

## WEST NORTHAMPTONSHIRE COUNCIL CABINET

11<sup>th</sup> October 2022

Cabinet Member for Finance – Councillor Malcolm Longley

<b>Report Title</b>	<b>Adoption and community use of assets</b>
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**Appendix A** – Draft Adoption of Assets Policy

**Appendix B** – Draft Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property

#### **1. Purpose of Report**

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- 1.1 To propose policies relating to aspects of the Council’s business related to assets, specifically a policy on the adoption of assets, and a policy on the use of the Council’s property for voluntary, community, social enterprise, and faith (VCS) groups.

#### **2. Executive Summary**

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- 2.1 As a new local authority, WNC does not yet have policies covering all significant areas of its operations. The practices of the predecessor councils are typically followed, but these do not provide a consistent basis for decision-making for West Northamptonshire.

- 2.2 Accordingly, two new policies are proposed addressing land and property-related issues. These are:
- a) Adoption of Assets.
  - b) The Voluntary, Community, Social Enterprise, and Faith Group use of Property.
- 2.3 Each of the proposed policies is designed to give clarity to all concerned about the Council's approach to the matters it covers, helping to make the best use of public resources in pursuit of the Council's policy objectives.
- 2.4 The proposed Adoption of Assets Policy covers such matters such as which is the most appropriate adopting body, the sums which should be paid on adoption, and the terms of adoption.
- 2.5 The proposed Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property provides a framework for a fair and open choice of which VCS group should be awarded use of the Council's property and on what terms having regard to all statutory constraints and requirements. It applies the Council's grants policy to assess the community benefit of each proposed use of a property.
- 2.6 Informal consultation has been carried out on both documents. It is proposed to adopt the Adoption of Assets policy on an interim basis whilst formal consultation is carried out on it, as continuing to operate without a policy framework is undesirable. The voluntary, community, social enterprise, and faith use of property policy is proposed for immediate adoption, with any changes which seem sensible following implementation being addressed in future updates.

### **3. Recommendations**

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- 3.1 It is recommended that the Cabinet:
- a) Authorises consultation on the draft Adoption of Assets Policy.
  - b) Adopts on an interim basis the draft Adoption of Assets Policy, pending the results of the consultation.
  - c) Adopts the draft Policy on Voluntary, Community, Social Enterprise, and Faith Group use of Council Property.

### **4. Reason for Recommendations**

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- 4.1 To provide a clear basis on which the Council takes decisions about the adoption of assets and about the use of its assets by voluntary, community, social enterprise, and faith groups.

### **5. Report Background**

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#### **Overview**

- 5.1 The Council began operating as a local authority a little over a year ago. As such, it does not have the fully-developed policy framework a local authority normally develops over time. Certain policies of the predecessor councils with a statutory backing were preserved under the provisions of the local government reorganisation regulations, but most were not. Whilst typically the non-

transferred policies are still applied (in many cases it would be unreasonable to do otherwise) they do not form a coherent basis of decision-making across West Northamptonshire.

- 5.2 In consequence the Council lacks clarity on a number of areas where it would be helpful for policy direction to be specified in order that operational decisions reflecting the Council's intentions can be taken promptly, effectively, transparently, and consistently.

## **6. Issues and Choices**

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### **Adoption of Assets**

- 6.1 The Council is often asked to take on the ownership or control ('adopt') of assets such as open spaces. This arises most often in connection with development proposals but can also occur at other times, perhaps when an existing owner is struggling to maintain or manage a facility. Such assets are often of value to the community but carry a financial cost to look after.
- 6.2 A draft policy is therefore proposed to set out the parameters under which the Council will consider such requests. This seeks to:
- a) Clarify that 'adoption' in these cases means to take the legal ownership of the asset in question.
  - b) Establish the cases in which it is appropriate for the Council to adopt assets and those in which some other body should be preferred.
  - c) Define the levels of financial contribution (commuted sums or other mechanisms) the Council or other adopting bodies should seek, and under what conditions this may be reduced or waived.
  - d) Where it is not appropriate for the Council to adopt an asset because it is better controlled more locally, but a parish council is not going to adopt it, the parameters for a body which would take it on (this is designed to help avoid abusive management arrangements, and fall-back demands on the Council).
- 6.3 It is proposed that the policy would also be commended to the parish councils of West Northamptonshire for their own adoption, with the substitution of references to West Northamptonshire to references to their parish. Of course, the Council cannot compel parish councils to do this; they are free to take their own decisions. However, many parish councils may find it helpful. If the Council consults on that basis and makes available the consultation responses, it should avoid or reduce the need for parish councils to carry out their own consultations on adopting the policy.
- 6.4 The draft policy has been subject to information consultation with parish councils via the Northamptonshire County Association of Local Councils (NCALC).
- 6.5 Due to the benefit of having a policy in place, it is proposed that it be adopted on an interim basis, whilst it is also formally consulted on. Following the formal consultation any appropriate changes would be recommended to Cabinet for approval.

