

| ISLE OF ANGLESEY COUNTY COUNCIL | |
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| Report to: | Executive Committee |
| Date: | 31st May, 2016 |
| Subject: | Asset Management Policy and Procedures – Policy Review |
| Portfolio Holder(s): | Cllr J Arwel Roberts (Highways, Waste & Property) |
| Head of Service: | Dewi R Williams |
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| Local Members: | N/A |

| A –Recommendation/s and reason/s |
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| <p>Recommendation To endorse report and adopt amended Policy.</p> <p>Background The Authority's Asset Management Policy and Procedures (AMPP) document was last reviewed in March 2012. The document provides the policy framework in relation to the following property management topics:</p> <ul style="list-style-type: none"> • The disposal of assets • The letting of assets • Lease and property management • Rent arrears • Property Acquisition • Asset Transfers <p>As reported to the Executive Committee in its meeting dated 14th December 2015 (Item 5) the Scrutiny Outcome Panel considering the Disposal of Assets concluded that the current AMPP should be reviewed to incorporate a number of recommendations which intend to simplify, standardize and expedite the process along with reflecting changes to marketing practices since the policy was last reviewed.</p> |

The main revisions are summarised as follows:

- a. Make amendments to reflect the present structure of the Heads of Services;
- b. Amend financial thresholds, marketing and disposal methods;
- c. Avoid unnecessary reporting;
- d. Simplify the reporting processes to Local Members, sharing information at a much earlier stage for information purposes rather than consulting at the end of the process.
- e. Conduct communications with Local Members via email rather than by letter.
- f. Redraft section 7.0 of the report (Asset Transfers) to ensure consistency with the previous sections and to reflect recent Welsh Government best practice guidance and legislation.

B – What other options did you consider and why did you reject them and/or opt for this option?

N/A

C – Why is this a decision for the Executive?

This is a revision to an existing approved policy.

CH – Is this decision consistent with policy approved by the full Council?

This is a revision to an existing approved policy.

D – Is this decision within the budget approved by the Council?

There is no additional cost to the Authority in relation to the amendments made to the existing policy.

| DD – Who did you consult? | | What did they say? |
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| 1 | Chief Executive / Strategic Leadership Team (SLT) (mandatory) | The comments of the Chief Executive and SLT have been taken into account in drafting the policy - with particular reference to section 7 (Asset Transfers) of the document |
| 2 | Finance / Section 151 | Comments made by the S151 Officer have |

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| | (mandatory) | been taken into account when drafting this policy |
| 3 | Legal / Monitoring Officer (mandatory) | Comments made by Legal Services have been taken into account when drafting this policy |
| 4 | Human Resources (HR) | |
| 5 | Property | N/A – This report has been prepared by Property |
| 6 | Information Communication Technology (ICT) | |
| 7 | Scrutiny | Amendments to the existing policy document are being made on the instigation and recommendations made by the Scrutiny Outcome Panel in November 2015 |
| 8 | Local Members | |
| 9 | Any external bodies / other/s | |

| E – Risks and any mitigation (if relevant) | | |
|---|---------------------------|-----|
| 1 | Economic | N/A |
| 2 | Anti-poverty | N/A |
| 3 | Crime and Disorder | N/A |
| 4 | Environmental | N/A |
| 5 | Equalities | N/A |
| 6 | Outcome Agreements | N/A |
| 7 | Other | N/A |

| F - Appendices: |
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| Appendix A – The draft revised policy |

| FF - Background papers (please contact the author of the Report for any further information): |
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ISLE OF ANGLESEY COUNTY COUNCIL

ASSET MANAGEMENT POLICY AND PROCEDURES
(Procedures for Selling, Letting, Lease Management, Rent Arrears,
Buying & Transferring of Property)

MAY 2016

HEAD OF SERVICE HIGHWAYS, WASTE & PROPERTY

PROPERTY SERVICES

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1.0 INTRODUCTION

- 1.1 The Isle of Anglesey County Council Constitution delegates' authority to the Head of Service (Highways, Waste & Property) to acquire or dispose of land and buildings in accordance with this Asset Management Policy and Procedures.
- 1.2 This Asset Management Policy and Procedures document sets out the guiding principles to be used in such instances.
- 1.3 Essentially this Plan will:-
 - a) Act as a reference point for procedural matters when managing the Council's property assets.
 - b) Ensure that the Council is consistent in its dealings with the general public in relation to property matters.
 - c) Ensure that Best Value is taken into account when managing the Council's property assets.
 - d) Ensure that the Council meets the requirements of current legislation in relation to Local Authority property management, in particular, the Local Government: General Disposal Consent (2003) or any subsequent revisions.
 - e) Delegate certain Property Management facilities to the Head of Service (Highways, Waste & Property).
 - f) Enable the Council to act in an efficient and effective manner when responding to requests from the general public in relation to its property portfolio.
- 1.4 This Policy does not apply to the management of the Council's Smallholdings Estate or the David Hughes Charity Estate.
- 1.5 This Policy shall not apply to development land when the Council itself is a partner in a proposed development e.g. provision of Social Housing.
- 1.6 Any deviation from the Policy shall require the consent of the Executive/Relevant Portfolio Members as will any future amendment of this policy.
- 1.7 This Asset Management Policy shall not apply to statutory disposals made on behalf of the Housing Revenue Account (HRA) or to Right-to-Buy disposals made under the Housing Act 1985.
- 1.8 Sections 2.3, 3.2 and 3.3 of this Asset Management Policy, at the discretion of the Head of Service (Highways, Waste & Property), shall not apply to small areas of land where only one prospective purchaser or prospective tenant in the market could make purposeful use of it. In circumstances where a small number of prospective purchasers or prospective tenants or a Town or Community Council may have interest in purposeful use of a small area of land, a "mini-tender" may be adopted at the discretion of the Head of Service (Highways, Waste & Property), rather than the full marketing procedure, and such exceptions are to be limited to prospective sale

values of less than £10,000 or prospective rental values of less than £500 per annum.

