

Agenda



Delegated Decisions - Cabinet Member for Assets & Equalities

Date: Wednesday, 22 May 2019

To: Councillor M Whitcutt

Item		Wards Affected
1	<u>86/87 Lower Dock Street, Newport</u> (Pages 3 - 8)	Pillgwenlly
2	<u>Disposal of land adjacent 282 Corporation Road, Newport</u> (Pages 9 - 14)	Victoria
3	<u>The Substation At Allt Yr Yn Close, Allt Yr Yn, Newport</u> (Pages 15 - 22)	Allt-yr-yn

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Report

Cabinet Member for Assets & Equalities (Deputy Leader)

Part 1

Date: 22 May 2019

Item No: 01

Subject 86/87 Lower Dock Street Newport

Purpose To seek approval from the Cabinet Member for Assets & Member Development (Deputy Leader) to declare the subject land surplus to the Council's requirements and to dispose of the freehold interest on terms agreed by the Head of Law and Regulation.

Author Housing and Assets Manager

Ward Pillgwenlly

Summary The current leaseholder of the premises wishes to purchase the freehold from the Council. They are currently occupying the premises on a lease for 99 years from 28th February 2007 with a current rent passing of £250 per annum.

Proposal That the subject land be declared surplus and disposed of on terms recommended by Newport Norse and approved by the Head of Law and Regulation.

Action by Head of Regeneration, Investment and Housing.

Timetable Immediate

This report was prepared after consultation with:

- Newport Norse
- Head of Regeneration Investment and Housing, Newport City Council
- Strategic Director – Place
- Head of Finance – Chief Finance Office
- Head of Law and Regulations – Monitoring Officer
- Head of People and Business Change

Signed

Background

86/87 Lower Dock Street is a mixed use property with retail on the ground floor and residential on the upper floors. The property is situated at the southern periphery of the city centre near the Asda superstore and Mission Court.

The Council own the freehold, which is subject to a lease for 99 years from 28th February 2007. The rent passing is £250 per annum, which is under review and represents a geared ground rent. Rent reviews are every 10 years throughout the term.

The tenant Crestwell Developments Ltd. wishes to acquire the freehold interest. There is no obligation on the Council to sell to the current tenant and the potential loss in revenue, albeit relatively small needs to be weighed against any capital receipt that could be achieved.

Due to the length of the lease and the remaining long unexpired term, the value of the Council's reversionary interest is relatively low.

This property was acquired for regeneration and is now held as an investment. The income is a ground rent and will only provide a relatively small income as it is geared at 3% of the full market rent.

The current tenant has wanted to purchase the freehold for some time and is very persistent in his ambition. He has until recently only offered a relatively modest sum to purchase, but one that does exceed our opinion of the value. He has now increased this to a level that is significantly in excess of the market value.

The Council have not been seeking to sell this property and the approach from the current tenant is an almost perfect special purchaser situation where his offer far exceeds what would be achieved through any other method of sale.

On balance and bearing in mind the level of offer our recommendation is to sell the freehold interest on terms to be agreed and approved by the Head of Law and Regulation.

Financial Summary

There is currently no cost implication for the Council due to the terms of the Lease. The disposal of the land will mean that the council will receive a capital receipt which can be reinvested in the capital programme. The loss of income will be absorbed within the commercial estate.

Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Freehold remains with the Council	L	L	All maintenance costs are borne by the tenant as part of the Lease agreement.	Tenant

Links to Council Policies and Priorities

Property Rationalisation Programme
Medium Term Revenue Plan (MTRP)

Options Available

1. Take no action
2. Decline the offer to purchase the Freehold and continue receiving the income generated from the Lease on the property.
3. Agree to the sale of the Freehold and receive a capital receipt from the disposal of the asset.

Preferred Option and Why

That the subject land be declared surplus and be disposed of on terms to be recommended by Newport Norse and agreed by the Head of Law and Regulation.

Comments of Chief Financial Officer

Disposal of this freehold will benefit the Council by the realisation of a small capital receipt which will be reinvested in the capital programme. The Head of RIH would need to be satisfied that the revenue income loss, minimal as it is, will have no impact on the achievement of the overall income target for the Council's Commercial estate and the MTFP.

