

Cabinet – 5 September 2018

Community Asset Transfer Policy

Portfolio: Councillor A Andrew, Deputy Leader and Portfolio Holder
Regeneration

Related portfolios: Councillor G Perry, Portfolio Holder Community Leisure and Culture

Services: Regeneration and Development
Localities and Partnerships

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 The Council wishes to foster and improve its relationship with the Voluntary and Community Sector (VCS) and believes that a fair and transparent Community Asset Transfer Policy (CAT) will promote independence for the VCS and provide the sector with an opportunity to secure external funding to allow for continuity of its service provision for local people. The proposed Policy outlines the Council's approach to Community Asset Transfer. It provides a clear, transparent and positive framework to assist in the consideration of appropriate transfers of assets (land or property) to the VCS in line with the Council's current Corporate Asset Management Plan (CAMP) 2014-19. Having a CAT Policy will help to promote co-location of services, increase accessibility of services for our residents and support the VCS in managing assets independent of the Council in the longer term.
- 1.2 The Council owns a number of assets across the Borough from which services are delivered; some of which are already being utilised by the VCS. The proposed CAT Policy aims to promote the full use of the Council's assets once it decides it no longer needs them for its own purposes (either operationally or for the realisation of a capital receipt). The proposed CAT Policy will apply when the Council has declared an asset surplus to its requirements in accordance with the CAMP 2014-19 and is applied to the transfer of such assets which take place after this Policy is adopted by Cabinet. The Council has recognised that to deliver against its current Transformation Programme objectives there is a need to establish a policy that supports the aspiration of both the 'Our Assets' and 'Enabling a vibrant and sustainable voluntary and community sector' themes to support such organisations access and occupy Council property to deliver high quality services in areas of need.
- 1.3 The Council recognises the opportunities offered by community management of assets however it must also ensure that any transfer of assets to the VCS are properly assessed to ensure sustainability, that there is local support, and the

organisation proposing to manage the asset is properly constituted and has sufficient competent people willing and available to ensure its effective and sustained operation. The Council will be seeking to reduce its liabilities for the management and maintenance of CAT properties through formal leasing arrangements. The proposed CAT Policy will provide a framework for the Council to evaluate (and thereafter monitor) the use of its assets for community use.

- 1.4 The proposed Policy has been consulted upon and the feedback of stakeholders and community representatives has been considered in the drafting of the Policy found at **Appendix A- Draft Community Asset Transfer Policy**. At the time of writing this report consultation on the draft Policy was ongoing, including (as set out in paragraph 13) a 'stress test' business case and evaluation process undertaken by the Council in partnership with One Walsall and two VCS organisations. The outcomes of this mock exercise may lead to minor amendments to the Policy after the Cabinet report meeting itself and this is to be managed through a delegation to make minor amendments to the Policy as set out at paragraph 2.2.

2. Recommendations

- 2.1 That Cabinet note the consultation responses to the proposed Community Asset Transfer Policy
- 2.2 That Cabinet approve the draft Community Asset Transfer Policy (Appendix A) and delegate authority to the Executive Director Economy and Environment in consultation with the Portfolio Holder- Regeneration and Portfolio Holder-Community Leisure and Culture to make minor amendments to the CAT Policy following completion of the consultation process as set out in paragraph 13.

3. Report detail

- 3.1 Community Asset Transfer (CAT) is increasingly seen as a means of achieving a range of key objectives from promoting civic renewal, community cohesion, and active citizenship to improve the social, economic and environmental wellbeing of our communities. In 2007 the Quirk Review ('Making Assets Work: The Quirk Review of community management and ownership of public assets') signalled the transfer of public assets to community based organisations as a mainstream activity. The Council has recognised that to deliver against its current Transformation Programme objectives there is a need to establish a policy that supports the aspiration of both the 'Our Assets' and 'Enabling a vibrant and sustainable voluntary and community sector' themes to support such organisations access and occupy Council property to deliver high quality services in areas of need. The purpose of the CAT is set out in the proposed CAT Policy at **Appendix A** and an explanation of its benefits are provided.
- 3.2 The adoption of a CAT Policy will put in place a formal process setting out the arrangements for how the Council intends to deal with surplus property that may be disposed to voluntary and third sector organisations in a transparent and formal arrangement. The proposed CAT Policy includes for leasehold disposal via a range of short and long term leases. It is proposed that only a freehold disposal

with restricted use for community services will be considered by exception; where there is a robust business case and rationale.

- 3.3 Public assets owned by the Council are one of its major strengths and enables the Council to provide service provision for our communities. However, the Council needs to ensure these assets are being used efficiently and effectively in line with local needs and balance the requirement to dispose of surplus or underutilised assets to provide funding to support the Capital Programme and meet financial savings set out within the Council's Medium Term Financial Plan.
- 3.4 Importantly the proposed CAT Policy explains the types of Council assets which will qualify for CAT. The Policy sets out the process for determining whether an asset is surplus to the Council's requirement and whether it can be considered for a CAT. The decision to declare a surplus property available for a CAT will follow the decision making processes outline in the Corporate Asset Management Plan 2014-19 and the Council's Constitution 2018/19 which sets out the delegations afforded to officers and Members via Cabinet to approve property transactions.
- 3.5 The process of determining whether an asset qualifies as CAT is as important as the process to assess the 'business case' for disposal via a CAT. The Council is likely to receive requests from an individual or body wishing to acquire a Council asset but the CAT as a method of disposal can only be determined by the Council and not by the community proposer. When the Council decides to declare an asset surplus and available under a CAT it will make this publically known and will maintain a record overall possible CATs. The Policy explains the decision making considerations (the CAT criteria) and stages that will be followed to consider such matters.
- 3.6 The Council recognises the opportunities offered by community management of assets. It also recognises there are risks to be considered as part of the process, not least the possible loss or reduction in capital receipts or market rental income which could be realised should assets not be sold/ leased on the open market. It must also ensure that any transfer of assets to the VCS are properly assessed to ensure sustainability, that there is local support and the organisation proposing to manage the asset is properly constituted and has sufficient competent people willing and available to ensure its effective and sustained operation. This specifically could prove challenging as a number of VCS organisations may not have the depth of experience or means to meet the draft Policy criteria test due to the 'maturity' and strength of the sector currently.
- 3.7 The proposed Policy has direct links with the delivery of a number of other strategies and policies of the Council and partners including;
 - Walsall Council Corporate Plan 2018 – 2021;
 - The Walsall Plan: Our Health and Wellbeing Strategy 2017 - 2020
 - Local Development Framework;
 - Walsall Partnership's Locality Model;
 - Cohesion and Integration Strategy 2017 – 2020