- 1.9 Disposal of industrial development plots are subject to a separate application process.

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- 2.0 **DISPOSAL OF ASSETS** (defined as a transaction for a capital value that can include freehold sales, long leases, easements, release of covenants and the granting of other minor rights)
- 2.1 Disposal of the Council's assets should follow the guidelines and procedure set out below.
- 2.2 Local Members are to be informed at the commencement of the marketing process for information purposes only via email.
- 2.3 Marketing of the property to be disposed of shall take place in each and every case for a reasonable period of time. Should the Council receive a written declaration of interest in a property which has not been subjected to a marketing campaign, such a campaign must be instigated before any further negotiations can take place with the interested party.

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| For all property | : | “For sale” board on site and marketing on the Council’s own website along with at least one national marketing website (such as Rightmove or similar). On occasion additional specialist marketing may be required on a case by case basis. |
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The method of disposal shall either be by sealed tender or public auction depending on the type of property, its condition, its value and the preliminary condition in the market. This decision to either market or dispose will be taken by the Head of Service (Highways, Waste & Property) incorporating professional opinion and best practice. In each case a reserve price will be set beforehand. This shall not apply to industrial development plots which are subject to an application procedure. If a special purchaser is identified; defined as “a particular buyer for whom a particular asset has a special value because of advantages arising from its ownership that would not be available to other buyers in a market” (International Valuation Standards). The matter shall be dealt with as a deviation from policy as per clause 1.6 and referred to the Executive/Relevant Portfolio Members.

- 2.4 All properties will be sold on the basis of Market Value as defined in the Royal Institution of Chartered Surveyor’s Valuation Professional Standards 4(1.2). The Market Value will form the Reserve Price in any Public Auction or Sealed Tender exercise.
- 2.5 The responsibility for taking the decision on whether or not a property should actually be sold will be related to the Market Value of the property in question:-

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| Up to £250,000 | : | Head of Service (Highways, Waste & Property) in consultation with the Portfolio Member |
| Over £250,000 | : | The Executive or Relevant Portfolio Members |

- 2.6 In the event of the Portfolio Holder and the Head of Service (Highways, Waste & Property) being unable to come to an agreement in relation to disposing of a property the matter should then be referred to the Executive.
- 2.7 Any declarations of interest in a particular property received from the general public by other service departments shall be passed on to the Head of Service (Highways, Waste & Property) to be dealt with in accordance with this Asset Management Policy. The comments of the Service Department in question will be considered before any disposal takes place.
- 2.8 Before a property is disposed of on the open market it must first be offered to other service departments who will be given 14 days to show that they have a genuine need for the property in question. Should a service department be successful in securing the use of the property in question, that department will be responsible for all costs relating to the property. Any bids by service departments will be assessed by the Head of Service (Highways, Waste & Property). Each application will be considered on its merits; however, before taking on new assets and causing potential unnecessary delays to disposals, acquiring services will need to demonstrate their commitment to fund the running costs and pay the market value for the asset (as an internal transfer).
- 2.9 The detailed terms and conditions of any disposal will be agreed by the Head of Service (Highways, Waste & Property).
- 2.10 Services are to remain liable for the associated running costs of their surplus or assets held for sale (costs may include, but are not limited to: servicing of fixtures and fittings, utility standing charges, empty business rates, insurance and security) until they are either sold or transferred to another Service (2.8).

3.0 LETTING OF ASSETS (defined as a transaction for a fixed period of time for a rental income)

3.1 Letting of the Council's property assets should follow the guidelines and procedures set out below.

3.2 Marketing of the property to be let should take place in each and every case for a reasonable period of time at the discretion of the Head of Service (Highways, Waste & Property). Should the Council receive a written declaration of interest in a property which has not been subjected to a marketing campaign, such a campaign must be instigated before any further negotiations can take place with the interested party (with the exception of 3.8)

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| For all property | : | "To let" board on site and marketing on the Council's own website along with at least one national marketing website (such as Rightmove or similar). On occasion additional specialist marketing may be required on a case by case basis. |
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3.3 Following the marketing campaign each application received will be assessed in terms of the proposed use of the property. Two trade references and a bank reference (when trade references are not applicable they will be replaced by character references) will be obtained. Where more than one application is received and subject to budget availability, a formal credit check should be conducted on each applicant. Should one of the above be unsupportive, the application should be turned down.

3.4 Assets will be let on the basis of Market Rent as defined by the Royal Institution of Chartered Surveyor's Valuation Professional Standards 4(1.3). The Market Rent will form the guide price on marketing details.

