

<b>Cabinet Meeting</b>		<b>Agenda Item: 10</b>
<b>Meeting Date</b>	11 March 2015	
<b>Report Title</b>	<b>Faversham Allotment Transfer</b>	
<b>Cabinet Member</b>	Cllr Mike Whiting. Cabinet Member for Localism, Sport, Culture & Heritage	
<b>SMT Lead</b>	Dave Thomas	
<b>Head of Service</b>	Dave Thomas, Head of Commissioning & Customer Contact	
<b>Lead Officer</b>	Len Mayatt, Commissioning & Open Spaces Manager	
<b>Key Decision</b>	Yes	
<b>Classification</b>	<b>Open</b>	
<b>Forward Plan</b>	<b>Reference number:</b>	
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To agree the freehold transfer for the four allotment sites in Faversham to Faversham Town Council</li> <li>2. To agree the freehold transfer to Faversham Town Council of the public amenity land adjacent to Stonebridge Ponds</li> <li>3. To provide up to £14,000 for replacing the dangerous footbridge at the Stonebridge pond site</li> <li>4. To delegate authority to the Head of Commissioning &amp; Customer Contact, in consultation with the Cabinet Members for Finance and Localism, Sport, Culture &amp; Heritage to agree the final detailed terms of the freehold transfer</li> </ol>	

## **1. Purpose of Report and Executive Summary**

- 1.1 The purpose of this report is to seek approval from Cabinet to complete the freehold transfer of the four allotment sites in Faversham to Faversham Town Council and the adjacent Public Amenity land at Stonebridge Pond.
- 1.2 The four allotment sites and public amenity land are owned by the Borough Council. Three of the allotment sites have active allotment associations who deal with the day-to-day administration of the allotments. Two of the three sites (Millfield and Stonebridge Ponds) are statutory allotment sites. The fourth site (St Nicholas Road) is currently overgrown and not in use as allotments. The amenity land is closely linked to the allotment land.

## 2. Background

- 2.1 Cabinet previously received a report on this subject in March 2014, when the option for a 125 year lease for each of the sites was discussed and approved. Faversham Town Council subsequently refused the offer of a 125 year lease, maintaining their wish to achieve a transfer of the freehold.
- 2.2 In order to comply with the Borough Council's Community Asset Transfer Policy (revised November 2014) a freehold transfer, as opposed to 125 year lease, can be offered under exceptional circumstances. The Policy states that under such circumstances a claw back clause will be included as a condition of the transfer. Paragraph 5.6 of the Policy states:
- "In the exceptional event that a form of tenure other than leasehold is entered into, a 'clawback' or 'asset lock' provision will be placed as a legal condition on the transfer."*
- 2.3 While considering the principle of transferring the allotments, Members are advised that the transfer is recommended as under the provisions of the Local Government Act 1972, in an area where there is a Parish Council, all functions under the Allotments Acts 1908 to 1950 which include the provision of allotments shall only be exercisable by the Parish Council for the area. As such, in an area such as Faversham, the Town Council are the relevant authority to provide allotments and not the Borough Council. Therefore, there are strong grounds to offer the freehold transfer as an exceptional circumstance, which will also ensure the Borough Council is fully compliant with the Local Government Act 1972.
- 2.4 During discussions with the Town Council on the proposed transfer, the condition of the Boundary Wall and footpaths/waterways at Stonebridge Ponds has been a focus for discussion. East Kent Engineering Partnership (EKEP) was commissioned to inspect the bridges/footpaths/waterways and produce a proposal for any works which may be required and an indication of associated costs. It is proposed that only essential safety works are undertaken on any of these features by the Borough Council.
- 2.5 EKEP have inspected the site and produced a specification to replace one footbridge that is currently in a dangerous condition. They estimate the works required to rebuild the bridge will cost in the region of £14,000 plus a fee of £2,000 to manage the works if requested. The Stonebridge Allotment Association has agreed to undertake works to repair the other bridges on the site at no cost to the Council, as that work is of a much less technical nature.
- 2.6 EKEP have produced a specification for undertaking repairs to the banks of the waterways/footpaths if works are required in the future.