A successful CAT will be required to meet one or more of the Council's Corporate Priorities:-

- Economic Growth; for all people, communities and businesses
- People; have increased independence, improved health and can positively contribute to their communities
- Children; have the best possible start and are safe from harm, happy, healthy and learning well
- Communities; are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.

In addition, any applications will be benchmarked against our knowledge of existing support that the VCS already provides in the locality to ensure that the provision supports the Council's Vision that 'inequalities are reduced and all potential is maximised'.

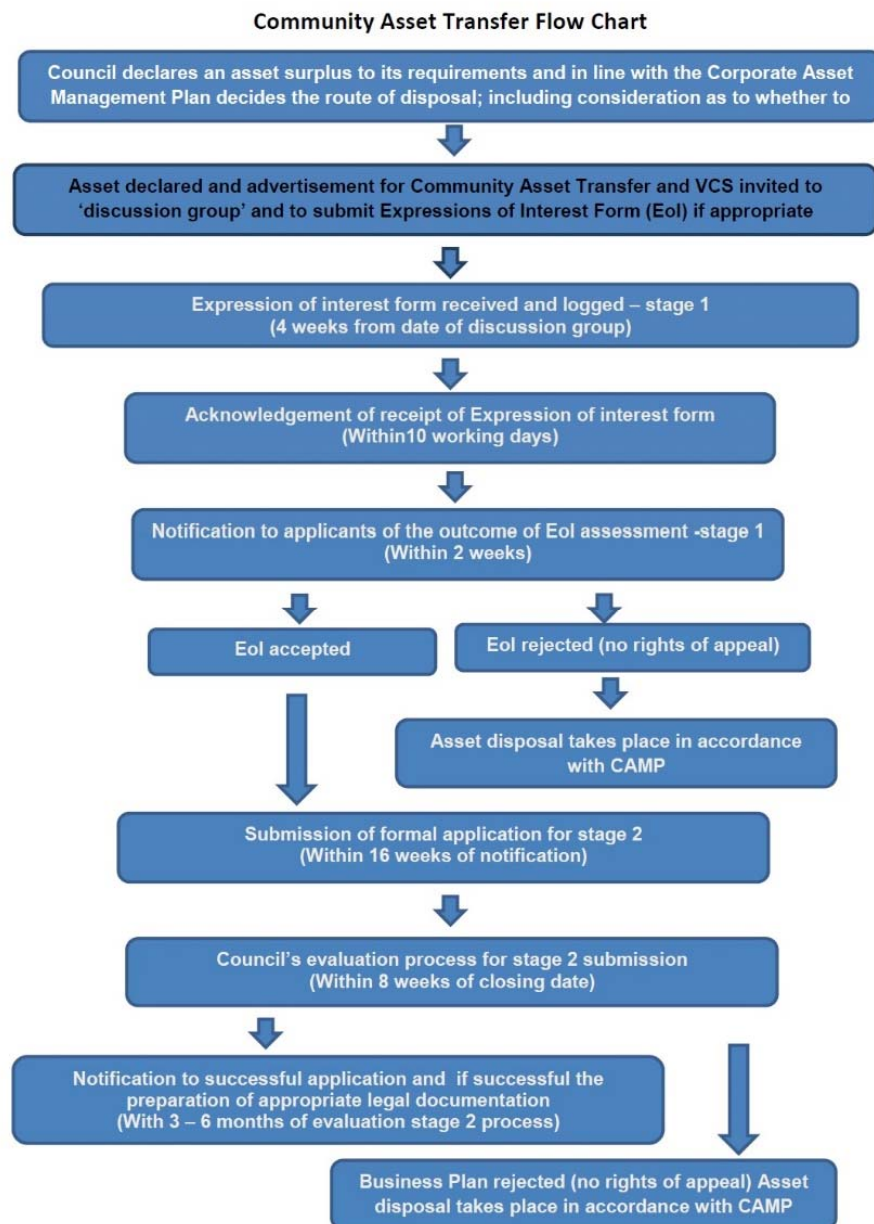
3.8 The Council will consider CAT to not-for-profit community based organisations e.g. a registered charity or Community Interest Organisation (CIO) and where all proposals are aligned to the priorities and outcomes set out earlier in Section 3.6. In addition:

- The asset must be made fully available for use by a range of local groups, especially those working with, or in, disadvantaged communities, and should be compliant with the Equality Act 2010 and other statutory requirements;
- The use of the asset is environmentally sustainable. Any future refurbishment plans are subject to landlord consent and as part of the scheme should consider energy efficiency as a priority, and use good quality, environmentally sustainable, materials;
- The organisation will need to show at least a five year cash flow and budget forecast that demonstrates sustainability and that the asset can be adequately maintained. At EoI stage a review of the financial resources of a community group will be undertaken to understand their financial sustainability;
- The use of the asset has a variety of benefits for the community it serves;
- The organisation and key individuals has appropriate skills and expertise to sustain the project in the long term;
- There are clearly defined structures, roles and responsibilities within the organisation appropriate to deliver the project, whether voluntary and/or paid.
- The organisation has a clear decision making process with adequate governance arrangements and management controls;
- All legislation and regulatory controls is in place;
- The organisation has the support of the local community and can demonstrate local need, community support through consultation, and the project is not aligned only with a single interest group; and
- There are monitoring and evaluation processes in place around project delivery

3.9 The CAT determination process will follow a staged application and assessment process utilising an Expression of Interest and Full Business Case. A process flow chart is found below (**figure 1**) and forms an appendix to the Policy in **Appendix A**. The flow chart demonstrates to interested parties the process and anticipated timelines involved in the determination process. It also confirms that there will be no rights of appeal against the determination of a CAT and once a proposal has

been considered and rejected, the property will be disposed of through the Council's disposal process methods as set out in the CAMP 2014-19 and Constitution.

Figure 1. CAT Process Flow Chart



3.10 It will be important for the future success of CATs that this Policy is adopted through due process, kept under review, and resourced corporately to assist its implementation.

3.11 The Policy states that consideration to dispose via a CAT will apply from the date of adoption. The CAT cannot be applied retrospectively and therefore cannot be

used as a tool to review, change or implement a new regime for the occupancy of Council buildings by existing VCS organisations.

4. Council Corporate Plan priorities

4.1 As set out in paragraph 3.7 the CAT Policy has direct links with a number of Council policies and plans including;

- Walsall Council Corporate Plan 2018 – 2021;
- The Walsall Plan: Our Health and Wellbeing Strategy 2017 - 2020
- Local Development Framework;
- Walsall Partnership's Locality Model;
- Cohesion and Integration Strategy 2017 – 2020

A successful CAT will be required to meet one or more of the Council's Corporate Priorities:-

- Economic Growth; for all people, communities and businesses
- People; have increased independence, improved health and can positively contribute to their communities
- Children; have the best possible start and are safe from harm, happy, healthy and learning well
- Communities; are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.
- Internal Focus; all Council services are efficient and effective.

4.2 Successful CAT will support the Council to deliver the objectives of the Corporate Plan and meet the Council's purpose (to create an environment that provides opportunities for all individuals and communities to fulfil their potential) and meet one of the strategic priorities; a CAT will provide a tool for the VCS to support our communities to prosper and become more resilient, and support community services to be delivered in local buildings that can help develop a stronger sense of belonging and cohesion.

4.3 The Council has already developed a Social Value Policy which lists the themes, outcomes and measures (TOM's) that will be used to maximise social value benefits for people and communities in Walsall. Social Return on Investment (SROI) is a way of *measuring* the broader social, economic and environmental value generated by an organisation. This means that every successful application for a CAT will have bespoke formulas to calculate the SROI. With that in mind, the Council has a number of options available to calculate SROI:-

- Option 1 – there are several free 'value calculators' available online, for example Housing Associations' Charitable Trust (HACT). These calculators are already set up with generic formulas so that data is uploaded and the calculation is automated. This option will provide the Council with a good measurement of SROI but will not be comprehensive.

- Option 2 – there are organisations that provide a bespoke service, for example The Social Value Portal, Bright Ideas Consulting Ltd. These are chargeable services and costs vary depending upon the amount of data to analyse and whether the Council wishes to subscribe annually (i.e. annual subscription costs £12K p.a.)

Bearing in mind that the West Midlands Combined Authority (CA) is leading on SROI and there is a Black Country taskforce working on this matter it is recommended that Option 1 is utilised until a regional solution is identified.

5. Risk management

5.1 Managing Expectations

5.1.1 Managing the expectations of the community, stakeholders and Elected Members as to how and when the Council disposes of its property interests, and how the Council allows others to manage/ operate within its assets may continue to prove difficult; however having a transparent and adopted CAT Policy will help to overcome this by setting out the evaluation criteria and decision making process involved so all who participate understand the parameters in which the Policy will operate. The adoption of a CAT policy and disposing of Council interests in property through this route will also not overcome the complexities associated with how community organisations currently (or historically) have come to occupy Council buildings; no engagement with the sector has commenced on how existing occupancy of Council buildings may be formalised or what decision making process may need to be undertaken to agree occupancy terms- an area of concern that was expressed by the VCS during the CAT Policy consultation process.

5.2 VCS capacity to engage and delivery the CAT Policy objectives

The success of the Policy may rest in the strength of the VCS to respond to the evaluation process as set out paragraphs 3.7 and 3.8 of this report. The criteria will mean that some organisations may not meet the sustainability tests and meet the minimum requirements. This has been a consideration of the consultation process with the VCS. In addition support can be given to organisations who may express an interest in a CAT but fail to meet the criteria by engaging with the Council and One Walsall to develop their organisation and business plan, or be introduced to partner organisations who may form consortiums or other structures to deliver shared objectives.

5.3 Resources to implement the Policy

5.3.1 Staff- There may be periods where the capacity, resources and skills to administer and implement the CAT are constrained by the work programme or competing priorities. The work to redesign the current asset management team and implement the asset management improvement plan through the Our Assets Transformation Theme will support the implementation of the CAT. Greater collaboration between supporting service areas will be established through new and existing governance arrangements- see paragraph 11.1.