3.5 The decision on whether or not to let a property asset and the choice of tenant will be the responsibility of the Head of Service (Highways, Waste & Property), unless the Market Rent is greater than £50,000 (fifty thousand pounds). Where the Open Market Rent exceeds £50,000 per annum or if the Head of Service (Highways, Waste & Property) is unable to select a tenant, for whatever reason, the decision will be made by the Executive or the relevant Portfolio Members.

3.6 The detailed terms and conditions of any letting will be agreed by the Head of Service (Highways, Waste & Property). This shall include measures to ensure compliance with the lease terms and conditions such as a financial bond or a guarantor as deemed appropriate by the Head of Service (Highways, Waste & Property).

3.7 A register of all lettings authorised by the Head of Service (Highways, Waste & Property) will be kept within the Property Service.

- 3.8 Marketing of an empty property may be avoided where existing tenants, who have fully complied with their existing lease agreements and where expressions of interest have been received to relocate their business into alternative premises, will be allowed to relocate subject to a review of their agreement terms and conditions by the Head of Service (Highways, Waste & Property).

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4.0 LEASE MANAGEMENT/PROPERTY MANAGEMENT

- 4.1 The renewal of Business Tenancies under the Landlord and Tenant Act 1954 will be the responsibility of the Head of Service (Highways, Waste & Property).
- 4.2 The reviewing of a rent as part of the terms and conditions of a current lease will be the responsibility of the Head of Service (Highways, Waste & Property).
- 4.3 Issuing consent for the alteration of any leased premises will be the responsibility of the Head of Service (Highways, Waste & Property).
- 4.4 Applications for the assignment of a lease will be considered by the Head of Service (Highways, Waste & Property) who shall assess the suitability of the assignee as a tenant (Section 3.3 of this plan applies).
- 4.5 Issuing any other consent in relation to the terms and conditions of a lease will be the responsibility of the Head of Service (Highways, Waste & Property).
- 4.6 Applications for wayleaves or easements will be dealt with by the Head of Service (Highways, Waste & Property). This applies when the Council either gives or takes the easement or wayleave.
- 4.7 Any agreements with a term of fewer than 12 months or the granting of any Licence or any non-exclusive possession permission to occupy property may be agreed by the Head of Service (Highways, Waste & Property).
- 4.8 Should a services department no longer wish to make use of a property they control, the property in question must be declared surplus to requirements. The service department in question will remain responsible for the said property, and all associated costs, until the property is disposed of or let. The decision in respect of the future utilisation of the property in question will be made by the Head of Service (Highways, Waste & Property).
- 4.9 The Head of Service (Highways, Waste & Property) will be authorised to accept the surrender of a lease, oppose the renewal of a lease or terminate any lease for whatever reason he sees fit.
- 4.10 In instances for shorter term leases and whereby requests are received for a rental value which is below Market Rent the following sections shall apply:
- 4.11 The Property Service, on behalf of the Council, shall obtain Market Rent for the Property.
- 4.12 The request for a rental reduction will be referred to the appropriate Service associated with the activities of the proposed users/ occupiers and that Service will deal with the application, in respect of rental payments. The appropriate Service dealing with the application will be responsible for allocating a budget to enable a

payment to be made to the applying organisation in respect of the equivalent rent reduction and to enable that organisation to make payment of full Market Rent to the Council.

- 4.13 In the event that the application is refused, the matter may be referred to the Executive/Relevant Portfolio Members for consideration if requested by the applicant.

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5.0 RENT ARREARS

- 5.1 The preferred method of rent collection shall be through a Direct Debit arrangement, avoiding the need to raise invoices. Tenants shall enter into Direct Debit arrangements on legal completion of the lease.
- 5.2 Collection of rent shall be carried out by the Finance Department. Rent is demanded within 14 days and if payment is not received a reminder is sent out 7 days later. A letter from the Council Solicitor is sent out 14 days following the reminder should the rent remain outstanding.
- 5.3 If a tenant has not paid rent for two months or more, and has been issued with demands, reminders etc. as stated above, the Head of Service (Highways, Waste & Property) as landlord will issue a letter requesting full payment of the outstanding debt within 48 hours.
- 5.4 If payment is not received within the stipulated 48 hours the premises should be peaceably re-entered and the lease therefore terminated if the lease allows. This is in accordance with the terms and conditions of leases currently offered by the Council.
- 5.5 The Head of Service (Highways, Waste & Property) in consultation with the Finance Department is authorised to negotiate a payment plan for rent arrears should there be a case where this is in the Council's best interest.

6.0 PROPERTY ACQUISITION

- 6.1 In the event of a service department wishing to purchase property for its use, a request must be passed on to the Head of Service (Highways, Waste & Property). The service department must inform the local member in each and every case via email.
- 6.2 The responsibility for taking the decision on whether or not a property should actually be acquired will be related to the Market Value of the property in question:-

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|----------------|---|---|
| Up to £100,000 | : | Head of Service (Highways, Waste & Property) in consultation with the Portfolio Member. |
| Over £100,000 | : | The Executive |

- 6.3 All acquisitions of property will be made on the basis of Market Value as defined by the Royal Institution of Chartered Surveyor's Valuation Professional Standards 4(1.2).
- 6.4 In the event of the Portfolio Holder and the Head of Service (Highways, Waste & Property) being unable to come to an agreement in relation to the acquisition of a property the matter shall then be referred to the Executive.

