

Report to: **Council**

Date: **22 February 2018**

Title: **TRANSFER OF CHARITY LAND TO
DARTMOUTH TOWN COUNCIL**

Portfolio Area: **Assets**

Wards Affected: **Dartmouth and East Dart**

Relevant Scrutiny Committee: **Overview and Scrutiny Panel**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **Immediately
following this meeting**

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RECOMMENDATIONS

That Council RESOLVES:

- 1. That pursuant to s.280 of the Charities Act 2011, to approve a transfer of the administration of the two Charitable Trusts at Castle Woodland and Warfleet, Dartmouth to Dartmouth Town Council, in conjunction with the proposed transfer of other Assets, as resolved by Executive on 2nd February 2017; and**
- 2. To delegate authority to conclude detailed negotiations to the COP Lead for Assets, in consultation with the s151 officer, Head of Paid Service, COP Lead for Legal and Leader of the Council.**

1. Executive summary

- 1.1 When considering this report, the Council must ensure that it acts in the best interests of the charity alone and not in pursuance of the policy, direction or interests of the local authority. The charitable objects in this instance are the protection of the land for public recreational use.

- 1.2 Following Executive approval to proceed with the transfer of a number of assets to Dartmouth Town Council on 2nd February 2017, the detailed legal work and negotiations have reached the final stages.
- 1.3 Two of the assets are Charitable Trusts and held by the Council as trustee. Pursuant to S.280 of the Charities Act 2011, it is necessary for the Council to resolve to transfer the administration of each of the charities to Dartmouth Town Council.
- 1.4 The two assets are known as Warfleet and the Castle Estate and they were gifted to the Council's predecessor to be held and maintained for the purposes of public recreation. This restriction on use will not change, if the transfer takes place.
- 1.5 The COP Lead for Assets seeks delegated approval to conclude the transfer of sole trusteeship of the two assets above, to Dartmouth Town Council, in conjunction with the previously approved transfer proposal.

2. Background

- 2.1 The Executive resolved on the 2nd February 2017 to support the proposal to transfer property assets to Dartmouth Town Council. Negotiations for the proposal are reaching a conclusion in line with that resolution. The proposal includes land at Coronation Park and Royal Avenue Gardens, Townstall, Warfleet and Castle Woodland.
- 2.2 Two parcels of land included in the proposed transfer are held by the Council as sole charitable trustee. The two parcels of land are; 1) title number DN536320 (land to the north and east of Castle Road, Dartmouth, and 2) title number DN536122 (land to the east side of Castle Road, Dartmouth). All the charity land is shown on drawing numbers 15-521-02 Rev B and 15-521-04, attached.
- 2.3 Local Authorities are empowered by S.139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament. Such money or assets are held by the Council upon charitable trust and do not form part of the Council's corporate funds or corporate assets. When making decisions regarding these assets, the Council must act in the best interests of the particular charity and its beneficiaries. The Council has a legal duty of care towards the charities.
- 2.4 The Mayor Aldermen and Burgesses of the Borough of Clifton Dartmouth Hardness were gifted parcel 1) in 1903 and parcel 2) in 1930 which had the legal effect of creating charitable trusts requiring that the land be used for the benefit of the public. The administration of the charitable trust was transferred to the Council on local government reorganisation in 1974.
- 2.5 Charity land is regulated and protected by the Charity Commission and the Commission has advised that, provided the Council, acting in its capacity as charity trustee, is satisfied that the change of administration is in the best interests of each charity and its beneficiaries, the Council may pass a resolution pursuant to S.280

of the Charities Act 2011 to transfer the administration of each of the charities to Dartmouth Town Council.

- 2.6 If the Council, acting in its capacity as charity trustee is not satisfied that the change of administration is in the best interests of each charity and its beneficiaries, the Council must not transfer the land and must continue to administer the charitable trusts in question.
- 2.7 When acting as charity trustee, the Council must ensure that it acts in the best interests of the charity alone and not in pursuance of the policy, direction or interests of the local authority. The charitable objects in this instance are the protection of the land for public recreational use. It is not proposed that, following transfer, the way the land is used will change, or that the transfer will have an impact on the use of the land by the public.

3. Outcomes/outputs

- 3.1 Having reviewed whether it continues to be in the best interests of these charities for the Council to remain as trustee, officers recommend that the charitable objects would be best served by the Council transferring trusteeship to Dartmouth Town Council because the land can be better managed at a more local level. Together with the other assets proposed for transfer, Dartmouth Town Council will be fully responsible for a number of property assets and is improving its management, staff and equipment resources to do so effectively.
- 3.2 The Council and Dartmouth Town Council are working towards completion of the transfer of land at Dartmouth before 1st April 2018, with Dartmouth Town Council taking over full responsibility for the assets from the completion date. It is proposed that if the Council passes a resolution pursuant to S.280 of the Charities Act 2011 to transfer the two parcels of charitable land, these parcels would be included in the asset transfer (as originally envisaged).
- 3.2 As part of the transfer of the two parcels, the Council would ensure that Dartmouth Town Council accepts that it is under a duty to abide by the original trusts of the charity and its stated objects. Dartmouth Town Council must also accept that the land will continue to be charity property and will not form part of the Parish Council's corporate property.
- 3.3 If the Council is not satisfied that transferring the administration of either or both of the charitable trusts to Dartmouth Town Council is in the best interests of each charity and its beneficiaries, the land in question must not be included in the transfer.

4. Options available and consideration of risk

- 4.1 Discussions to date have included these Charity land assets for the reasons stated in 3.1 above.
- 4.2 The Charity Land assets are restricted to a specific use; that of ensuring the land is available for public recreation. If the Council were to retain these assets, it would be unlikely to be able to put

them to an alternative use without approval from the Charity Commission.

- 4.3 It is felt that, because the assets' use is restricted, Dartmouth Town Council would be the most suitable trustee and that it would continue to pursue the intentions of the trust.
- 4.6 The Council has advertised the intention to dispose of the assets listed in 2.1, in accordance with the Local Government Act 1972. Representations from the public were invited and one had been received by the deadline of 7th February 2018. This is currently being considered.
- 4.7 Commercial Services, Portfolio Holder for Assets and Local Members have all been consulted on the overarching proposal to transfer assets, and are supportive.

5. Proposed Way Forward

- 5.1 Subject to approval of this proposed transfer of trusteeship, to proceed with proposed transfer of assets to Dartmouth Town Council, in line with Executive resolution of 2nd February 2017.
- 5.2 If not approved, further negotiation on the assets to be included in the proposed transfer to Dartmouth Town Council will be required.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The proposal is a requirement of The Charities Act 2011 and the details are set out in s2.3 to s.2.7 of the report.
Financial	N	
Risk	Y	The Risks are set out in s.4 of the report.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Site Location Plans;

- Drawing Number - 15-521-02 Rev B
- Drawing Number - 15-521-04

Background Papers:

- Report to Executive – 2 February 2017.
- Minutes of South Hams Executive – 2 February 2017.