WILTSHIRE COUNCIL

CABINET (CAPITAL ASSETS) COMMITTEE
26 July 2011

Subject:	**Policy for the Transfer of Community Assets**
Cabinet Member:	Toby Sturgis – Waste, Property and Environment
Key Decision:	Yes

Purpose

1.   To request that members confirm the Council's policy in respect of the Transfer of Community Assets.

Background

2.   The Community Asset Transfer Policy was approved by Cabinet on 15th December 2009. It set out a framework whereby all properties declared surplus by the Council would be subject to consultation with Area Board members.   There were three main strands:

- Area Board Members should be pro-active in identifying priority community projects to ascertain whether the Council can assist delivery of that project through asset transfer;
- There should be some tangible benefit to the community with the transfer being a specific catalyst to achieve a specific objective.
- To make the process quick and easy, through the use of short-form templates and applying standard transfer documents as far as possible.

3.   Cabinet resolved on 14th September 2010 to apply a further clarification to the process, by proposing a distinction between strategic and non-strategic property sales recognising the need to streamline the process to reflect the volume of sales expected through the Workplace Transformation Programme and the Corporate Plan. A strategic property is defined as having a value in excess of £250k, or if it has been identified to fund a strategic corporate project. A similar approach is taken where the property is being sold or transferred to a third party to deliver a corporate policy or statutory function.

4.   The Cabinet Capital Assets Committee resolved on 10 January to request the Director of Resources to carry out a review of the Community Asset Transfer policy, and to report to a future Committee meeting with a proposed amended policy.

Main Considerations

Policy Description

5.　The Council will promote and facilitate the transfer of assets currently in its ownership to community groups where the community value of such a transfer can be demonstrated to exceed the strategic value to the Council. The policy should sit alongside the equivalent policy regarding the delegation of services to Parish and Town Councils, but seeks to take a pragmatic approach to avoid unnecessary duplication between them.

Categorisation of Assets

6.　Applications for a Community Asset Transfer will be considered in three main categories.

- Category 1 – Applications for an asset that is defined as "Strategic" in terms of its contribution to the Council's aims.

- Category 2 – Applications for an asset that is not defined as strategic, but where the asset has third party land interests, complicated legal title issues, or where the asset is a building. Applications in this category may include instances where the status of the community group requires further confirmation.

- Category 3 – Applications for an asset that is not defined as strategic, where the transfer would be a straightforward exercise following satisfactory legal title verification, and the community group's status is clear or requires no further investigation.

7.　By categorisation in this way, the following process will be tailored to suit the level of complexity associated the application and the asset in question.

The application process

8.　It is proposed that further work be carried out between the relevant Area Board Manager, officers in Strategic Property Services, Legal Services and the Community Governance team to develop and update the guidance documents available to community groups, members, Area Board members and officers, to provide a clear and concise guide to the process and their roles within it.

9. It is proposed that three main stages exist for all community asset transfer requests:

    1) Pre-application Stage
    2) Application Evaluation and Decision Stage
    3) Legal implementation Stage

10. At the end of each stage, a key gateway exists. Key aspects of each stage are outlined below:

Pre-application Stage

11. Advice is available from officers in Strategic Property Services in advance of an application being made, to assist enquiries from groups who may be looking for piece of land or a building to meet a specific need.

12. During this stage, it should be possible to identify which of the above categories an eventual application may sit within, and to enable the depth of supporting business case and application information to be tailored accordingly.

13. This stage of the process should culminate in the following being produced:

    - Completed Community Asset Transfer Application Forms
    - Applicants Business Case
    - Community Area Managers Report

14. At the pre-application stage, any links between an Asset Transfer within scope for this policy, and a Service Delegation should be identified. It should be established at between the parties and officers of the relevant Council Departments which is the predominant factor. The predominant factor should dictate which policy prevails, in order to avoid duplication in processes and unnecessary complexity to the application and approval processes.

Application Evaluation and Decision Stage

15. On receipt of the application, Strategic Property Services will allocate it to the appropriate category. The governance and decision making process proposed is as follows:

16. For Category 1 applications – the application must first be considered by the Area Board to determine whether they support the application, and are satisfied by the credentials of the applicant and its business case. This should be based on the template report, and completed by the Area Board Manager.

17. If the Area Board recommends the approval of the application, they should submit the Community Area Manager's report to the Cabinet (Capital Assets) Committee for consideration as a strategic asset. The Committee

will decide whether the application's community benefits outweigh the strategic importance of the asset either in terms of its continued ownership by the Council or in terms of its importance to the Council's financial planning.

18.   <u>For Category 2 applications</u> – the application will be considered by the Area Board on the basis of the Community Area Manager's Report. The Area Board has delegated authority to approve or reject the application, noting any complexities associated with the transfer process. A suitable outline timescale for the transfer should be identified, and the applicant should be able to confirm that they have the support available to progress the transfer process and respond to complex title issues within reasonable timescales.