7.0 ASSET TRANSFERS

- 7.1 This 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 to third sector and community organisations. An asset is land or buildings in the ownership of the Council. Unless specifically excluded, this policy relates to any Council owned asset as a potential transfer and leaves this open for a decision on a case by case basis by the Corporate Land and Buildings Assets Group (CLBAG) and will be subject to the Welsh Government's guidelines in particular Well-being of Future Generations (Wales) Act 2015 and the National Assets Working Group Best Practice Guidelines.
- 7.2 The Council aims to be a professional and well run council, innovative and outward looking in its approach, committed to developing our people and partnerships in order to deliver efficient and effective services of good quality, that are highly valued by our citizens. Community development and empowerment of communities to help them deliver their own solutions to identified local needs and demands is consistent with this aim. The Council will consider both leasehold and freehold transfers (where it is in the interests of the Council).
- 7.3 Generally, long-term leases will be considered most appropriate to allow the Council to retain some control, but where the transfer of a freehold is considered appropriate, covenants protecting the Council's interests will be secured in the transfer.
- 7.4 All transfers will be considered on a case by case basis and will take account of the Council's responsibility to obtain 'best consideration' in the disposal of its assets. However, in circumstances where transfers are deemed to promote the economic, social or environmental wellbeing of the area the Council may agree that 'best value' in these circumstances is a transfer at less than market value (subject to 7.9 h).
- 7.5 Exclusions to the asset transfer policy are as follows:
- a) Schools sites and buildings identified as surplus as part of the Welsh Government's 21st Century Schools Programme. It shall be the Council's policy to sell such sites for the best possible consideration and wherever practicable to maximise capital receipts from such sites.
 - b) The David Hughes Estate is held on trust by the Council for the charitable purposes and subject to the Charities Acts.
- 7.6 The following sections provide a protocol and guidance for consideration of transfer of property assets to Third Sector (Charitable, Community and Voluntary Groups); Social Enterprises and Local Community Councils.

Guiding Principles Relating to Proposals for Asset Transfer Purpose

- 7.7 The Council exists to provide certain services for the people of the island. The Council is mindful of the potential for other organisations to assist in the delivery

of local services and the need in certain instances for assets to support such provision. The Council will determine at a strategic level how services are to be delivered and provided to the public. Strategic service delivery plans form the basis of decisions regarding the provision and management of assets to support service delivery. It follows that the Council will consider asset transfers to other organisations where it is clear that the basis for doing so would be for supporting the provision of local or strategic services.

- 7.8 The Council has a legal statutory duty to obtain best value for its assets. The Council also relies significantly upon revenue savings and capital receipts from the sale of surplus sites and premises to support the provision and upkeep of remaining assets for service delivery. In cases where the Council is unable to identify sufficiently strong purpose for asset transfer to another organisation, or where there is doubt as to whether asset transfer for the benefit local communities outweighs the benefits of alternative options for disposal which are open to the Council, there is likely to be a stronger case presented for a decision towards maximisation of financial benefit to the authority.

Principles to be applied

- 7.9 The following guiding principles will therefore be applicable during the consideration of any proposals for disposal of property at less than market value, whether by means of leasehold or freehold disposal.
- a. In relation to school sites and buildings identified as surplus as part of the Council's school places rationalisation programme or in connection with the Welsh Government's 21st Century Schools Programme, it shall be the Council's policy to sell such sites on the open market (unless alternative use by a Council service is identified) and wherever practicable to maximise capital receipts from such sites by considering development potential and taking steps to include such potential within sales particulars.
 - b. In considering potential asset transfer options the Council shall give due consideration to and balance the competing requirements of local communities against the benefits which may accrue to the wider community. Such consideration shall include appraisal of all costs to the Council of disposal at less than market value, including revenue implications. Benefits to local communities will be viewed in the context of how these may also assist the island as a whole.
 - c. Disposals at less than market value may be deemed appropriate where there is evidence of market failure or where asset transfer is likely to be the only mechanism for maintaining established services which are identified as being beneficial to the wider community and where no realistic alternative means of provision has been identified.
 - d. In instances where competing requests for asset transfer are identified for a single

property the Council shall consider advertising the availability of the site and this may include options for purchase of the site on the open market. A matrix for scoring applications shall be determined prior to placing the advert and shall include whether a public service is to be delivered from the site, quality of the proposed service provision, frequency of use of the site per week or month, cost benefits to the Council.

- e. The Council will normally only consider asset transfer at less than market value to Community and Town Councils, Third Sector Organisations (Voluntary, Charitable or recognised Social Enterprises) and Community Based Groups (which may have been formed specifically for the purpose). However, transfers to organisations at less than market value will be subject to State Aid rules.
- f. In all cases asset transfer shall only take place to a properly constituted body for which the following factors are clearly established and acceptable to the Council:
 - i. objectives of the organisation and the social, economic and environmental benefits to the community.
 - ii. risks – financial cost to the Authority, sustainability of the organisation - what would happen to the asset in the event of the organisation ceasing to exist.
 - iii. how the asset will be managed both on a day to day basis and over the long term, including impact on the Welsh Language in terms of the Welsh Language (Wales) Measure 2011.
 - iv. how the organisation will manage its financial affairs and the overall governance of the organisation.
 - v. the purpose for which the site or building is to be used is clear and is identified as directly supporting local communities and/or providing local or strategic services for the people of the island and can demonstrate public support.
- g. Sites and premises which are considered to be of value for strategic developments or which may be required in connection with the long term prosperity of the island shall not be considered for asset transfer even in cases where one or more of the above criteria are met.
- h. The Council may decide to include conditions in relation to disposals at less than market value whether of leasehold or freehold and such conditions may relate to the following:
 - proposed use of the site or building
 - length of term of lease
 - exclusion from the statutory protection of the Landlords and Tenant Acts

