



## **TOURISM, COMMUNITIES, CULTURE AND LEISURE COMMITTEE**

**Thursday 19 September 2024**

<b>REPORT TITLE:</b>	<b>COMMUNITY ASSET TRANSFER UPDATE</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF FINANCE</b>

### **REPORT SUMMARY**

This report has been requested by the Chair of this Committee.

It provides an update on the community asset transfers put into a programme by Members following budget decisions taken by the Council in the financial year 2022/23.

It is to be noted.

This report meets the following priorities in the Wirral Plan 2021-26

- Safe, vibrant communities where people want to live and raise their families.
- A prosperous inclusive economy where local people can get good jobs and achieve their aspirations.

It is a non-key decision.

### **RECOMMENDATION/S**

It is recommended that this report is noted.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 To update the Committee on the progress of the Community Asset Transfer Programme at the request of the Chair.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 There are no other options to consider as this is an update report on decisions previously taken by the Council, this Committee, Children, Young People and Education Committee and the Policy & Resources Committee.

### **3.0 BACKGROUND INFORMATION**

- 3.1 In setting the Council's budget for 2022/23, Members made decisions to close several libraries (Irby, Pensby, Wallasey Village, Hoylake, Woodchurch, Bromborough, Prenton, and Higher Bebington ) two municipal golf courses (Brackenwood and Hoylake) and one Leisure Centre (Woodchurch).
- 3.2 They decided to put these surplus assets into a Community Asset Transfer (CAT) Programme. The Policy & Resources Committee approved an updated Community Asset Transfer Policy on 16 March 2022. A budget allocation was provided for the transfer of the libraries, there was no budget allocated for the transfer of the municipal golf courses and there was a capital sum equal to the then estimated demolition cost of the leisure centre which was available to support a transfer of that asset.
- 3.3 Any transfer decisions were to be based on a viable business plan. All transfers have been done based on a full repairing and insuring lease (normally for 25 years) and the Council retains the freehold ownership of the asset. This means that if any transfers were to fail in the future (and to date none from the 2009-13 CAT Programme, or the 2022/23 Programme have failed) then the asset would return to the Council, who would then decide the next steps.
- 3.4 Decisions on the transfer of any asset, or alternative options, have been made by Members of this Committee, Children, Young People and Education Committee (Higher Bebington library for education purposes) and Policy & Resources Committee.
- 3.5 An internal group of officers, under the then Director of Resources (now the Director of Finance), was formed to progress the asset transfers. This group comprised of representatives from the Programme Management Office, regeneration, assets, legal, finance, neighbourhood services and was supported, for a time, by external consultants to advise on several of the expressions of interest and business plans. To be done well, community asset transfer is resource intensive, but this is repaid by ensuring successful transfers which bring significant community benefits.
- 3.6 Community Asset Transfers are a legal property transaction and can be complex. It is important to spend time ensuring that all the relevant matters relating to a transfer are thoroughly understood by all parties. Officers have worked extensively with those

organisations and groups seeking a transfer of an asset to ensure they have a viable business plan, that assets are in a condition to transfer, that the legal documentation meets the needs of all parties, that there is support available to assist, where this is needed, that legislation (Local Government Act 1972 and Subsidy Control Regulations 2022) is complied with, and that the outcomes of the transfer are agreed. Each transfer is then monitored annually by a member of the Council's Asset Team. The organisation and/or group can discuss any issues with the Council's asset officer at any time.

3.7 The progress of the CAT programme is set out in Appendix 1 of this report.

#### 4.0 FINANCIAL IMPLICATIONS

4.1 The table below shows the amounts allocated (by capital and revenue) to support the transfer of the former library assets.

<b>Funding Table for CAT Libraries</b>		
<b>Former Library</b>	<b>Total Allocated Capital</b>	<b>Total Allocated Revenue</b>
Bebington	0	60,000
Irby	40,000	20,000
Pensby	67,000	69,476
Prenton	52,000	30,590
Wallasey Village	33,575	22,000
<b>Total</b>	<b>192,575</b>	<b>202,066</b>
<b>Available - Total Original Allocation</b>	<b>500,000</b>	<b>282,000</b>
<b>Difference Remaining</b>	<b>307,425</b>	<b>79,934</b>

4.2 The figures for Irby Library will change when the business plan is brought to this Committee in October 2024

#### 5.0 LEGAL IMPLICATIONS

5.1 The terms of reference for the Policy and Resources Committee include to, amongst other matters, consider disposals of assets above £500,000 in value.

5.2 In general the Committee in reaching a decision must consider all relevant considerations and disregard irrelevant considerations and come to a reasonable conclusion. Not to consider alternative uses would expose any decision to legal challenge.

5.3 A relevant consideration is the Council's fiduciary duty to the Council Taxpayer to take account of its interests in maximising income or savings and obtaining the best price reasonably obtainable for the disposal of any asset. The Committee should therefore consider any income or capital receipt forgone because of transferring an

asset for community use. Any financial loss would have to be clearly outweighed by the strength of the community benefits. The Council's current financial position is a relevant factor.