19.   Area Board Members in consultation with officers may need to consider:
(i) Any Legal matters relating to the property/terms of transfer.
(ii) Any financial costs/benefits/issues arising from the proposal.
(iii) Experience/capacity/capability of the Council/organisation involved.
(iv) Detailed risk assessment of the proposal.
(v) Details of the transfer agreement.

20.   <u>For Category 3 applications</u> – the application will be considered by the relevant Area Board who will have delegated authority to approve or reject an application, on the basis of adequate checks by Strategic Property Services and Legal Services. Subject to the satisfactory input from the applicant, and reasonable timescales for responses from their legal advisors, such applications are expected to be completed within an eight week period from the point of approval of the application.

21.   Where this period is likely to be exceeded for reasons that emerge through the process, the Council may consider the use of a licence to pass early possession of the asset to the applicant ahead of the formal transfer being completed. However, this is approach should be reserved for exception cases, and priority focused on completing the land transfer within the timescale outlined in 20. above.

22.   In all cases, the community proposal applicant would be required to submit a formal Business Case to support the proposal. This would enable officers to fully consider the implications to the Council of any asset transfer.

23.   In straight forward cases, this could be done using a short form, the template for which could be prepared and managed by the Community Area Manager in conjunction with the applicant to speed up the process of assessing applications.

Legal Implementation Stage

24. This is the stage at which the legal transfer will be completed. During this stage, contact between Strategic Property Services, Legal Services and the applicant and their legal advisors will be ongoing. Even in straight-forward Category 3 transfers, this process may involve numerous exchanges, and this should be expected. The timescales within which each party responds should be reasonable, but it should be noted that the Council will do all that is reasonable to expedite the transfer once a decision has been made.

25. The use of standard template documentation is intended to ensure consistency and fairness, but also to help speed up the process of transfer.

26. Where the property concerned is land, in order to be consistent then this should be transferred to the community group (including Parish or Town Councils) on the same terms as those which were passed across to Salisbury City Council.

27. Where the property concerned is a building, there may be more complex terms to be applied. This should be noted by all parties, and explained carefully to applicants to avoid expectations on the speed of transfer to be unduly raised.

Environmental and climate change considerations

28. None.

Equalities Impact of the Proposal

29. The Business Case submitted by community groups should identify how they intend to provide equality of access for their proposed use of the asset. This should be a core consideration in evaluating applications.

Risk Assessment

30. Whilst there is a clear intention in favour of transfer of assets to provide local community services in appropriate cases, the Council has to consider its statutory and financial obligations as part of any such arrangements.

31. Members should note that this policy should not seek to pass across properties that become liabilities to community projects. There is a risk that a community proposal identifies a property that is not fit for purpose thereby undermining the sustainability of that project through an opportunistic transfer.

32. There may be risks resulting from some specific proposals but these will be dealt with as part of the individual assessment of each case.

Financial & Legal Implications

33. Members will be aware that in some cases the asset will underpin the Council's budget in terms of specific service reviews, including the Campus and Operational Delivery Programme. The loss of a significant capital receipt may be financially and legally unacceptable without being off-set by identified compensatory savings, irrespective of the merits of the community proposal. These implications will be assessed by the Cabinet Capital Assets Committee in evaluating Category 1 applications as determined in paragraph 16.

34. There may be other financial and legal issues connected with some specific proposals but these will be dealt with as part of the individual assessment of each case.

35. Since its introduction in December 2009 a high number of applications and pre-application requests have been received. This has thus far placed an unfunded revenue pressure on Strategic Property Services and Legal Services. The Council's Section 151 Officer has confirmed that the Council's internal staffing costs in Property and Legal Services associated with applications under this policy are able to be legitimately recovered from Capital Receipts. This will enable resource to be dedicated to the operation of this policy and would enable applications to be dealt with more pro-actively than has been possible until now.

36. Members are asked to note that since its introduction a backlog of requests has built up. This backlog will take some time to clear, but the above described policy and process will enable applications to be dealt with more swiftly in future.

Conclusions

37. This paper proposes a number of amendments to the Community Asset Transfer policy that are intended to improve the speed and clarity with which applications are dealt.

38. The implications of implementing the changes are considered to be minimal on applicants to the process, but will assist officers in progressing straight forward applications with a minimum of delay.

39. Further guidance will be developed to ensure that all parties involved in transfers are clear of the policy, its implementation and the roles and responsibilities of those involved.

Proposal

40. That the Cabinet (Capital Assets) Committee approves the above approach to the transfer of community assets.

41. That Cabinet (Capital Assets) Committee approves the following delegations of authority under this policy:

a) Decisions related to Category 2 applications under the policy are delegated to Area Boards;
b) Decisions related to Category 3 applications under the policy are delegated to the Director Of Transformation & Resources following consultation with the Cabinet Member, Property and Development Control;

42.   That a plan for communication of this decision be developed in conjunction with Democratic Services, Area Board Team and Communications, together with the development of an improved guidance document to support all parties involved in the process.

Reason for Proposal

43.   To ensure that the Community Asset Transfer policy continues to be deliverable and that the policy remains relevant to the Council's objectives in line with the Business Plan, and evolving work related to building resilient communities.

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Background Papers

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices
None