- provision of a financial surety
 - covenants or pre-emption clauses to ensure that the proposed use or development of the site is carried out as intended, within a reasonable timescale and that the site is not sold on for purposes other than those originally intended as a consequence of the asset transfer, without paying back any undervalue at the relevant percentage.
- i. With the exception of works necessary to ensure the Council meets its obligations with regard to health and safety, the Council will not undertake maintenance or improvements to properties prior to disposal by asset transfer.

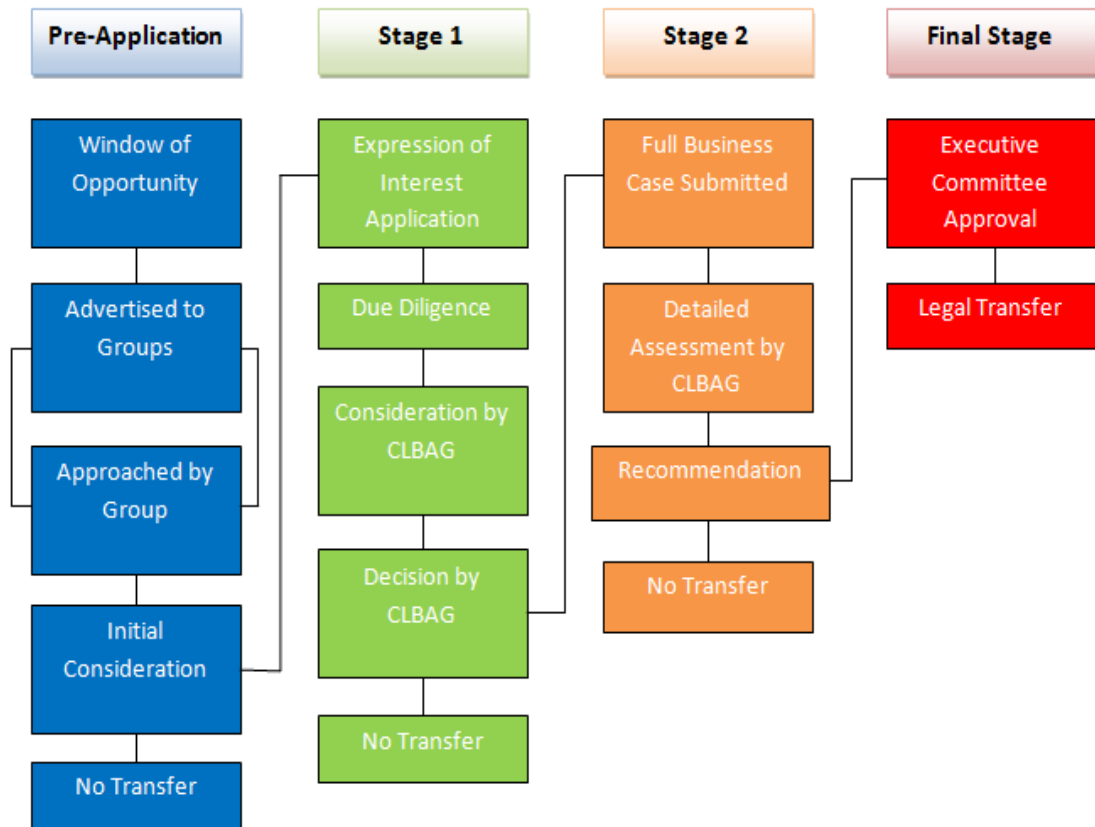
Issues for Consideration in Relation to Proposed Asset Transfers and Related Disposals

7.10 The following issues have been identified as requiring formal and detailed consideration as part of any proposal to transfer of property assets to another organisation:

- a. Need for initial appraisal of proposed asset transfer prior to more detailed consideration.
- b. How will the organisation ensure that it provides services and opportunities to members of the community through the medium of Welsh and treats the Welsh language no less favourably than the English language.
- c. Independently assessed Market Value of the asset.
- d. Proposed value of asset transfer.
- e. Whether the asset is to be transferred at undervalue and if so whether this difference is less than or greater than £2M (See general Disposal Consent [Wales] Dec 2003)
- f. Nature of the organisation taking on the asset, governance and sustainability.
- g. Intended use of the asset by the organisation, whether or not there is a need and public support.
- h. Whether the purpose, nature of the organisation and intended use of the asset are consistent with being in the interests of the economic, social or environmental wellbeing that will benefit the area, part of the area or people's resident or present in the area.
- i. Whether the identified economic, social or environmental wellbeing benefits the area by an amount commensurate with the proposed undervalue transfer.
- j. Impact on the Council's retained assets.