Comments of Monitoring Officer

The proposed sale of the Council's freehold reversion to the current leaseholder is in accordance with the Council's powers to dispose of land under section 123 of the Local Government Act 1972. The mixed use property has already been allocated for investment purposes and has been "disposed" of by way of a 99 year ground lease. The passing ground rent is a modest geared rental and the capitalised value of the Council's freehold reversion is very small because of the unexpired term of the 99 year lease. Therefore, if the leaseholder is prepared to pay more than market value for the purchase of the Council's reversionary interest, then this would clearly represent best value for the Council as it is effectively a special purchaser offer, as the freehold is worth considerably more to the sitting tenant as compared with any other purchaser.

Comments of Head of People and Business Change

There are no staffing implications arising from this report.

Asset management is a key area for consideration as part of the Well-being of Future Generations Act. The decision to dispose of this land will secure its long term future, be of benefit to the local community and help prevent any anti-social behaviour incidents. The report has considered the five ways of working and the decision contributes to a number of well-being goals including a wales of vibrant culture and a wales of cohesive communities.

Comments of Cabinet Member

Cabinet Member has been briefed on this report.

Scrutiny Committees

N/A.

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance

equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Children and Families (Wales) Measure

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

Wellbeing of Future Generations (Wales) Act 2015

This is an opportunistic minor property transaction instigated by the current leaseholder and the reality is that it is between the council and leaseholder with no impact on surrounding areas or individuals hence the difficulty in achieving some areas of the five ways of working in detail. The long term benefit of the property has been considered and whether the income from the property is more beneficial than the capital receipt. Selling the property to the current occupier will prevent any future liability for the Council, in case something drastic were to happen to the property. Collaborating with the current occupier regarding the sale will result in terminating all liabilities of the Freehold. As with any generation of a capital receipt it creates an increase in resources for the Council to use to meet its Wellbeing objectives.

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

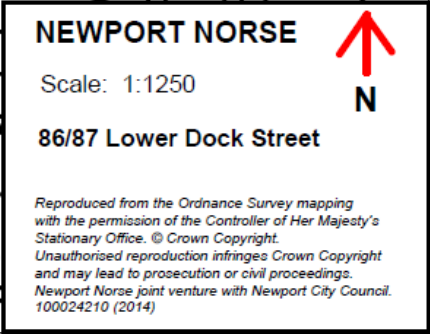
Consultation

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

Site plan attached

Dated: 22 May 2019



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Report

Cabinet Member for Assets & Member Development (Deputy Leader)

Part 1

Date: 22 May 2019

Item No: 02

Subject Disposal of land adjacent 282 Corporation Road, Newport

Purpose To seek approval from the Cabinet Member for Assets and Member Development (Deputy Leader) to the disposal of land adjacent to 282 Corporation Road, Newport.

Author Housing and Assets Manager.

Ward Victoria

Summary Newport City Council has received a request to purchase additional land from the residents at 282 Corporation Road.

Proposal To agree disposal of land adjacent to 282 Corporation Road, Newport to the existing residents on terms recommended by Newport Norse and approved by the Head of Law and Regulation.

Action by Head of Regeneration, Investment and Housing.

Timetable Immediate

This report was prepared after consultation with:

- Strategic Director – Place
- Head of Regeneration, Investment and Housing
- Housing & Assets Manager, Newport City Council
- Principal Engineer, Streetscene, Newport City Council
- Head of Law and Regulation, Newport City Council
- Head of Finance
- Head of People and Business Change
- Associate Director of Property Services, Newport Norse
- Property Manager, Newport City Council
- Estates Portfolio Officer, Newport Norse

Signed

Background

There has been a request from the residents at 282 Corporation Road to purchase land that is adjacent to their house. Corporation Road is one of the main roads within Victoria in Newport. There is a mixture of residential and commercial premises in the area.