- 2.7 Members are asked to agree to provide the sum of up to £14,000 to be made available to facilitate repairs to the dangerous bridge. Faversham Town Council has agreed to provide £2,000 towards the cost of the works. Any future costs relating to the blast wall, bridges and waterways will be the responsibility of the Town Council.
- 2.8 Under the provisions of Section 123 of the Local Government Act 1972, the Council is required to achieve the best consideration that can be reasonably obtained in the circumstances when offering the freehold unless Government consent is specifically granted for a disposal at “under value”.
- 2.9 Where an agreement is proposed that means the Council will not be achieving best consideration and the ‘under value’ does not exceed £2 million, the Local Government Act 1972: General Disposal Consent 2003 (Circular 6/03) removes the requirement for a specific consent to be obtained in circumstances where the transaction will help it to secure the promotion or improvement of the economic, social or environmental wellbeing of its area. Local authorities should seek professional advice relating to the likely amount of ‘under value’ resulting from the transaction, so the Council can make an informed decision on the implications of the proposal.
- 2.10 DVS were appointed to supply an independent valuation in February 2014. They provided the following valuations:
- (a) ‘Unrestricted Value’ this is the current market value of the freehold interest based upon a 125 year lease for an unrestricted use at a market rent; and
  - (b) ‘Restricted Value’ this is the current market value of the freehold interest subject to the specific terms of the proposed transaction.
- 2.11 They considered the Unrestricted Value to be £190,000 for all four sites and the Restricted Value to be £1,470. Therefore, the estimated Undervalue resulting from the proposed transaction being the difference between the Unrestricted and Restricted Valuations is **£188,530**.
- 2.12 The Council obtained further advice from DVS in September 2014 on the values based on a freehold disposal. They subsequently confirmed that without any material changes to the terms of the transfer there should be no significant difference in the market value of the allotments between a freehold disposal or disposal by way of a 125 year lease.

### **3. Proposals**

- 3.1 The proposal is to offer Faversham Town Council the freehold for the four allotment sites and the public amenity land, including a clawback clause as a condition of the transfer as required by the Borough Council’s Community Asset Transfer Policy.

3.2 Members are requested to provide up to £14,000 for the cost of replacing the footbridge at the Stonebridge Pond site. It is proposed the money for this work could be made available from the projected revenue underspend for 2014/2015.

## 4. Alternative Options

4.1 There are two alternative options for consideration.

4.2 **Option One:** as the Borough Council does not have legal powers to provide allotments within the boundary of the Faversham Town Council area, there is an option for the Borough Council to retain ownership of the sites and cease using them as allotments. This would mean the Town Council would then either have to purchase alternative land to provide allotments, or for there to be no allotments in the Faversham area. This is not considered to be a sensible or cost effective approach and is not recommended to Members.

4.3 **Option Two:** as Members have previously offered the Town Council 125 year lease for each of the sites in question, they may wish to adhere to that previous decision. However, as the Borough Council does not have legal powers to provide allotments in the Faversham area as described in Paragraph 2.2 and Faversham Town Council have resisted the offer of 125 year lease, there is a strong case to offer the freehold transfer as an exceptional circumstance under the Borough Council's current Community Asset Transfer Policy. Therefore, the option of maintaining the offer of 125 year lease is not recommended for approval.

## 5. Consultation Undertaken or Proposed

5.1 Faversham Town Council and the allotment associations have been consulted and are in agreement with the proposal. Consultation has involved the Cabinet Member for Localism, Sport, Heritage and Culture and the Cabinet Member for Finance.

## 6. Implications

Issue	Implications
Corporate Plan	<p>This proposal supports the corporate priority for Embracing Localism by transferring ownership (in response to the special conditions contained within the Local Government Act 1972) to the Town Council.</p> <p>The proposal is compatible with the Council's Community Asset Transfer Policy as revised in November 2014.</p>

Financial, Resource and Property	<p>Provide up to £14,000 as a one-off cost to replace the dangerous bridge at Stonebridge Ponds.</p> <p>Once the transfer is complete, all future maintenance costs will be borne by the Town Council.</p>
Legal and Statutory	<p>The Local Government Act 1972 states that in an area where there is a Parish Council, provision of allotments lies solely with the Parish Council. Therefore, Faversham Town Council is the relevant authority to provide allotments which lends further support to the proposal in this report.</p> <p>The Council has met its obligations under Section 123 of the Local Government Act 1972 by appointing a Property Specialist to establish the estimated level of any Under Value if the proposal is approved.</p>
Crime and Disorder	No implications noted at this time.
Sustainability	With the support of the Faversham Town Council, the allotment associations will be able to secure their long term future and potentially apply for funding the Borough Council would not have access to.
Health and Wellbeing	The activity of working an allotment and growing fresh produce is a positive contribution to the health and wellbeing of the local community.
Risk Management and Health and Safety	The Town Council will be responsible for complying with appropriate Health & Safety legislation
Equality and Diversity	None noted at this stage.

## 7. Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Location plans

## 8. Background documents

8.1 None.