

COUNCIL

21 JANUARY 2016

ACQUISITION AND DISPOSAL OF LAND AND PROPERTY

Portfolio Holders: Councillor Andrew Mackness, Corporate Services
Councillor Adrian Gulvin, Resources

Report from: Phil Watts, Chief Finance Officer
Perry Holmes, Assistant Director, Legal and Corporate Services

Author: Julie Keith, Head of Democratic Services

Summary

Following consideration of this matter by the Cabinet on 12 January 2016, this report advises the Council that the acquisition and disposal of property are executive functions and as such must be dealt with by the Leader and Cabinet subject to budget and policy framework rules. The Council's Constitution should be revised to reflect this.

This report also notifies the Council that the Leader has confirmed and extended the authority delegated to the Assistant Director, Legal and Corporate Services at the last meeting of the Council which will enable the disposal (in addition to acquisition, management and letting) of suitable non-operational investment properties funded by a £2million sum added to the Capital Programme.

1. Budget and Policy Framework

- 1.1 This is a matter for Cabinet and Full Council.
- 1.2 The acquisition and disposal of land and property are executive functions which may not be discharged by the Council unless contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by Full Council.

2. Background

- 2.1 On 15 October 2015 the Council agreed to add £2.0 million to the capital programme for additional investment in new non-operational property with a view to generating increases in annual rental income and longer term capital growth. The Council also delegated authority to the Assistant Director Legal and Corporate Services (in consultation with the Leader, Portfolio Holder for

Resources and Chief Finance Officer) to agree a strategy and robust set of criteria for future investment. The Council agreed to delegate authority to the Assistant Director Legal and Corporate Services, in consultation with the Leader, Portfolio Holder for Resources and Chief Finance Officer to acquire, manage and let suitable investment properties (decision number 430/2015).

- 2.2 There was discussion at the Council meeting on 15 October 2015 about the current provision within the Constitution which requires any decision to acquire or dispose of land above £100,000 to be taken by the Cabinet and decisions above £1.0 million to be taken by Full Council. During the debate the Leader of the Council indicated that land and property transactions funded from the new provision within the capital programme for property investment should be exempt from this requirement which would involve a change to the Constitution.

3. Options

- 3.1 This discussion prompted a review of the provision in the Constitution requiring decisions to acquire or dispose of land above £100,000 and £1.0 million to be taken respectively by the Cabinet or Full Council. Advice has been provided to the Leader of the Council and relevant Portfolio Holders that in law, the acquisition and disposal of land, property and other assets are executive functions and as such must be dealt with by the Leader and Cabinet or officers under delegated authority from the Leader unless contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by Full Council.
- 3.2 The Cabinet was therefore recommended on 12 January 2016 to forward this advice to Full Council on 21 January 2016 with the required changes to the Constitution as set out in Appendix A to this report. The effect of this will mean that any general land or property acquisitions exceeding £100,000 in value will be a matter for the Cabinet in future. Officers will continue to have delegated authority to deal with any acquisitions or disposals up to £100,000.
- 3.3 The officer delegations agreed by Council on 15 October 2015 as set out in paragraph 2.1 of this report need to be agreed by the Leader as executive delegations and the officer scheme of delegation should be amended as set out at Appendix A.

4. Advice and analysis

- 4.1 The current practice of referring any decision to acquire or dispose of land and property above £1.0 million to Full Council has been in place in Medway for a number of years. On each occasion the Cabinet has approved the proposal before it reaches Full Council so statutory requirements have been met. However the Council should now take the opportunity to correct the Constitution to reflect provisions relating to the discharge of local authority functions in the Local Government Act 2000 and associated regulations. This will also need to be reflected in the Council's Asset Management Plan and Corporate Property Strategy.

4.2 The Cabinet , on 12 January 2016, noted the intention of the Leader to confirm the delegations to the Assistant Director Legal and Corporate Services relating to the acquisition, management and letting of suitable investment properties funded from within the new provision of £2.0 million in the capital programme with the addition of authority to approve disposals. The financial threshold requiring transactions over £100,000 to be decided by the Cabinet will not apply for investment property acquisition and disposal under this officer delegation.

5. Cabinet

5.1 The Cabinet considered this report on 12 January 2016 and made the following decisions.

5.1.1 The Cabinet noted advice that, in law, the acquisition and disposal of land and property are executive functions and as such must be dealt with by the Leader and Cabinet unless contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by Full Council.

5.1.2 The Cabinet noted that the Council will be advised at its meeting on 21 January 2016 to approve amendments to the Constitution as set out in appendix A to this report to reflect the fact that decisions on the acquisition, or disposal of land and property are a matter for the Cabinet and cannot be taken by the Council with the exception of any decision which would be contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by Full Council.

5.1.3 The Cabinet noted that the Leader of the Council intended to formally agree to:

- delegate authority to the Assistant Director Legal and Corporate Services (in consultation with the Leader, Portfolio Holder for Resources and Chief Finance Officer) to agree a strategy and robust set of criteria for future investment in non-operational property to be funded from provision made for this purpose in the Council's Capital Programme and
- delegate authority to the Assistant Director Legal and Corporate Services, in consultation with the Leader, Portfolio Holder for Resources and Chief Finance Officer to acquire, manage, let **and dispose** of suitable investment properties where funded from provision made for this purpose in the Council's Capital programme and that the requirement to seek a Cabinet decision on any transactions exceeding £100,000 is waived only in respect of non-operational investment property transactions covered by this delegation.