5.3.2 Property Conditions- Consideration to the suitability of a surplus property to be made available as a CAT will be needed as part of the initial stages as often such surplus properties may be of inadequate or poor quality. Some may require investment prior to being suitable for leasing to a community organisation. Some

initial funding may be needed for the Council to undertake a building condition survey to inform its decision to dispose and what level of property maintenance responsibilities are able to be passed to a future occupier through the terms of a lease agreement. CAT occupiers should undertake their own property assessments and seek a 'schedule of condition' forming part of the lease which sets out the condition of the property at the point of occupation and helps to manage the process for dealing with future building dilapidations at the point a lease ends. There are currently no revenue or capital resources available for property improvements under the CAT Policy or other asset management funds. This risk will need to be determined on a property-by-property basis and any decision to invest in the property will need to follow the Council's decision making processes. The investment will need to be evaluated against the Social Return on Investment (SROI) the organisation is able to deliver. Support may also be available from One Walsall to help organisations access external grants to improve facilities where a suitable length of lease is in place to secure such funds.

6. Financial implications

- 6.1 Finance colleagues have been consulted on this report. It is anticipated that the administration of a CAT can be met within existing resources. The costs of preparing the Policy including the consultation process have all been met from within existing budgets, namely those held by the Localities and Partnerships team.
- 6.2 As noted in paragraph 3.3 there could be financial implications for the Council in adopting a CAT that may see the loss of capital receipts or below market value rental income. These financial implications will be an important factor in the decision to declare a surplus asset available for a CAT, and will form part of the Council's evaluation and decision making process; considered on a case-by-case basis. The impact on the Medium Term Financial Plan will need to be considered in the round if a loss of receipt or income via a CAT delivers financial benefits elsewhere in the 'system'. For example where the VCS may be providing services of value for the community then this may be deemed important to the Council; producing a SROI will aid this evaluation. The SROI will be evaluated through the Expression of Interest and Full Business Case evaluation processes which are appended to this report. In addition to any potential loss of capital receipt or the below market rental income achieved through properties declared as a CAT there could be a financial implication arising from the need to improve the condition of a property prior to it being leased to a community organisation- see section 5.3.
- 6.3 It is recommended to use a free online toolkit to measure Social Return on Investment, pending the development of an alternative regional toolkit designed by the Combined Authority. At this stage it is anticipated that the CA Model will also be accessed free of charge.

7. Legal implications

- 7.1 Legal Services have been consulted on the report and the preparation of the Policy and have advised that under section 123(1) of the Local Government Act 1972 (LGA 1972), Councils have a fairly wide discretion to dispose of their assets in any

manner it wishes. This includes selling freehold interests, granting or assigning leases and granting easements. However, this general power is limited by the duty in LGA 1972, s123(2) to achieve the best consideration reasonably obtainable when disposing of land, unless:

1. The 2003 General Disposal Consent applies; or
2. Secretary of State for the Department of Communities and Local Government has given his consent to the disposal;

7.2 A disposal by way of a short tenancy (defined as the granting of a term not exceeding seven years or the assignment of a term which has at the date of the assignment not more than seven years left to run) is not caught by the duty to achieve best consideration. The General Disposal Consent (England) 2003 permits Councils to transfer land below market value, without the need to seek specific permission from the Secretary of State, provided that:

- in the Councils opinion, the transfer will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area, and
- the difference between the land's market value and the actual price paid for the disposal (if any) (i.e. the undervalue) does not exceed £2,000,000

The General Disposal Consent 2003 only applies to land held by Councils under LGA 1972. It does not apply to land held for housing purposes (which is usually held under the Housing Act 1985) or planning purposes (which, in relation to disposal, is subject to section 233 of the Town and Country Planning Act 1990). It must be noted that even where the Secretary of State consents to a disposal at less than the best consideration, the disposal must still comply with EU State Aid rules.

7.3 It is intended that all leases negotiated and agreed with the VCS under the CAT Policy will seek to place obligations on the leaseholder to not only manage and maintain the property but also uphold the original community benefits set out and evaluated in the business case; termination and assignment clauses in the lease will be used to allow the Council to manage not only its freehold interests but monitor the ongoing sustainability and value of the services a VCS leaseholder is providing. Each lease will commence with an agreed heads of terms which will be entered into during the latter stages of the evaluation process; such heads of terms are not legally binding.

7.4 It should be noted that a CAT is distinguished from other related legal processes. For example; Community Right to Bid which was introduced by Part 5 of the Localism Act 2011 which gives local groups a right to nominate buildings or other land for listing by the Council as an Asset of Community Value because the use of the asset furthers (or has recently furthered) the social wellbeing or social interests of the local community. When land or buildings is listed an Asset of Community Value (ACV) local community groups have a right to make a bid for the asset within a statutory time limit and a process is undertaken by the Council to determine whether a ACV should apply. The Community Right to Challenge which is also introduced by Part 5 of the Localism Act 2011 is the right for community organisations to submit an expression of interest in running services of a Council on behalf of that local authority.

8. Procurement implications/Social Value

- 8.1 There are no direct procurement issues arising from this report. Consideration has been given to the distinction between a VCS organisation delivering services to the community in a Council freehold property (via a CAT and lease arrangement), and a VCS organisation delivering a service on behalf of the Council in a Council property which would require a procurement to be undertaken to identify suitable service providers who would be engaged through a Concessionary Agreement. The CAT Policy is not intended to be used to deliver Council services in this way.
- 8.2 As set out elsewhere in this report and within the CAT Policy itself, the intent of evaluating a VCS proposition is to understand the potential SROI that the use of a Council asset may have.