- k. Whether the nature of the organisation and intended use of the asset would result in a transfer of the asset breaching European Union State Aid Regulations.
- l. Whether the transfer relates to an “open space” defined by section 336(1) of the Town and Country Planning Act 1990 and should be disposed under the terms of the Local Government Act 1972 s123(2A) which necessitates advertisement in a local paper for 2 weeks and consideration of any representations made as a result.
- m. Whether the transfer relates to “playing fields” which should be disposed under the terms of the Playing Fields (Community Involvement in Disposal Decisions) [Wales] Measure which necessitates the need to conduct various consultations, impact assessments and consider any representations made.
- n. Whether the proposal is to transfer freehold to the organisation or transfer by way of a lease
- o. Whether the transfer is to be conditional upon services being provided from the asset by the organisation
- p. The Welsh Government recommends that Local Authorities confer with their external auditors when seeking to rely on the General Disposal Consent
- q. In cases where more than one asset is under consideration for transfer to an organisation, each proposed transfer is to be reviewed separately in relation to the above criteria

Process for Consideration of Asset Transfers



7.11 Any Council service wishing to consider a transfer of one or more assets to another organisation must refer the matter to CLBAG at the earliest opportunity. Any requests for asset transfers received from outside bodies or organisations must be forwarded to Property Services who will bring the matter before CLBAG for consideration. Any requests received directly by, or any proposals initiated by Property Services, will be brought to the attention of CLBAG by Property Services.

7.12 Property Services will follow this protocol in considering such proposals. Upon receiving details of requests or proposals for asset transfers, Property Services will review the Asset Register to establish the following:

- a. That the Council is the freehold owner of the asset
- b. Which Service is responsible for management or operation of the asset
- c. Whether the asset has any legal covenants or restrictions attached to the Title and whether these would restrict the further consideration of an asset transfer
- d. Property Services will formally consult with the service which is responsible for the management and operation of the asset

- e. Property Services will consult with all Council services to establish any interest for further or alternative use of the asset by the Council. If one or more services registers an interest in further use of the asset this will be considered in detail with the relevant services to identify appropriate budgets, authority and approval in conjunction with consideration of the asset transfer proposal.
 - f. In relation to assets considered suitable for transfer; Property Services will contact relevant external organisation and send a Pre-Application Expression of Interest application form with a request for this to be completed and returned within a maximum of 6 weeks. The form will make clear to the organisation the next steps in the process and the requirements the Council will make of the organisation during the next stages e.g. preparation of Business Plan, provision of financial information, payment of fees and other relevant costs. A form for this purpose is appended to this document (Appendix 1).
 - g. The Expression of Interest form will be assessed by Corporate Land and Buildings Assets Group (a panel consisting of the relevant Services including Finance, together with appropriate officers) in a timely manner (not exceeding 6 weeks). If the initial application response is deemed to be satisfactory the following steps in this process will be undertaken. If the response is deemed to be unsatisfactory the Panel will make a recommendation and the application will be refused providing clear reasons for the refusal.
 - h. When it is clear that matters identified above would not prohibit an asset transfer process Property Services will obtain independent Market Valuations of the Property on the basis of existing usage, the proposed usage by the external organisation and, if appropriate, potential development value. Independent Market Valuations will usually be obtained through the Valuation Office Agency (District Valuer). The costs of the DV valuation and any other external fees e.g. Legal costs are to be borne by the organisation to whom the asset transfer is proposed to be made, unless a decision by the Executive is made to the contrary.
 - i. Property Services will review the proposal to determine the proposed value of transfer and any undervalue.
- 7.13 The Council's approved Asset Management Policy and Procedures requires any disposal to be at market value following a marketing campaign other than in certain specified circumstances. Any deviation from the policy will require Executive approval. By its nature, an asset transfer to a specific organisation is unlikely to result from a marketing campaign and is likely to be at a sum below market value. It follows that proposals for asset transfers will, in all probability, need to be considered by the Executive for decision. Property Services will discuss details of the proposal with the relevant service to determine information required to be included in the report to the Executive. Information regarding the nature of the organisation, services to be provided from the asset, use of the asset and any conditions relating to use will need to be included.

- 7.14 In instances where the proposed transfer would result in an undervalue exceeding £2M or otherwise when the proposal does not fall within the scope of the General Disposal Consent [Wales] 2003, prior authority from Welsh Government will be required and alternative advice will be required as this protocol will not be appropriate.
- 7.15 Property Services will undertake consultation with and seek authority and further advice from Welsh Government.
- 7.16 Property Services will consult with the Finance and Legal services to review the following:
- a. whether the proposed transfer may be considered to be in the interests of the economic, social or environmental well-being that will benefit the area
 - b. whether the proposed transfer would constitute a breach of State Aid regulations
- 7.17 Property Services will inform and obtain observations from the relevant Local Members for the ward where the property is located.
- 7.18 With the assistance of other departments Property Services will prepare a report for the Executive setting out all relevant information including specific advice on the following:
- a. Whether the disposal is in the interests of the economic, social or environmental well-being that will benefit the area
 - b. Whether the disposal is considered to result in a breach of state aid regulations
 - c. The views of the Local Member, Portfolio Holder and initial review panel
 - d. The views of the relevant service with responsibility for the management and operation of the asset or, if applicable, the views of the relevant service in relation to the proposed use of the asset following transfer.
 - e. Responses to consultations and alternative uses identified for the asset.
 - f. Details of the open market valuation and proposed transfer value together with reasons for making the transfer, in the following form:

| Asset | Valuation (£) | Transfer Price (£) | Undervalue (£) | Undervalue (€) | Reason for Transfer |
|--------------|------------------|-----------------------|-------------------|-------------------|------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| Total | | | | | |

- 7.19 When Executive approval of the transfer is granted, Property Services will instruct Legal Services, including relevant and appropriate terms and conditions, to proceed with the transfer documentation and complete the transfer.