6. Financial, Legal and Risk Management Implications

6.1 Part 1A of the Local Government Act 2000 (" the 2000 Act") provides that where authorities operate executive arrangements (Leader and Cabinet or Mayor and Cabinet) all functions are to be exercised by the executive unless otherwise specified either in that Act, any enactment passed after it, or

specified in regulations made under Section 9D of that Act. The relevant regulations are the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which set out the functions that are not to be the responsibility of the executive (i.e. Cabinet), those that may be the responsibility of the executive or are not to be the sole responsibility of the executive. The acquisition and disposal of land and property are not specified in the 2000 Act, any subsequent enactment or the regulations and as such must be the responsibility of the Cabinet with the exception of any decision which would be contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by full Council.

- 6.2 The Council's Constitution should be amended to reflect these statutory provisions as set out in Appendix A to this report.
- 6.3 In addition the Leader of the Council must confirm the delegation of executive authority to the Assistant Director Legal and Corporate and Legal Services as set out in paragraph 2.1 of this report together with the addition of authority to approve disposals as this was an omission from the report to Council in October.
- 6.4 The recommendations in this report bring the Council's Constitution into line with statutory provisions and remove the risk of decisions that must be taken by the Cabinet being reversed or varied by the full Council. Previous practice does not expose the Council to challenge as the Cabinet has always approved any relevant property decisions ahead of referral to Full Council.
- 6.5 It should be noted that in January 2015 the Coalition Government consulted local authorities on a range of proposals which would consolidate the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and 15 subsequent amending regulations and introduce some other changes. This included a proposal that disposal of an asset or the granting of a long lease on an asset should not be a function of the executive where the value of that asset exceeds a defined sum. The suggested threshold was £500,000. The new Government has not taken any action to implement this legislative change but should it be taken forward at a later stage this would require a reinstatement of Full Council approval for some disposals.
- 6.6 On 15 October 2015 the Council agreed to add £2.0 million to the capital programme for additional investment in new non-operational property. There are no further financial implications arising from this report.

7. Recommendations

- 7.1 That the Council notes advice that, in law, the acquisition and disposal of land and property are executive functions and as such must be dealt with by the Leader and Cabinet unless contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by Full Council.
- 7.2 The Council is asked to approve amendments to the Constitution as set out in appendix A to this report to reflect the fact that decisions on the acquisition, or disposal of land and property are a matter for the Cabinet and cannot be

taken by the Council with the exception of any decision which would be contrary to the policy framework or contrary to or not wholly in accordance with the budget approved by Full Council.

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Background papers

None

Appendices

Appendix A – Proposed changes to the Council's Constitution

CHANGES REQUIRED TO THE CONSTITUTION – SHOWN AS TRACKED

PART 5 - FINANCIAL LIMITS

5.1 Land acquisition and disposal

- ~~Limit of authority for Cabinet to act – up to £1,000,000~~
- Limit of authority for the Chief Executive and Directors to act – up to £100,000, Acquisitions and disposals above this value are a matter for the Cabinet unless contrary to the policy framework or contrary to ,or not wholly in accordance with, the budget approved by full Council. This limit does not apply to the acquisition and disposal of non-operational investment properties funded from provision made by the Council for this purpose in the Capital Programme.

PART 4 – EMPLOYEE DELEGATION SCHEME – ASSISTANT DIRECTOR, LEGAL AND CORPORATE SERVICES

<p>6.15 Property:</p> <ul style="list-style-type: none"> • Manage the Council's land and property resources in compliance with current legislation and Council policy; • Agree terms for the disposal or purchase of property approved by the Council. Where there is a disposal of a property to accept the highest tender/offer, provided that the assistant director is satisfied it is the best price reasonably obtainable; • Within the financial limits delegated to the director, to agree terms and dispose of or purchase property; • Grant, enter into, or vary the terms of leases or sub leases, where the consideration does not exceed £10,000 per annum on any single transaction or £20,000 after consultation with the relevant portfolio holders. Similarly to enter into and vary the terms of easements, licences, agreements, restrictive covenants or other rights or documents subject to the same financial limit; • Approve the terms of short-term leases and licences of Council-owned properties on the Rochester, Strood and Chatham Riverside; • Approve terms for the appropriation of land previously authorised by the <u>Leader and Cabinet or Council as appropriate</u>; • Authorise the making of 'well maintained' payments, home loss payments and the payment of statutory compensation removal expenses and trade disturbance allowance to displaced owners and occupiers; • To grant licences, tenancy agreements, or leases at the Innovation Centre Medway, on the best terms reasonably obtainable subject to these being for no more than seven years. <p><u>Direct Investment in Property</u></p> <ul style="list-style-type: none"> • <u>In consultation with the Leader, Portfolio Holder for Resources and Chief Finance Officer</u> To acquire, manage, let and dispose- of and let suitable investment properties <u>where funded from provision made for this purpose in the Council's Capital Programme, in consultation with the Leader, Portfolio Holder for Resources and</u> 	<p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p>Leader/Cabinet</p> <p><u>Council</u></p> <p><u>Leader/Cabinet</u></p>
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Chief Finance Officer and that the requirement to seek a Cabinet decision on any transactions exceeding £100,000 is waived only in respect of non-operational investment property transactions covered by this delegation-

Note: A sum of £2m was added to the Capital Programme ~~located~~ by the Council for this purpose on 15 October 2015. The threshold of £100,000 which triggers a requirement for a Cabinet decision does not apply for land and property transactions under this delegation.