9. Property implications

- 9.1 The introduction of a CAT Policy and the option available to the Council to consider a CAT for its surplus assets will need to support the Council's priorities and have regard to the desired outcomes in other Council asset strategies including:
- The Corporate Asset Management Plan (C-AMP) 2014 – 2019;
 - The 'Our Assets' Transformation Programme and the draft Asset Management Improvement Plan;
 - The Medium Term Financial Plan
- 9.2 Assets may be identified as potentially surplus for a CAT in a variety of ways. They are likely to be identified as part of the Corporate Asset Management Plan as it is through this process that an asset is declared surplus. The status of the property, including its tenure, market value in accordance with Royal Institution of Chartered Surveyors (RICS) Valuation- Professional Standards and potential for realisation of a capital receipt, will form part of an assessment as to whether a CAT is an appropriate form of disposal.
- 9.3 The CAT Policy proposes that the Council will enter into lease arrangements for all CATs unless there are extenuating or special circumstances where a freehold disposal is necessary. Where possible, the Council will look to pass on maintenance and other operating costs of the property to the leaseholder thus providing a financial saving to the Council by reducing its expenditure on a given property. The evaluation of whether a VCS organisation has the abilities, skills and financial resources to take on the terms of any lease will form part of the evaluation process.
- 9.4 Where the CAT evaluation process fails to identify a suitable VCS organisation to lease a property to, then the Council will pursue alternative occupiers/ purchasers for the surplus property by following its disposal processes as set out in the C-AMP and Council Constitution.

10. Health and wellbeing implications

- 10.1 Whilst there are no direct health and wellbeing implications arising from this report, the adoption of a CAT and the transfer of an asset to a VCS organisation may have positive outcomes on residents as some of the community services provided by the VCS have a direct impact on health and wellbeing. An evaluation of the potential impact on health and wellbeing will form part of SROI evaluation that can be understood through the Expression of Interest and Full Business Case processes.

11. Staffing implications

- 11.1 In the first instance the Policy will be administered by the Place Team within the Regeneration and Development Service; it is the responsibility of this service area to carry out the strategic corporate asset management function of the Council. The function itself is under review through the 'Our Assets' transformation programme and so the future implementation of the CAT (the capacity and skills needed) will have to be considered as the 'Our Assets Improvement Plan' evolves. At the time of writing the Policy the expertise to evaluate CAT business cases does not exist within the Place Team and thus it will be necessary to rely on expertise from other Council services/ teams. Notably the process will rely on support from the Localities and Partnership Team, Finance and Legal Services. The proposed Policy has been drawn up collaboratively between the Place Team and Localities and Partnership Team.

12. Reducing inequalities

- 12.1 The implications for reducing inequalities have been considered through an Equality Impact Assessment.

13. Consultation

- 13.1 Consultation on the CAT Policy has been developed and implemented with One Walsall who have circulated the draft documents via its distribution lists and networks, reaching over 1000 contacts in the VCS. An online survey has been undertaken to gather feedback on the Policy (the survey can be found at **Appendix B**). A workshop was also held on 18.07.18 to engage a sample group of community representatives who either have experience of a CAT or have shown interest in asset management/ownership in the past. The workshop allowed for feedback on the draft Policy and it was agreed that One Walsall would 'test' the Expression of Interest and Full Business Case templates with a community organisation; run as a 'mock assessment' to understand how the evaluation criteria can be applied. Key messages arising from the consultation included:-

- That a 'discussion group' is formed that occurs before expressions of interests are completed to support the process and to ensure that the expressions of interest we receive are viable;

- The Council need to improve its transparency on the process / scoring / evaluation and by who has been involved in the decision making process;
- That the Policy recognised the importance of small organisations and would want to encourage those to apply (i.e. introduce a preference over nationals);
- That the Council strongly recommend in the Policy that interested parties work with One Walsall on their applications (we all gain knowledge of the sector and help it to grow);
- At the point when a CAT is declared, the Council includes indicative lease terms and indicative operating costs for the asset (and potentially conditions survey
- That the Council need to be clearer around our priorities and how many of them does the VCS need to meet;
- That the Council should include an appeals process.

13.2 Taking on board the feedback from the consultation the following amendments to the Policy have been made and form the proposed at **Appendix A**:

- Policy criteria has been made clearer.
- As part of the Policy the Council has now introduced a ‘discussion group’ to take place before Expressions of Interest are completed to support potential applicants.
- The Policy has been amended to improve the process of determination,
- The Policy has been amended to strongly recommend that applications seek support from One Walsall.
- The Policy has been amended to reflect the Council’s long terms aims which are now linked to the Council’s Corporate Plan.
- The Council has not included a right of appeal as it feels the Expression of Interest and Full Business Case is a rigorous process that will produce the right outcomes for Walsall.

13.3 In further response to the consultation, the Council intends to launch the Policy and invite the VCS where there will be an opportunity for the VCS to ask questions and explore the Policy further. Following adoption of the Policy consideration will be given to the use of the CAT Policy in the cases of properties already in occupation by the VCS; here it may be appropriate for the Council to use the principles of the case and assessment criteria to inform the future occupation of such buildings. The Council will also draw up a CAT Policy guidance booklet which will be co-produced with the VCS Working Group and One Walsall. As there is ongoing work to engage the VCS in the mock assessment of the Expression of Interest and Full Business Case then the purpose of seeking a delegation is to finalise the documentation prior to the first CAT being made available.