- 7.20 When the proposed transfer is conditional upon the delivery of a public service from the asset, the relevant service shall be responsible for preparing the terms of a service level agreement to be entered into with the organisation for that service.

Assessment of State Aid

- 7.21 Assessment of State Aid requirements may require further specialist advice but consideration of the following matters will guide decisions as to whether State Aid is likely to be significant factor influencing a decision on asset transfers:

- a. State Aid is defined under Article 87(1) of the EC Treaty as being any public resource given selectively to an undertaking that could potentially affect competition and intra-community trade. An undertaking is defined as any entity, regardless of its legal status, that is engaged in economic activity. It can include voluntary and non-profit making public or private bodies when they are engaged in economic activities which have commercial competitors.
- b. It is the responsibility of the Authority to ensure that it complies with State Aid rules. In considering the application of State Aid rules, the nature of the activities to be undertaken at the premises which are the subject of the asset transfer are to be examined. Relevant EC Case Law will need to be reviewed in the context of findings. UK Government expects a “risk-based” approach to be undertaken where appropriate.
- c. The review will require the recording of the aims of the proposed asset transfer, consideration of each activity to be undertaken at the premises against case law and precedents where such exist, and whether the activity is such that State Aid would apply. An example of a review matrix is included as Appendix 2 to this document, along with examples of case law and other circumstances that may be considered relevant.
- d. Key tests for consideration for State Aid to be present are as follows:
 - the aid is to be granted by the State or through State resources
 - the aid provides an advantage to the undertaking
 - the aid is selective – it favours certain undertakings or production of certain goods
 - it distorts or threatens to distort competition
 - it affects trade between Member States

- 7.22 Any award of public resources meeting all of the above tests is deemed to be State Aid and is subject to the Regulations accordingly. In instances where State Aid is deemed to apply notification of the proposal to Brussels will be required and this is outside the scope of this document.

Appendix 1 - Community Asset Transfer Expression of Interest (EOI)

Anglesey County Council has an approved protocol for the consideration of requests and proposals for the asset transfer of property which is deemed to be surplus to requirements. The Council will conduct consultations and due diligence and may request further information in due course.

The following Application Form is an initial stage in the consideration of any proposals for asset transfer. You are requested to provide responses to the following questions and to submit these to the following:

Isle of Anglesey County Council
Head of Service (Highways, Waste & Property)
Sustainable Development Department
Council Offices
Llangefni
Anglesey. LL77 7TW

| | |
|------------------------|--|
| Organisation | |
| Applicant | |
| Contact details | |
| Date | |

| | |
|----------------------------------|--|
| 1. Introduction | |
| The Outline Business Case | |
| a. | Is this a request to take possession of a specific asset? If yes, please provide details. |
| b. | Have you been invited to make a request by the Local Authority? If yes, please provide details. |
| c. | Is this an exploratory request? If yes, please provide details of your requirements. |
| d. | Other reason? If yes, please provide details. |
| e. | Have any other buildings in the vicinity been considered for use? |

| 2. Background | |
|-----------------------------------|---|
| Describe your organisation | |
| a. | The services provided |
| b. | The area of service provision |
| c. | People numbers and organisational structure |
| d. | The accommodation you currently use |
| e. | How your organisation is funded |
| f. | How your organisation provides services to the public through the medium of the Welsh language. |

| 3. Why the asset is needed | |
|---------------------------------------|---|
| Is your existing accommodation | |
| a. | Unsuitable? |
| b. | In the wrong location? |
| c. | Too costly or you have received notice to vacate? |
| d. | Is your service expanding? |
| e. | Are you providing additional services? |
| f. | Have you considered other properties/assets? |

| 4. Benefits | |
|--|--|
| Provide details of the benefits that you consider could be achievable. | |
| You should include benefits to your organisation, to the community and to Anglesey. | |
| a. | Will the asset enable service improvements? |
| b. | Will additional services be provided? |
| c. | Will the service become more visible? |
| d. | Will the service become more accessible? |
| e. | Will the asset compliment other services or organisations or enable collaborative working? |
| f. | Will it safeguard services? |
| g. | Will there be any financial savings? |

| 5. Organisational Health Check | |
|---|---|
| Consider your Organisations ability to maintain services delivery and deliver benefits | |
| a. | Do you have a mission and objectives? |
| b. | What are your governance arrangements? |
| c. | Do you have a written constitution or Memorandum & Articles of Association? Please provide Company/Society registration number and/or Charity registration number. |
| d. | Do you publish an annual report? If yes, please provide the most recent copy. |
| e. | What financial package is in place to support your proposal and how secure is the funding? |

| 6. Partners, Collaborators and Stakeholders | |
|---|--|
| Are you proposing any arrangements with the council or other public or third sector organisations? | |
| a. | Provide details and state the scope of their involvement. |
| b. | Are they supportive of this proposal? |
| c. | Has the organisation consulted with the local community and can demonstrate broad community support? |

Following receipt of your reply in respect of the above the Council will arrange a Panel to assess your responses to these questions and advise you as to further steps to be proposed. If the Panel considers that an asset transfer is not appropriate you will be informed providing the rationale for refusal.

