COMMUNITY MANAGEMENT AND ASSET TRANSFER POLICY

REPORT OF:	HEAD OF CORPORATE RESOURCES
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Wards Affected:	*All*
Key Decision:	No
Report to:	Council
Date of meeting:	3 November 2021

Purpose of Report

1. To seek Council approval of the Mid Sussex District Council Community Management and Asset Transfer Policy (Appendix A).

Recommendations

2. That Council adopts the Mid Sussex District Council Community Management and Asset Transfer Policy (Appendix A).

Background

3. The draft Community Management and Asset Transfer Policy and the revisions suggested by the Scrutiny Committee for Leader, Finance and Performance were considered by Cabinet on 7 June 2021. It was resolved to present the final draft to Council for adoption.

4. This policy sets out the broad principles, criteria and process for considering requests and/or inviting submissions for the transfer of new and existing Council owned assets to community management. It is designed to ensure community managers are competent, use of the facility is suitable and the decision- making process is clear and transparent.

5. Applicants must be appropriately constituted, operate for community, social or environmental benefit and be non-profit distributing. Community asset transfers will generally be by means of a full repairing Lease for a maximum of 35 years or a License to Occupy for short term arrangements.

6. Following presentation to Cabinet, the Lease Terms section of the policy was amended slightly on the advice of colleagues in the Legal team, primarily to allow the terms of the Management Agreement to be incorporated within the lease where appropriate. The Management Agreement template (Appendix B) is intended as a guide to support good practise and high operating standards and will be negotiated alongside the lease or license.

Council Powers

7. The Council is empowered under section 123 of the Local Government Act 1972 (“the 1972 Act”) to dispose of land in any manner they wish, including the sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies for a term of 7 years or less or the assignment of an existing lease with an unexpired term of 7 years of less to run), unless the Secretary of State consents to the disposal.

8. It is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where the Council considers it appropriate to dispose of land at an undervalue.

9. Section 128(1) of the 1972 Act confers on the Secretary of State power to give a general consent for the purposes of land disposals by local authorities carried out under their powers in Section 123 of the 1972 Act. The Secretary of State's sole statutory function in respect of the exercise by Council of these disposal powers is to give or withhold consent to a proposed disposal in cases where his consent is required.

10. The Secretary of State for Housing, Communities and Local Government has issued the Local Government Act 1972: General Disposal Consent (England) 2003, which gives the Council the power to make disposals of certain classes of Council owned land at a consideration that is less than the best consideration that can be reasonably obtained. It only applies to land that can properly be disposed under the Council's section 123 powers and does not apply to land held for specific statutory purposes such as land held for housing purposes or land held for planning purposes which have their own completely separate powers of disposal of those classes of land, which must be disposed of strictly in accordance with those Acts.

11. The Consent has been issued to give the Council autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, the Council must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.

12. The terms of the Consent mean that specific consent is not required for the disposal of any interest in land which the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

13. If the asset is located within a public park or recreation ground or otherwise comprises a site or part of a site that is classed as open space within the meaning of Section 336(1) of the Town and Country Planning Act 1990, which defines open space as *"any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground"* the Council is required by Section 123(2A) of the 1972 Act to advertise the Council's intention to dispose of the land for two consecutive weeks in a local newspaper circulating in the area in which the asset is situated and the Council must consider before deciding to make any particular disposal any objections received from members of the public who may object to the disposal.

Policy Context

14. This policy supports the Council's Corporate priorities:

- *Financial Independence* – community managers will be required to present detailed plans and financial forecasts to demonstrate that they have a sustainable business model
- *Effective and Responsive Services* – community management of facilities will facilitate resident involvement and help providers to develop more effective local services.

- *Strong and Resilient communities* – the policy will enable community led initiatives and support self-sufficient, vibrant and inclusive communities

Financial Implications

15. None. Community asset transfers will be cost neutral or generate an income for the Council. Any investment in physical infrastructure will be funded through s106 receipts and external fundraising.

Risk Management Implications

16. The policy has been devised to limit the risk to the Council. The assessment criteria and decision-making process is robust to properly examine the suitability of the applicant and proposed use. The lease terms and management agreement will help the Council reclaim facilities if they are not used as intended, for community benefit, or poorly managed in the future.

Equality and Customer Service Implications

17. The policy is intended to enable where appropriate communities to take local responsibility for local facilities which will benefit residents. Applicants are required to submit an Equal Opportunities Policy and demonstrate that facilities are affordable and accessible to users.

Other Material Implications

18. None

Background Papers

- Scrutiny Committee for Leader, Finance and Performance minutes 19 May 2021 (item 8) https://midsussex.moderngov.co.uk/documents/g2918/Printed%20minutes%2019th-May-2021%2017.00%20Scrutiny%20Committee%20for%20Leader%20Finance%20and%20Performance.pdf?T=1

- Cabinet minutes 7 June 2021 (item 6) https://midsussex.moderngov.co.uk/documents/g2919/Printed%20minutes%2007th-Jun-2021%2016.00%20Cabinet.pdf?T=1