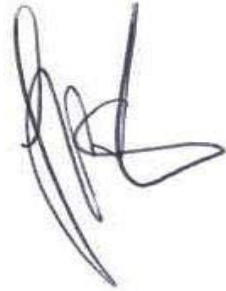
Background papers

N/A

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Councillor A. Andrew
Deputy Leader
Portfolio Holder Regeneration

28 August 2018

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1. Introduction

1.1 The Council believes that strong community organisations have a positive impact on our residents and contribute positively to the social, environmental and economic wellbeing of our residents. Local voluntary organisations / groups are key in strengthening our communities as each are embedded in local areas, they have a greater understanding of local need and are trusted by their communities. Bringing communities together around a common goal enables individuals to champion and influence positive change for their locality and through working together our communities will thrive.

1.2 Section 123 of the Local Government Act 1972 is one of the principle pieces of legislation which governs the way in which a Local Authority can dispose of assets which it owns. Under [section 123\(1\)](#) of the Local Government Act 1972 ([LGA 1972](#)), Local Authorities have a fairly wide discretion to dispose of its assets (such as land or buildings) in any manner it wishes. This includes selling freehold interests, granting or assigning leases and granting easements. However, this general power is limited by the duty in [LGA 1972, s 123\(2\)](#) to achieve the best consideration reasonably obtainable when disposing of land, unless:

- (1) The 2003 General Disposal Consent applies; or
- (2) Secretary of State for the Department of Communities and Local Government has given his consent to the disposal;

2. Purpose of the Community Asset Transfer Policy (CAT)

2.1 The Council wants to foster and improve its relationship with the Voluntary and Community Sector (VCS) and believe that a fair and transparent Community Asset Transfer Policy (CAT) promotes independence for the VCS and provides the sector with an opportunity to secure external funding to allow for continuity of its service provision for local people.

2.2 The Council recognises the importance of small and medium-sized organisations in their ability to create additional social value for the communities they work with and wants to promote collaborative working of such organisations as part of this Policy.

2.3 The Council owns a number of assets across the borough of Walsall from which services are delivered; some of which are already being utilised by the VCS. This Policy aims to promote the full use of the Council's assets once it decides it no longer needs them for its own purposes. The policy will help to promote co-location of services, increase accessibility of services for our residents and support the VCS in managing assets independent of the Council in the long term.

- 2.4 This policy outlines the Council's approach to Community Asset Transfer. It provides a clear, transparent and positive framework to enable the consideration of appropriate transfers of assets to the VCS.
- 2.5 For the purposes of this policy the term 'asset' is defined as 'land or buildings in the ownership of the Council'.
- 2.6 This policy will apply when the Council has declared an asset surplus to its requirements and is applied to the transfer of such assets which takes place post the date upon which this policy is adopted.
- 2.7 A Council-wide review of the way assets are used by the Council, its tenants and its partners is underway. The CAT will therefore not apply or be available to any Council asset that is in occupation prior to the date of adoption of this policy.

3. National Context

- 3.1 Asset transfer is increasingly seen as a means of achieving a range of key objectives from promoting civic renewal, community cohesion, and active citizenship to improve the social, economic and environmental wellbeing of our communities. In 2007 the Quirk Review ('Making Assets Work: The Quirk Review of Community Management and Ownership of public assets') signalled the transfer of public assets to community based organisations as a mainstream activity.

4. Local Context

- 4.1 This Community Asset Transfer Policy has direct links with the:
- Walsall Council Corporate Plan 2018 – 2021;
 - The Walsall Plan: Our Health and Wellbeing Strategy 2017 - 2020
 - Local Development Framework;
 - Walsall Partnership's Locality Model;
 - Cohesion and Integration Strategy 2017 – 2020
- 4.2 The operation of surplus asset transfer will need to support our priorities set out within the above Plans and have regard to the desired outcomes in other Council strategies including:
- The Corporate Asset Management Plan (C-AMP) 2014 – 2019;
 - 'Our Assets' Transformation Programme and the Asset Management Improvement Plan;
 - Medium Term Financial Plan
- 4.3 For the purposes of this Policy all applications will need to meet one or more of the Council's Corporate Priorities:-
- Economic Growth; for all people, communities and businesses
 - People; have increased independence, improved health and can positively contribute to their communities
 - Children; have the best possible start and are safe from harm, happy, healthy and learning well

- Communities; are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.

5. Principles of Asset Transfer

- 5.1 Public assets owned by the Council are one of its major strengths and enables the Council to provide service provision for our communities. However, the Council needs to ensure these assets are being used efficiently and effectively in line with service needs and balance the requirement to dispose of surplus or underutilised assets to provide funding to support the capital programme and meet financial savings set out within the Council's Medium Term Financial Plan.
- 5.2 The Council recognises the opportunities offered by community management of assets. It also recognises there are risks to be considered as part of the process, not least the possible loss or reduction in capital receipts which could be realised if the asset were to be disposed of on the open market rather than as a CAT. The Council must also ensure that any transfer of assets is made with due diligence, are properly assessed to ensure sustainability, that there is local support and the organisation proposing to manage the asset is properly constituted and has sufficient competent people willing and available to ensure its effective and sustained operation. Applicants should refer to Appendix 1 and 2 for full details around criteria and the assessment process.
- 5.3 The use of public assets leased to community organisations should meet the Council's standards in respect of our Cohesion and Integration Strategy 2017 – 2020 and should ensure that our communities receive the best outcomes from the organisation.
- 5.4 Section 123 of the Local Government Act 1972 is one of the principle pieces of legislation which governs the way in which a Local Authority can dispose of assets which it owns. Under [section 123\(1\)](#) of the Local Government Act 1972 ([LGA 1972](#)), Local Authorities have a fairly wide discretion to dispose of its assets (such as land or buildings) in any manner it wishes. This includes selling freehold interests, granting or assigning leases and granting easements. However, this general power is limited by the duty in [LGA 1972, s 123\(2\)](#) to achieve the best consideration reasonably obtainable when disposing of land, unless:
- (2) The 2003 General Disposal Consent applies; or
 - (2) Secretary of State for the Department of Communities and Local Government has given his consent to the disposal;
- 5.5 A disposal by way of a short tenancy (defined as the grant of a term not exceeding seven years or the assignment of a term which has at the date of the assignment not more than seven years left to run) is not caught by the duty to achieve best consideration. The General Disposal Consent (England) 2003 permits LAs to transfer land below market value, without the need to seek specific permission from the Secretary of State, provided that:

- In the Council's opinion, the transfer will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area, and
- The difference between the land's market value and the actual price paid for the disposal (if any) (i.e. the undervalue) does not exceed £2,000,000

5.6 The General Disposal Consent 2003 only applies to land held by LAs under [LGA 1972](#). It does not apply to land held for housing purposes (which is usually held under the [Housing Act 1985](#)) or planning purposes (which, in relation to disposal, is subject to [section 233](#) of the Town and Country Planning Act 1990).

5.7 The Public Services (Social Value) Act 2012 which came into force 31/01/13 requires that when commissioning for public services consideration has to be given to how the wider benefits of social, economic and environmental returns can be secured. Social Return on Investment (SROI) is the framework for measuring and accounting for this broader concept of value. The principles of SROI were developed from social accounting cost-benefit analysis and can be used, for example, to improve services and their outcomes. The Council will determine the additional value provided by assessing the social return on investment (SROI) that the VCS will provide to our communities which is detailed in Appendix 1 attached.

6. Types of Tenure

6.1 It is accepted that different methods of transfer may be appropriate and these can range between short and long-term leases, and management agreements. A short term lease (of up to 7 years) will be considered appropriate when the Council wishes to review the ongoing use of the asset for community purposes. A long-term lease will be considered when a business case demonstrates a requirement which may be linked to the security of income- for example the conditions of a grant award or service contract. In this instance a lease of no more than 25 years will be granted and will contain terms and restricted covenants to ensure continued community use.

6.2 Service agreements may be necessary in some instances where the Council wishes to ensure and safeguard the future provision of community facilities and benefits.

6.3 The form of tenure will be determined by the Council through its decision making process including through the Council's Cabinet.

7. Eligibility

7.1 The Council will consider Asset Transfer to not-for-profit community based organisations e.g. a registered charity or Community Interest Organisation (CIO).not for private profit and where all proposals are aligned to the priorities and outcomes set out earlier in Section 4 of this Policy. Applicants should refer to Appendix 1 and 2 for full details around criteria and the assessment process. In addition:-

- The proposal must meet one or more of the Council's corporate priorities as set out in 4.3 of this Policy;

- The asset must be made available for use by a range of local groups, especially those working with, or in, disadvantaged communities, and should be compliant with the Equality Act 2010 and other statutory requirements;
- The use of the asset is environmentally sustainable. Any future refurbishment plans are subject to landlord consent and as part of the scheme should consider energy efficiency as a priority, and use good quality, environmentally sustainable, materials;
- The organisation will need to show at least a five year cash flow and budget forecast that demonstrates sustainability and that the asset can be adequately maintained;
- The use of the asset has a variety of benefits for the community it serves;
- The organisation and key individuals has appropriate skills and expertise to sustain the project in the long term;
- There are clearly defined structures, roles and responsibilities within the organisation appropriate to deliver the project, whether voluntary and/or paid.
- The organisation has a clear decision making process with adequate governance arrangements and management controls;
- All legislation and regulatory controls is in place;
- The organisation has the support of the local community and can demonstrate local need, community support through consultation, and the project is not aligned only with a single interest group; and
- There are monitoring and evaluation processes in place around project delivery

8. Process

- 8.1 Assets will be identified as surplus assets in accordance with the Council's Corporate Asset Management Plan and then determined for Community Asset Transfer through an internal decision making process. The status of the property, including its tenure, market value in accordance with Royal Institution of Chartered Surveyors (RICS) Valuation- Professional Standards and potential for realisation of a capital receipt, will form part of an assessment as to whether a Community Asset Transfer is an appropriate form of disposal.

9. Stages

Stage 1 – Declaration of a surplus asset through the Corporate Asset Management Plan (internal process)

- 9.1 An asset will only be considered for a CAT once it has been declared surplus to the Council's requirements and where it meets the assessment set out in this policy. Ordinarily the Council will review its disposals programme in line with the Council's financial planning and will reserve the right to declare assets surplus in-year. The preparation of an initial assessment will be carried out by the Asset Management Team within Economy & Environment ahead of recommendations being made in accordance with the Corporate Asset

Management Plan and through the set out governance process: The assessment findings will be considered by the Corporate Asset Review Group and where appropriate the Asset Strategy Group. The focus for this assessment is to determine the Council's formal position in relation to surplus assets.

- 9.2 This initial assessment will address 3 key questions in turn:
1. Is there any other strategic factor in terms of the Council's own requirements that mean the asset should not be assessed as surplus and therefore a potential asset transfer?
 2. Will a capital receipt or rental income be realised from this asset that is needed to support the Council's financial planning?
 3. Is the asset unsuitable for use as part of the 'One Public Estate' agenda?

