

<b>Cabinet Meeting</b>		<b>Agenda Item: 7</b>
<b>Meeting Date</b>	7 September 2016	
<b>Report Title</b>	Asset Transfer of facilities at Iwade Recreation Ground	
<b>Cabinet Member</b>	Cllr Duncan Dewar-Whalley, Cabinet Member for Finance and Performance	
<b>SMT Lead</b>	Dave Thomas, Head of Commissioning and Customer Contact	
<b>Head of Service</b>	Dave Thomas, Head of Commissioning and Customer Contact	
<b>Lead Officer</b>	Martyn Cassell, Leisure and Technical Services Manager	
<b>Key Decision</b>	No	
<b>Classification</b>	Open	
<b>Forward Plan</b>	<b>Reference number:</b>	
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To transfer Iwade Recreation Ground including the children's playground and the changing pavilion to Iwade Parish Council on a 125 year lease.</li> <li>2. To delegate authority to the Head of Commissioning and Customer Contact and Head of Property in consultation with the Cabinet Member for Finance and Performance to negotiate the final terms of the lease.</li> </ol>	

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

- 1.1 The report provides Cabinet with the history of the Iwade Recreation Ground development and suggests reasons for transferring the site to Iwade Parish Council.

## **2 Background**

- 2.1 Iwade Recreation Ground was previously managed and maintained by Iwade Parish Council via a lease arrangement with a local farmer.
- 2.2 As part of the Iwade housing developments, the site was secured and the developers requested that the transfer was made to Swale Borough Council. Provision was agreed through a Section 106 Agreement to construct sport and leisure facilities including a children's playground, hard surface car park and sports changing pavilion with social area. The whole grassed area was also redeveloped including fencing surrounds and now provides space for formal playing pitches.

- 2.3 Persimmon Homes has undertaken the development and is now looking for Swale Borough Council to take possession of the site. An indicative plan is shown at Appendix I, but the final area of land to be transferred will be subject to the final details of the transfer agreement received from Persimmon Homes.
- 2.4 There are still some steps that need to be undertaken by the developer prior to SBC acceptance of the site. These include snagging to the internal features of the changing pavilion, evidence of maintenance records, conduct of a building surveyor inspection and then handover of various operating manuals.
- 2.5 Initial discussions have been held with members and officers of Iwade Parish Council to return the operation of the site to them. They have requested a 125 year lease. Draft Heads of Terms have been drawn up that capture these discussions and follow the principles of the Asset Transfer Policy. The draft Heads of Terms can be found at Appendix II.
- 2.6 Whilst the site is brand new, the benefit of the transfer is that Swale Borough Council will save longer term running costs with no grounds maintenance and inspections, no building maintenance or insurance liabilities, no administration of bookings and no requirement for SBC to allocate renewal funds for replacement at the end of the facility life.
- 2.7 The proposed transfer is in line with the recommendations of the Swale Playing Pitch Strategy (PPS) and the lease will state the need to keep the site as a recreational facility and to make it available for junior football usage to help meet the identified deficit in the PPS.
- 2.8 It is anticipated that the developer will be in a position to transfer the site in the next three months and this may be before the negotiations of the lease with Iwade Parish Council have been completed. If this situation does occur, then in order to ensure that the asset is managed and maintained in this interim period, SBC will maintain it utilising our existing ground maintenance budget.
- 2.9 Under the terms of the Asset Transfer Policy, it has been determined that an external valuation under Section 123 of the Local Government Act 1972 is not required as there is no alternative non-community use. The proposed disposal would only be at an 'undervalue' if it was realistic to think that the Council could sell or lease the land/premises for a capital receipt or a higher rent. Given that the Section 106 Agreement includes the need to protect it as public open space and it is assumed the Transfer Agreement will also require this, the above options are not possible.
- 2.10 Furthermore an internal valuation is not proposed on the basis that the transfer will be undertaken on a back to back or very short interim period and therefore permission of the Section 151 officer is the only requirement.

### **3 Proposals**

- 3.1 To transfer Iwade Recreation Ground including the children’s playground and the changing pavilion to Iwade Parish Council on a 125 year lease.
- 3.2 To delegate authority to the Head of Commissioning and Customer Contact and Head of Property in conjunction with the Cabinet Member for Finance and Performance to negotiate the final terms of the lease.

### **4 Alternative Options**

- 4.1 The site could be retained and managed by SBC. This will increase on-going costs for the management of open spaces.
- 4.2 The site could be leased directly to interested voluntary sector sports clubs. Whilst this is an option mentioned in the Asset Transfer Policy and Playing Pitch Strategy, it is considered that the facilities will be more sustainable in the hands of the Parish Council as they could be used to develop localised community activities. A voluntary club would be unlikely to take a lease on better terms than is proposed in this transfer to Iwade Parish Council. A sports club is also unlikely to be interested in management of the children’s playground.

### **5 Consultation Undertaken or Proposed**

- 5.1 The item has been raised at Asset Transfer Group and Asset Management Group.
- 5.2 An initial meeting has taken place with Iwade Parish Council and Cabinet members have been briefed.
- 5.3 There will be a requirement to advertise this transfer in the local newspapers as a disposal of public open space under s123(2A) of the Local Government Act 1972.

