A programme of transfer of assets of this scale, with the associated engagement of voluntary, community and faith interests, not to mention partners, requires significant project management. The Change Programme Board approved the establishment of two project teams, one for each project strand (detailed earlier). The cost of the teams will be met through existing staffing budgets within the Communities Portfolio and the Children's Services Portfolio. There is also an expectation that staff time will be required from a number of council services (legal, finance and service teams that have buildings which could be considered for community asset transfer) to progress elements of this programme.
18. Any additional one off expenditure, such as determining the agreed sale price and the cost on the open market (which may be different) will be met through the Transformation Fund on a case by case basis, to be agreed by the council's Change Programme Board. The costs associated with the disposals will be internal council and other professional costs. Any additional costs incurred beyond the pilot phase of the programme will need to be considered on a case by case basis.

19. The Council will retain the right not to transfer assets that have been identified as having potential to generate significant capital or revenue receipts or are required for longer term strategic, planning or regeneration objectives. A transfer may also be precluded in the case that significant expenditure is needed, or has to be committed to by the Council, in order to facilitate that transfer. This will be evaluated on a case by case basis. Each case evaluation will also need to incorporate consideration of any VAT implications. If there is a capital receipt from buildings on land held by the Housing Revenue Account, consideration would need to be given to the ring fencing rules that apply to this account.

Property/Other

20. The Council will not:
 - consider applications for transfer with respect to schools, sheltered housing, social care establishments and other properties from which council run services are delivered that are not deemed by the council as suitable for transfer;
 - transfer properties to be used solely for religious, political or commercial activities.
21. The council recognises that in some cases, buildings that are available for CAT may not be vacant and a transfer may take place with a sitting tenant.
22. In considering transferring assets the council will review the impact on its abilities to meet its statutory duties. For example, many community centres and other buildings have traditionally been venues for early years services and children's centres. These services will need to be protected in any future agreements, as the Council has a statutory duty to ensure that children aged 2, 3 and 4, receive their entitlement to early education, that there are sufficient childcare places in the city and a sufficient number of children's centres to meet needs. Any loss in provision may create a liability for the council in order to meet these duties.
23. In addition, a number of community premises have been improved following agreement to licence to Early Years Education and Childcare Services (EYEC) and children centre services. Under the terms of grants from the Department for Education (DFE), the council must guarantee provision of EYEC for 25 years. If the interests of such early years/children's centre services are not protected, the council would need to repay the capital to the funders. In such cases, an early analysis of the investment and potential repayment and the impact on the Council's statutory duties has to be made before any recommendations can be made to Members.
24. The disposal terms for relevant community premises will include provision to allow the council to nominate EYEC/children centre providers to occupy such premises under reasonable terms subject to the approval of each community, voluntary or faith organisation's governing body. If the EYEC/children's centre providers materially breach the licence terms agreed, and as a consequence, the community, voluntary or faith organisation, acting reasonably, terminates the EYEC provider's licence, the council will identify an alternative EYEC/children's centre provider to meet the demand for early years places.

25. Three community centres are co-located with Day Services – these services would similarly need to be protected in any agreement on the assumption that these will continue to be commissioned by the council in future plans.
26. Paragraphs 23 to 26 highlight that there are statutory services currently operating in many council-owned community buildings. If transferred, these will need to be secured to ensure there are sufficient levels of services to meet needs. This will be reviewed on a case by case basis.
27. To ensure that assets continue to be used for the purposes of benefiting local communities, an asset lock will be incorporated into legal agreements. For nominal value freehold sales, it will be necessary to reserve pre-emption or “buy back” rights whereby the council will be entitled to buy back the sites for the same value that they were sold in the event that there is no longer a community use for the asset.
28. The council can transfer its own property interests (either freehold or long leasehold) to a third party. This transfer to a third party could either be a freehold or a long leasehold.
29. BCS provides a repairs and maintenance service to a number of council-owned community centres and community buildings within a total budget of £79,300, of which approximately 50% has been used for repairs and maintenance in the last two years. Transferring the assets would mean the community, voluntary or faith organisation would be able to choose whether to continue to purchase services from BCS or enter into agreements with other contractors. Depending on the number of transfers this may have a negative impact on BCS income. This will be reviewed on a case by case basis and will include discussions with unions on the potential impact.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