## VCS use of Council property

- 6.6 The Council frequently receives requests for the use of its property by voluntary, community, social enterprise, and faith group ('VCS') organisations seeking to deliver some form of community good. These range from room hire to exclusive occupation of a building for a prolonged period, typically under a lease. Where these are commercial transactions the appropriate charges are levied and no special considerations arise. However, such groups often seek discounted or free occupation in view of their community benefit and/or their inability to meet commercial terms. In those cases the Council would be making an under-value disposal of the property in question; in effect, a form of grant/subsidy by way of rental concession.
- 6.7 At present the Council has no formal means of determining which properties should be made available to VCS groups or which VCS group should be allocated one, and on what terms. There is a danger that this results in decisions which do not maximise value for money in achieving the Council's overall objectives.
- 6.8 A protocol is therefore proposed with the following key elements:
- a) The Council will identify on an ongoing basis the list of properties which is suitable for use of VCS groups and publicise this.
  - b) An application form will be provided for VCS groups to use.
  - c) When interest in using one of these properties is received, the application will be assessed by (i) the Housing & Communities team which deals with grant applications, including where appropriate with reference to the grants advisory panel, to assess the likely community benefits against the Council's objectives, and (ii) by the Assets & Environment team to assess the ability of the applicant to sustain the proposed occupation of the property on suitable terms.
  - d) If there was one applicant and its application was satisfactory then if the detailed terms could be agreed it would be granted a suitable form of occupation of the property.
  - e) If there was more than one applicant, the scores from the 'grant' assessment would be used to judge between them. The highest scoring applicant would be approached to agree detailed terms and if the detailed terms could be agreed it would be granted a suitable form of occupation of the property. If not, the offer would move the second-highest scoring applicant, and so on.
  - f) Definitions around which forms of occupation, including such issues as maintaining obligations and duration of agreement, should be applied in which cases.
  - g) Arrangement for parallel consideration of applications for grants and for use of property where the grant would be necessary for the property to be occupied as proposed.
- 6.9 In some cases the actual approval of outcomes would fall outside of officer delegations and would therefore need to be reported for authority to Capital & Assets Board or Cabinet. In those cases the policy would guide the recommendations put forward.
- 6.10 The draft policy was considered by the VCS Assembly, which represents VCS groups. The Assembly supported the draft policy. Its only comment which might be considered to suggest a change to the draft was a request that the Council is "sensitive re organisations and communities that may already occupy the buildings". It is considered that a group already operating from a building would have an inherent advantage in being able to demonstrate the value of its work to

the community, so there is no need to try and include an 'existing user' factor in the assessment of the merit of applications. The arrangements set out in the policy would also give existing occupiers of property substantial advance notice of the potential for change.

- 6.11 Whilst not requested by the VCS Assembly some minor updates have been made to the draft policy for clarity and to avoid unintended effects. These are that: It has been made clear that even if there is more than one application if the highest-scoring falls below the minimum threshold for grant award the special process applies (6.4 and 6.5); it has been clarified that for external funding to trigger longer tenancy periods it must be deliver significant sustainable value to the community (7.3.2); and it has been made explicit that for Type III property it is to be expected the Council will continue to seek commercial occupiers (9.3).

## **7. Implications (including financial implications)**

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### **Resources and Financial**

- 7.1 The proposed policies are designed to make the best use of the Council's assets. They do not involve any new expenditure.

### **Legal**

- 7.2 The legislative background to management of physical assets (land, including buildings) is complex, including the powers to acquire and dispose provided by the Local Government Act 1972 (and in the case of land to be acquired or held for planning purposes, the Town and Country Planning Act 1990), the general power of competence provided by the Localism Act 2011, and various other provisions. The proposed policies are designed to assist in compliance with these obligations as well as the general principles of public law such as decisions being taken on the basis of all relevant but no irrelevant considerations.
- 7.3 In domestic law the Council owes a general and important common law fiduciary duty to its Council tax payers and in EU Law to be retained after Brexit, it has a duty generally to act in a commercial manner in relation to property disposals.
- 7.4 The principal statutory provision is that set out at section 123(2) of the Local Government Act 1972, which states that "Except with the consent of the Secretary of State a council shall not dispose of land under this section, otherwise than by way of a short tenancy , at less than the best price that can be reasonably obtained." A short tenancy is the grant of a lease for not more than seven years.
- 7.5 Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 (the "General Consent") allows councils to make disposals at an undervalue provided that it can do within the terms of the General Consent in that the council considers that such disposal will help it secure the promotion improvement of the economic, social or environmental well-being of its area. The authority is required to demonstrate this is the case.

- 7.6 Where the undervalue exceeds the threshold permitted under the General Consent (£2 million) then express consent from the SoS is required.
- 7.7 The council will need to adhere to any other statutory consents required to lawfully enable a disposal to be made of assets which require such, including for example, public open space land.

**Risk**

- 7.8 In each case the proposed policies are designed to mitigate the risks of not having policies in place. Without policies the Council is at risk of taking ad hoc decisions which do not maximise value for money in the public benefit. It is also at greater risk of decisions being challenged, either legally or by other means, as insufficiently well-grounded. Even if such challenges are defeated or fall away there is a cost in dealing with them.