If the Panel agrees that your submission should be considered further the Council is then required to obtain an independent market valuation of the property and, if appropriate, potential development value. Your organisation will be asked in due course to bear the costs of the Valuation Office Agency (District Valuer) and any other relevant fees. Please confirm that you are willing to accept making payment in respect of such fees.

The Council must adhere to various measures set out in the Welsh Government's General Disposal Consent and this will require consideration of matters such as the economic, social or environmental well-being that will benefit the area through a transfer, state aid regulations and the value of a sale. If the Panel agrees your submission should be considered further we will require additional information to support this consideration and in relation to the General Disposal Consent and the Council will contact you further to request such information. This may include, for example, a Business Plan for the venture, constitution of the organisation, charitable status, financial accounts or balance sheet, etc. Please note that the asset transfer agreement is likely to contain a number of conditions on future use of the property and which will be based upon the information supplied and which may need to be the subject of further dialogue and negotiation.

A final decision on asset transfer will be taken by the Executive following consideration of a report which will provide details of the proposed venture and use of the building.

Guiding Principles Relating to Proposals for Asset Transfer Purpose

The Council exists to provide certain services for the people of the island. The Council is mindful of the potential for other organisations to assist in the delivery of local services and the need in certain instances for assets to support such provision. The Council will determine at a strategic level how services are to be delivered and provided to the public. Strategic service delivery plans form the basis of decisions regarding the provision and management of assets to support service delivery. It follows that the Council will consider asset transfers to other organisations where it is clear that the basis for doing so would be for supporting the provision of local or strategic services.

The Council has a legal statutory duty to obtain best value for its assets. The Council also relies significantly upon revenue savings and capital receipts from the sale of surplus sites and premises to support the provision and upkeep of remaining assets for service delivery. In cases where the Council is unable to identify sufficiently strong purpose for asset transfer to another organisation, or where there is doubt as to whether asset transfer for the benefit local communities outweighs the benefits of alternative options for disposal which are open to the Council, there is likely to be a stronger case presented for a decision towards maximisation of financial benefit to the authority.

Principles to be applied

The following guiding principles will therefore be applicable during the consideration of any proposals for disposal of property at less than market value, whether by means of leasehold or freehold disposal.

- a. In relation to school sites and buildings identified as surplus as part of the Council's school places rationalisation programme or in connection with the Welsh Government's 21st Century Schools Programme, it shall be the Council's policy to sell such sites on the open market (unless alternative use by a Council service is identified) and wherever practicable to maximise capital receipts from such sites by considering development potential and taking steps to include such potential within sales particulars.
- b. In considering potential asset transfer options the Council shall give due consideration to and balance the competing requirements of local communities against the benefits which may accrue to the wider community. Such consideration shall include appraisal of all costs to the Council of disposal at less than market value, including revenue implications. Benefits to local communities will be viewed in the context of how these may also assist the island as a whole.
- c. Disposals at less than market value may be deemed appropriate where there is evidence of market failure or where asset transfer is likely to be the only mechanism for maintaining established services which are identified as being beneficial to the wider community and where no realistic alternative means of provision has been identified.
- d. In instances where competing requests for asset transfer are identified for a single property the Council shall consider advertising the availability of the site and this may include options for purchase of the site on the open market. A matrix for scoring applications shall be determined prior to placing the advert and shall include whether a

public service is to be delivered from the site, quality of the proposed service provision, frequency of use of the site per week or month, cost benefits to the Council.

- e. The Council will normally only consider asset transfer at less than market value to Community and Town Councils, Third Sector Organisations (Voluntary, Charitable or recognised Social Enterprises) and Community Based Groups (which may have been formed specifically for the purpose). However, transfers to organisations at less than market value will be subject to State Aid rules.
- f. In all cases asset transfer shall only take place to a properly constituted body for which the following factors are clearly established and acceptable to the Council:
 - objectives of the organisation and the social, economic and environmental benefits to the community.
 - risks – financial cost to the Authority, sustainability of the organisation - what would happen to the asset in the event of the organisation ceasing to exist.
 - how the asset will be managed both on a day to day basis and over the long term, including impact on the Welsh Language in terms of the Welsh Language (Wales) Measure 2011.
 - how the organisation will manage its financial affairs and the overall governance of the organisation.
 - the purpose for which the site or building is to be used is clear and is identified as directly supporting local communities and/or providing local or strategic services for the people of the island and can demonstrate public support.
- g. Sites and premises which are considered to be of value for strategic developments or which may be required in connection with the long term prosperity of the island shall not be considered for asset transfer even in cases where one or more of the above criteria are met.
- h. The Council may decide to include conditions in relation to disposals at less than market value whether of leasehold or freehold and such conditions may relate to the following:
 - proposed use of the site or building
 - length of term of lease
 - exclusion from the statutory protection of the Landlords and Tenant Acts
 - provision of a financial surety
 - covenants or pre-emption clauses to ensure that the proposed use or development of the site is carried out as intended, within a reasonable timescale and that the site is not sold on for purposes other than those originally intended as a consequence of the asset transfer, without paying back any undervalue at the relevant percentage.
- i. With the exception of works necessary to ensure the Council meets its obligations with regard to health and safety, the Council will not undertake maintenance or improvements to properties prior to disposal by asset transfer.