- 5.4 In this regard it is important to ensure that the terms of a community asset transfer do not significantly reduce the savings made, or increased income achieved as a result of the measures already taken by the full Council to fulfil its legal duty to balance its budget.
- 5.5 If the community benefits are unlikely to be realised by a CAT transfer because, for example, of a lack of financial viability or necessary expertise, then they should be given little or no weight in the decision-making process.
- 5.6 The Council is under an additional duty under section 123 of the Local Government Act 1972 to obtain the best price reasonably obtainable for the disposal of any interest in its land unless the disposal is for a lease for less than seven years. If the proposed lease is for a longer term, then a less than market rent would be lawful if the value of the community benefits outweighed any loss of income.
- 5.7 A further consideration is the Subsidy Control Act 2022 which prohibits subsidies by public bodies to an enterprise (even if not for profit) that offers goods or services on a market. If the financial assistance (e.g. charging a below market rent in a lease) conferred an economic advantage on the selected enterprise that might distort competition with other providers, it would be unlawful unless the advantage were below the "de minimis" level of £315,000 (measured over the length of the proposed lease) or the rigorous requirements for a lawful subsidy under the Act were satisfied. The figure of £315,000 includes any previous financial assistance provided to the recipient by a public body during the past three financial years. Financial assistance would include any future discretionary business rates relief which is not given to its competitors.
- 5.8 Any proposed disposal by the Council of an interest in land that is public open space (i.e. land held for the purpose of public recreation such as public parks or golf courses that are open to the public and not restricted to a private membership) must be advertised in local newspapers for two successive weeks. Any objections received would have to be considered by the Committee before any decision were made on the disposal.
- 5.9 The grant of a lease to a CAT transferee would confer exclusive possession of the land to the organisation. The Council could impose covenants on the lessee e.g. to keep the property in good repair or not to use it for any purposes other than those specified. Those covenants would be enforceable but any decision by the Council to forfeit the lease for non-compliance could be overturned by the Court in its discretion if the lessee sought relief from forfeiture. The Council would in effect lose control of the land for the duration of the lease (and the lessee would have the right to a renewal of the lease on its expiry unless its right were excluded pursuant to the Landlord and Tenant Act 1954).
- 5.10 Any disposal of the land for a different use than the one formerly established by the Council would have to be compliant with any legally enforceable covenants imposed

by previous owners or current landlords and with any requirements for planning permission.

- 5.11 If the Committee decided not to proceed with a CAT transfer, decisions on the next steps would then be required.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 The Council has existing staffing and financial resources in place to progress the Community Asset Transfer 2022/23 Budget Programme as set out in this report.

## **7.0 RELEVANT RISKS**

- 7.1 Transferring any asset carries a risk that it may not be successful. The Council uses a lease approach and retains the freehold of any asset, so that it will return to the Council if any transfer is not successful.
- 7.2 Under the CAT proposals the Council would be leasing the assets to the relevant organisation and if any transfer failed the asset would return to the Council but only after possible litigation and the Court or the lessee agreeing to the forfeiture of the Lease. Consideration could then be given to the options for the future of the site.
- 7.3 A communications strategy is in place to manage any reputational risks associated with the CAT project.
- 7.4 Any post transfer risks (e.g. ensuring compliance with the lease, maintaining the property etc) will be dealt with by lease provisions and regular annual monitoring of these matters.
- 7.5 A register of all assets transferred will be kept by the Asset Management Team. The annual report to members on the Asset Strategy 2022-27 will report progress on CAT.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 Extensive engagement has taken place with all the organisations and groups interested in Community Asset Transfer. There has also been engagement with Ward Members relating to transfers in their ward.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 It is not considered that the proposed transfer or its alternative will adversely affect any section of the community having protected characteristics. Indeed, it will have positive benefits. Each organisation must have an Equality Policy.

## 10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 These are considered in relation to each specific asset.

## 11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 Transferring assets has community benefits. This can provide positive opportunities and empowerment for local organisations/groups and communities; bring in external investment not available to the Council; create permanent employment opportunities; promote voluntary work; and enable co-location of community activities for local benefits.

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## APPENDICES

Appendix 1 - CAT 2022/23 Budget programme update

## BACKGROUND PAPERS

1. Community Asset Transfer Policy March 2022

## SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
Tourism Communities Culture and Tourism Committee	16 June 2022
Report on CAT (stage 1)	
Report on CAT	25 October 2022
Report on CAT	2 February 2023
Report on CAT	9 March 2023
Report on CAT	22 June 2023
Children, Young People and Education Committee	19 July 2023
Policy and Resources Committee	27 July 2023
Policy and Resources Committee	21 November 2023
Policy and Resources Committee	17 July 2024