### **6 Implications**

<b>Issue</b>	<b>Implications</b>
Corporate Plan	A Borough to be Proud of – Protect and improve the natural and built environment  A Community to be Proud of – encourage active communities and support the voluntary sector, work in partnership to improve health and mental health
Financial, Resource and Property	There are small cost implications if the acceptance of the site from the developer is prior to the agreed transfer date out to the Parish Council. The figures are low and can be absorbed into the existing open spaces and grounds maintenance budgets.

	<p>It is proposed that the lease is at a nominal rent to allow for sustainable operation in the future by the Parish Council. A rent review option has been included in the Draft Heads of Terms with a trigger at 5 years and/or a clause based on implementation of a commercial venture.</p> <p>Retaining the site would increase the costs of the grounds maintenance contract and increase workload for existing resources in Customer Services, Environmental Response Team and Parks team.</p> <p>A low rental is proposed at £10 per annum.</p>
Legal and Statutory	<p>The lease will be completed by Mid Kent Legal Services.</p> <p>There will be a requirement to advertise this as a disposal of public open space under s123 (2A) of the Local Government Act 1972. The costs of this will be borne by the Open Spaces budget.</p> <p>The transfer to the Parish Council will be bound by the terms of the Section 106 Agreement and Transfer Agreement from the developer.</p>
Crime and Disorder	<p>The design of the building and site fencing has been considered with crime and disorder in mind. Good management of the site will ensure any issues are reduced. Leisure activities are evidenced to provide diversionary activity for young people to reduce ASB.</p>
Sustainability	<p>Modern standard changing pavilion designs take into consideration energy efficiency. The Parish Council will be able to use income derived from increased community usage and through application for grants to help maintain the building.</p>
Health and Wellbeing	<p>The recreational facilities promote healthy activity. The site will provide a base for local sports clubs and for the Parish Council to use as a community facility.</p>
Risk Management and Health and Safety	<p>There is limited or no risk in the project as the facilities have been constructed by the developer. Prior to acceptance the buildings and site will be inspected by our in-house building surveyor.</p> <p>On-going risk will be passed onto the Parish Council under the terms of a full management and repairing lease.</p>
Equality and Diversity	<p>The children's playground was designed with disabled users in mind. The building complies with building regulations relating to access.</p>

## 7 Appendices

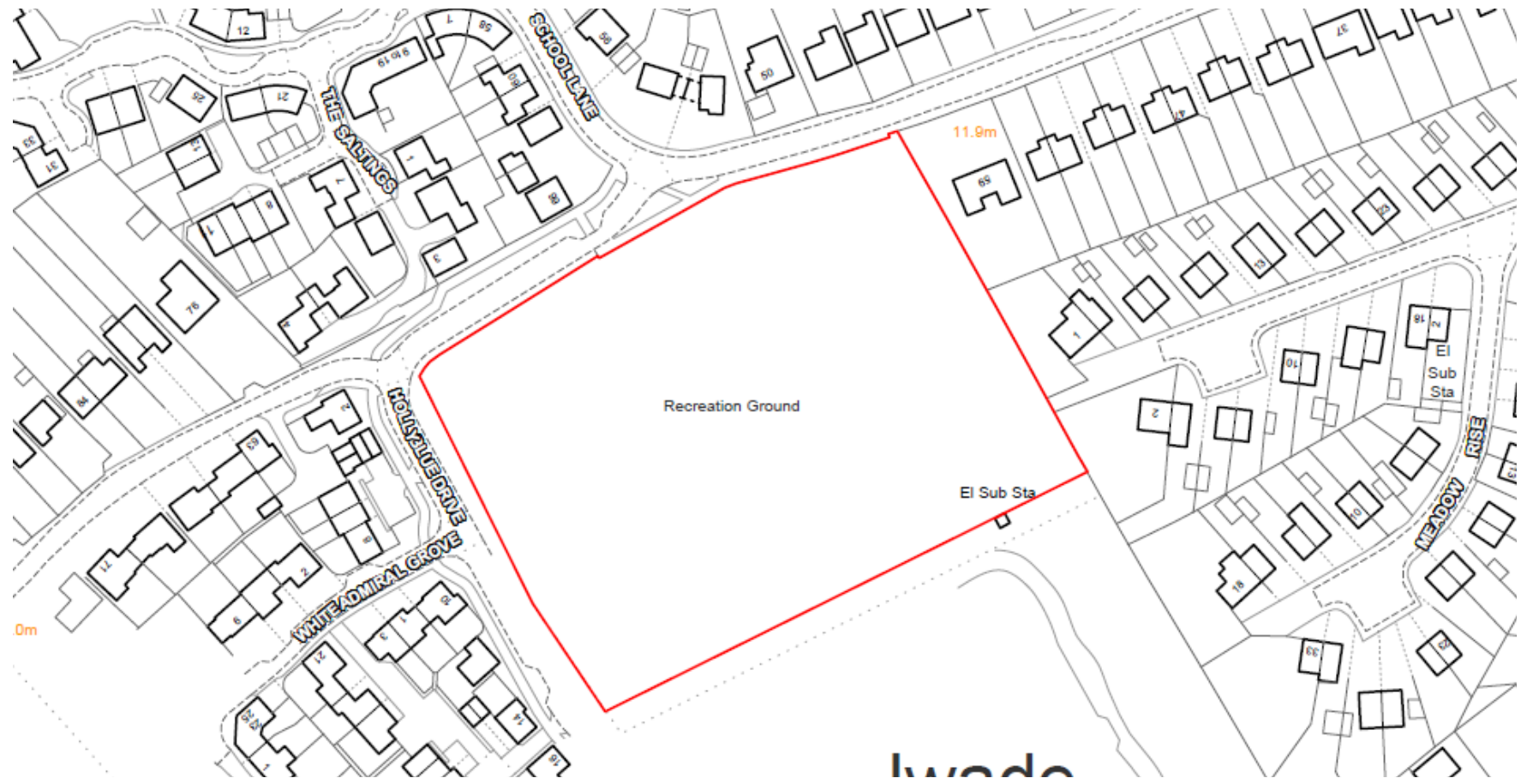
The following documents are to be published with this report and form part of the report:

- Appendix I: Indicative Site Plan
- Appendix II: Draft Heads of Terms for Iwade Recreation Ground Transfer

## **8 Background Papers**

n/a

# Appendix I – Indicative Site Plan



## Appendix II – Draft Heads of Terms for Transfer

### Lease of Iwade Recreation Ground, School Lane, Iwade, Sittingbourne

#### HEADS OF TERMS

<b>1.0 Initial information</b>	
1.0 Property Address	The Iwade Recreation Ground, School Lane, Iwade, Sittingbourne, Kent. As shown edged red on the attached plan.
1.1 Title No.	
1.2 Landlord	Swale Borough Council, Swale House, East Street, Sittingbourne, Kent. ME10 3HT
1.3 Tenant	Iwade Parish Council
1.4 Rent	Sum to be mutually agreed.
1.5 Type of lease	Head lease
<b>2.0 Lease length and breaks</b>	
2.1 Lease start date and length	A 125 year lease from <i>[date to be agreed]</i>
2.2 Break clauses or renewal dates	N/A?
2.3 1954 Act protection	N/A? check CAT policy
2.4 Rights	Rights are to be reserved for access and repair and maintenance of underground apparatus in favour of the relevant statutory undertakers.
<b>3.0 Rent Reviews</b>	After 5 years Commercial Venture trigger
<b>4.0 Assignment and subletting</b>	There shall be no assignment, sub-letting or parting of possession of the whole of the demised premises.  Subletting of parts will be permitted with the Council's prior approval providing they are compatible with the primary aim of being a community facility.  The hiring out to organisations approved by the Tenant for periods of less than 24 hours will be permitted.
<b>5.0 Services and service charges</b>	All services and service charges are the responsibility of the Lessee
<b>6.0 Repairing obligations</b>	The Tenant shall be responsible for keeping all buildings and structures and all fixtures and additions erected or to be erected on the demised premises in a good and substantial state of repair and condition throughout the term and for the maintenance of all boundary and site

	security fencing.
<b>7.0 Alterations</b>	The Tenant shall not carry out any structural or external alterations or new building works without the prior written consent of the Landlord. Non-structural internal alterations will not require prior consent.
<b>8.0 Permitted use</b>	The site shall be used for the provision of a <i>[recreation ground including formal sports pitches, children's play area, car park and sports changing pavilion providing a social space to support service provision to meet the needs of the local community]</i> . No other use is permitted without the express consent of the Council.
<b>9.0 Insurance</b>	The Tenant shall insure the demised premises and any buildings erected thereon and indemnify the Council against any claims for damages, losses or injuries and any other claims whatsoever arising out of the use of the demised premises by the tenant.
<b>10.0 Dilapidations</b>	The Tenant shall be responsible for all costs charges and expenses including solicitors costs and surveyors fees incurred by the Council in respect of the preparation and service of a notice under sections 146 and 147 of the Law of Property Act 1925
<b>11.0 Other issues</b>	
11.1 Nuisance	The Tenant shall covenant not to cause or permit to be caused anything which may become a nuisance to the Council or adjoining property owners
11.2 Rates and Utilities	The Tenant shall be responsible for the payment of all future rates taxes assessments and all outgoings payable by law in respect of the demised premises by either the owner or occupier thereof.
11.3 Statutory Obligations	The Tenant shall conform at his own expense to all statutory and other regulations pertaining to the demised premises including all health and safety legislation and obtaining any necessary planning consent required and to indemnify the Council against any claims arising from any breach of such regulations.
11.4 Legal costs	Each party to pay own costs
11.5 Conditions	The proposed Heads of Terms are



	subject to Member approval.
11.6 General	An Energy Performance Certificate is to be provided by the building contractors.
11.7 No contract	These Heads of Terms are subject to contract.
11.8 Landlords solicitors	Mid Kent Legal Partnership, Swale Borough Council, East Street, Sittingbourne, Kent. ME10 3HT
11.9 Tenants solicitors	To be advised