Stage 2 – Assessment of Potential for Transfer (internal process)

- 9.3 The preparation of this more detailed assessment will be the responsibility of the Asset Management Team who will work with the Localities and Partnerships Team and the Service area managing the asset (via the directorate asset review group) to undertake the assessment. This assessment will estimate the potential benefits of some other alternative use or transfer of an asset.

- 9.4 The assessment will consider:
- Spend on other services made possible as a result of the capital receipt from a 'commercial' or best value disposal of the asset;
 - Cost savings to Council's revenue budget as a result of removing the asset / liability (e.g., repair / maintenance) or removing the subsidy provided to maintain the activity within the building;
 - The benefits generated to the community and/or the Council by the transfer of the asset to alternative ownership or management for continued and/or more effective delivery of current or expanded activity - possibly with greater potential for community involvement;
 - The benefits generated to the community and/or the Council by the transfer of the asset to alternative ownership or management for delivery of potential projects / proposals appropriate to the asset and locality which provides community benefit;
 - The benefit to the community or Council that might be generated by the contribution of land or premises or other assets into a shared programme of work, joint venture or partnership; and
 - Any other relevant issues, e.g. EU state aid rules, funding claw backs.

Stage 3 – Expressions of Interest (external process)

- 9.5 Should an asset be initially confirmed as suitable for Community Asset Transfer the next stage will be to identify potential projects/proposals appropriate to the asset and locality. Consultation with internal departments of the Council will be undertaken through the Directorate and Corporate Asset Review Group which will include representation from One Walsall as the voice for the VCS. It is expected these consultations will identify all potential community organisations, who have the capacity and interest in taking appropriate projects forward. The VCS will be invited to attend a 'Discussion Group' meeting in the first instance where organisations can table ideas and initiatives. Following feedback all

relevant organisations will be contacted with details of the property and requested to an Expression of Interest. The opportunity will also be published on the Council's website and promoted by One Walsall's news feed. The Council strongly recommends that organisations engage with One Walsall for free and confidential support around the application process and undertakes a 'health check' carried out by One Walsall.

- 9.6 If an organisation has already submitted an interest for an asset then this will be considered in general terms only. If a decision is taken to make the asset available for transfer then Expressions of Interest will be invited from all interested parties. Attached at Appendix 1 is an 'Expression of Interest Form' template and the evaluation criteria. This template is designed to be used by community enterprises as part of their own review procedures and will form the business case for any potential asset transfer agreement with the Council. Expressions of Interest will be assessed in accordance with the evaluation criteria and either accepted or disregarded at the decision of the Council - no rights of appeal will be allowed.

Stage 4 – Full Application / Business Plan (external process)

- 9.7 Once expressions of interest have been appraised any successful organisations will be asked to complete a full application and a business case. Completion of these documents allows organisations to self-assess their own governance, business planning, financial management and policies and procedures and feedback on unsuccessful applications will be available on request. Support for organisations around submitting documentation is available via One Walsall (contact details are included at the end of this Policy)
- 9.8 In preparing its business plan the community organisation should formulate a financial offer for the property which reflects the inherent affordability of its proposals, and the Council will take this into consideration in evaluating the submission. The business plan submitted by organisations must include detailed proposals including projected capital and revenue costs, financial offer, proposed funding and other sources of income, details of community support and benefits, sustainability and projected timescales, together with details of the legal and constitutional makeup of the organisation demonstrating legal ability to take a conveyance of the asset. Business Plans will be assessed in accordance with the evaluation criteria and either accepted or disregarded at the decision of the Council - no rights of appeal will be allowed.

Stage 5 – Recommendation for Asset Transfer (internal process)

- 9.9 Following a successful outcome of the full application and business case scrutiny, a recommendation for asset transfer would be made to the appropriate decision making body as set out in the Council's Constitution which provides the necessary delegations to undertake a property transaction.

Stage 6 – Monitoring of Asset Transfer

- 9.10 On a case by case basis, monitoring arrangements will be put in place to ensure on-going monitoring of the asset, against the business plan submitted. The purpose of monitoring will be to support the ethos of continued partnership working between community organisations involved in any transfer of assets

and the Council. The monitoring arrangements will help identify support and provide a critical friend analysis to community organisations. It will also help to minimise the continued risks associated with asset management.

Further Information

For further information or general enquires on this Community Asset Transfer Policy please contact assetmanagement@walsall.gov.uk

DRAFT

Walsall Council Community Asset Transfer Policy Consultation

Question Title

*** 1. Do you think the policy is clear, explains what a "Community Asset Transfer" is and what Walsall Council's aims are?**

- Yes
- No
- Don't know

Please provide any comments:

Question Title

*** 2. Do you think the process will support voluntary and community organisations to take on Council assets?**

- Yes
- No
- Don't know

Please provide any comments

Question Title

*** 3. Do you think the decision making process is clear?**

- Yes
- No
- Don't know

Please provide any comments

Question Title

*** 4. Do you think there is adequate support included for organisations who wish to be involved in a Community Asset Transfer?**

- Yes
- No
- Don't know

Please provide any comments

Question Title

*** 5. Does your organisation currently deliver/work from a Council building?**

- Yes
- No
- Don't know

Please provide any comments

Question Title

*** 6. Is your organisation/group currently seeking land or buildings from which to deliver or develop its services?**

- Yes
- No
- Don't know

Please provide any comments

Question Title

*** 7. Contact details (optional)**

Name

Organisation

Role

Email

Telephone