**Consultation**

- 7.9 As noted in the body of the report, both draft policies have been subject to informal consultation, with parish councils and the VCS Assembly.
- 7.10 As noted in 6.5 it is proposed to formally consult on the draft Adoption of Assets Policy (whilst operating it on an interim basis). The responses to the informal consultation are considered as follows:

Consultee	Substance of comment	Response
NCALC	The policy “looked very good on first reading”.	Comments welcomed.
Towcester Town Council	<ul style="list-style-type: none"> <li>• Feels ten-year pump priming period is too short.</li> <li>• Strongly supports requirement for freehold transfers on adoption.</li> <li>• Provided a list of WNC assets it wished to be considered for transfer.</li> </ul>	<ul style="list-style-type: none"> <li>• It is considered 10 years is as much as can reasonably be required for pump priming. However, in some cases in-perpetuity sums would be due, which are higher.</li> <li>• No change requested.</li> <li>• These will be considered (not part of the policy consultation).</li> </ul>
Greens Norton Parish Council	<p>The PC “has no issues generally on the Policy but wishes to express concerns relating to the assumptions made for calculations.”</p> <p>Clarification was sought, and obtained from the Chairman of</p>	<p>Two long time periods were used to calculate the likely long-term average real interest rate.</p>

Consultee	Substance of comment	Response
	<p>the PC, as to the nature of the concerns. It turned out that these were whether the interest rate used for the in-perpetuity calculation would be correct in a period of higher inflation and thus, probably, higher interest rates.</p> <p>It also became clear that the PC had misunderstood and thought the commuted sum would apply to transfers between councils.</p>	<p>Given the real interest rate is the interest rate minus the inflation rate, real interest rates show signs of being (on average) reasonably stable. There is also, as the Chairman acknowledged, no other data to use. Given this, the proposed rate has not been changed.</p> <p>A statement has been added to the draft policy clarifying that transfers between councils is not 'adoption'. This should make it clear that the commuted sum provisions would not apply in such cases.</p>
Blakesley Parish Council	As per Greens Norton Parish Council (same Clerk).	As per the response to Greens Norton Parish Council.
Whittlebury Parish Council	As per Greens Norton Parish Council (same Clerk).	As per the response to Greens Norton Parish Council.
Daventry Town Council	<p>Concerns about</p> <ul style="list-style-type: none"> <li>• Using a 2008 document as part of the rationale.</li> <li>• Using specific interest rate rather than an index such as Bank of England or Public Works Loan Board (PWLB).</li> <li>• Lack of reference to safeguarding the community use of adopted assets.</li> </ul>	<ul style="list-style-type: none"> <li>• Whilst the 2008 document was used, the reasons were explained, and modern data also used.</li> <li>• The analysis did use PWLB data. If the suggestion is that an index should be used to regularly adjust the calculation, it is considered this is not appropriate as assets are held for long periods, which is why long term average rates were used. It would also be difficult to apply regular changes practically.</li> <li>• The draft policy has been amended to make this explicit.</li> </ul>
Collingtree Parish Council	Asked for lists of WNC assets the PC could consider adopting.	Response provided (not part of the policy consultation).
Roade Parish Council	Raised various issues about transfers of assets from WNC to the Parish Council.	Response provided (not part of the policy consultation).

- 7.11 It is suggested that the proposed Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property can be adopted without further consultation given (i) it uses the existing grants policy to assess community benefit, (ii) it can be amended in the future if practical use indicates that it could be improved, and (iii) the VCS Assembly has supported it.

#### **Consideration by Overview and Scrutiny**

- 7.12 The report has not been considered by the Overview and Scrutiny committee.

#### **Climate Impact**

- 7.13 The proposed Adoption of Assets Policy makes explicit mention of the need to operate assets on a net zero basis, in line with the Council's net zero goals. The proposed Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property would ensure that the Council's grants policy is used to assess the community benefit of proposed uses of property; the grants policy allows for climate considerations to be taken into account by reference to the Council's objectives.

#### **Community Impact**

- 7.14 The proposed Adoption of Assets Policy should be of assistance to residents, community groups, and parish councils in providing a clear structure, transparency, fairness, and equity and expectations for the adoption of assets.
- 7.15 The Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property should be of direct benefit to that sector, and thus the community more widely, by providing a clear and balanced framework for taking decisions on the use of property. The proposed Policy should also assist groups by using the grants policy for assessing community benefit, meaning groups do not need to learn a new set of criteria to score against.

#### **Communications**

- 7.16 It will be important that the Council brings attention to the policies once adopted, and in the case of the Adoption of Assets Policy, to the proposed consultation on it. Awareness of the policies will help them achieve their aims of giving clarity and consistency to the matters they cover.

## **8. Background Papers**

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- 8.1 None.

### **Appendix A – Draft Adoption of Assets Policy**

### **Appendix B – Draft Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property**