30. By agreeing disposals by negotiation there will be no need to invoke the extensive procedures in the “Community Right to Bid” legislation for council-owned assets.
31. Under Section 1 of the Localism Act 2011, the Council has a general power of competence to do anything that individuals generally may do; however that general power is subject to other statutory limitations. Section 123 of the Local Government Act 1972 provides that the Council must dispose of land for best consideration, save for cases where the consent of the Secretary of State has been obtained for any disposal at less than best consideration. Under the General Disposal Consent (England) 2003, such specific consent from the Secretary of State is not required for any disposal where the difference between the unrestricted value of the interest and the consideration accepted, is £2M or less, provided that:
 - the purpose for which the land is to be transferred is likely to contribute to the “promotion or improvement” of the economic, social or environmental well-being of the area.
32. In order to use the General Disposal Consent (England) 2003, the properties must be held under the Local Government Acts. There are a number in the HRA which means they will need appropriation from Housing Acts to Local Government Acts. This is an internal administrative process.

33. In 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 strategy, all normal and prudent commercial practices, clear and realistic valuation advice on the asset in question and EU State Aid rules.

Other Legal Implications:

34. If the land on which a community asset is located is held on Trust by the council as a registered charity, it requires the Charity to apply to the Charity Commission to seek consent for a sale. Section 36 of the Charities Act sets out the obligations in seeking consent. In such cases, a report will be presented to the Cabinet to seek approval for such consent, followed by a valuation process and advertising process.
35. Some community buildings have sitting tenants, with varying lease conditions and length of leases. If the lease provides a tenant with security of tenure, then they have the right to renew at the end of the lease. If security of tenure is excluded from the lease then tenants do not have the right to renew. At the end of a lease, the Council only has an obligation to relocate tenants if provision has been made in the lease. In practice, relocation can happen at any time with agreement.
36. For sites held under the Public Health Acts and designated as “open space” land, the Council is further obliged under Section 123 (2A) Local Government Act 1972, before taking any decision to dispose, to advertise its intention of disposal and Cabinet should then consider formally any objections received before making any final decision to dispose.
37. State Aid rules are designed to ensure that the single market is not subject to national distortion through state support to particular companies or sectors. Since the tests for State Aid relate to an organisation’s activities (and whether or not they are the subject of trade between Member States), it cannot categorically be stated that State Aid does not apply to all Community Asset Transfers. However, where an organisation can show that it is carrying out purely local activities, on a ‘not for profit’ basis, then this should be a good basis for showing there is no State Aid. Where the recipient of a Community Asset Transfer is engaged in carrying out ‘not for profit’ activities to meet local community need (i.e. with no cross-border trade), then the transfer is unlikely to count as State Aid in itself. However, what also needs to be considered is the status of organisations that are tenants in the building. If their activities fall under the State Aid Rules it could lead to accidental ‘leakage’ of Aid which inadvertently leads to the other bodies gaining an unfair advantage over their competitors.
38. Any pre-emption, asset lock or buy back right would need to be protected by a restriction entered onto the title of the relevant asset.
39. Assets transferred on a leasehold basis will be carried out on the basis that the entire responsibilities for managing and repairing the building, including all health and safety responsibilities, will be transferred from the council to the receiving organisation.

POLICY FRAMEWORK IMPLICATIONS

40. Recommendations for community asset transfer will contribute to Southampton City Council Plan and the council's medium term financial planning.

KEY DECISION? Yes

WARDS/COMMUNITIES AFFECTED:	All
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SUPPORTING DOCUMENTATION

Appendices

1.	CAT Strategy
2.	Consultation feedback
3.	ESIA

Documents In Members' Rooms

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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out?	Yes
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	None	
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