Norse have been on site and inspected the land and surrounding area. It had come to our attention that the land was actively being used by the residents already. A wooden fence has been constructed on one side which forms a boundary and there is an electronic steel gate to the front. This closes off the land from the main road. There is a right of way in place for the residents to cross the land so they can park their car in the garage but the Council has not given authorisation for the residents to enclose the land. Norse has **collaborated** with the residents in order to rectify and regularise the matter and the residents are willing to purchase the land. The disposal has only been offered to the resident of 282 Corporation Road as the land is only capable of use by them.

Norse have also **consulted** with the Council's Highway department, Legal department and Regeneration team in order to confirm that there are no objections to the disposal of the land as well as help meet our wellbeing objectives. There has been **involvement** from different Service Managers from different departments who are of the opinion that the disposal of the land would be in the positive interests of the Council for the **long term** as the land itself is not capable of use by anyone other than applicants. They have no objections to a disposal and it will not pose any future detriment to the Council.

Even though the land is not being maintained currently, it is still the responsibility of the Council. Disposing of the land, will relieve the Council of the obligation of this maintenance. The disposal will also allow the residents to **integrate** the subject land into their title and **prevent** any future legal disputes.

The long term benefit of the site has been considered and whether it is better to retain the land or pursue with its disposal. Selling the land to the owners of 282 Corporation Road will remove any future liability for the Council. There has been no consultation with other residents as the land is adjacent to 282 Corporation Road who already have a right of way over the land and the land has no benefit to any of the other local residents.

Financial Summary

If the disposal progresses, this would provide a capital receipt of £10,000 for the Council. There is no current income received from this land and therefore no impact on the 'commercial estate'

If the disposal progresses, this would prevent possible legal costs in trying to obtain the land back through Land Registry.

Risks

Failure to dispose of the land will result in title disputes between the Council and the residents.

Links to Council Policies and Priorities

- Asset Management Plan
- Property Rationalisation Programme
- Medium Term Revenue Plan (MTRP)
- Service Delivery Plans

Options Available and considered

- Decline disposal to the tenant but this would mean attempting to regularise the matter through formal action. There is no guarantee that the Council will be successful in this matter.

- Dispose of the land on terms to be agreed by Head of Law and Regulation. This will realise a capital sum for the Council and also regularise the matter.

Preferred Option and Why

Dispose of the land on terms to be agreed by Head of Law and Regulation. This will raise a capital sum of £10,000.

Comments of Chief Financial Officer

Disposal of this freehold will benefit the Council by the realisation of a small capital receipt, which is reinvested into the capital programme, disposal of the land will also remove any potential future liability to the Council.

Comments of Monitoring Officer

The proposed sale is in accordance with the Council's powers to dispose of surplus land under section 123 of the Local Government Act 1972. The land adjacent to 282 Corporation Road has already been encroached upon by the adjoining owners and enclosed as part of their property. Therefore, the position needs to be regularised to avoid any claims for adverse possession. Either the Council takes legal action to reclaim the land in its ownership or the freehold title is sold to the adjoining owners. Because the land is already subject to an existing private right of way in favour of the owners, then it has little or no value to the Council, even as an amenity area, and it would be a liability to maintain. The land is also of no value to any alternative buyer because of its location and the existing right of way. Therefore, the land only has special purchaser value to the owners of the adjacent property. The Council has a duty to secure the best price reasonably obtainable to the land but, as it is only of amenity value to the owners of the adjoining property, then a £10k receipt is considered to be best value. The transfer should include a restrictive covenant to ensure that the land continues to be used for residential purposes as part of the property at 282 Corporation Road. If the land is currently appropriated for operational service use within the asset register, then it will need to be declared surplus to requirements and re-appropriated for disposal.

Comments of Head of People and Business Change

There are no staffing implications to this proposal.

From a Well-being of Future Generations (Wales) Act 2015 perspective the sustainable development principle has been considered when writing this report.

Comments of Cabinet Member

Cabinet Member has been briefed on this report.

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs

of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Children and Families (Wales) Measure

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

Wellbeing of Future Generations (Wales) Act 2015

This small portion of land has been enclosed and performing its current function for many years and is sandwiched between the land belonging to Willenhall Surgery and the Council's roadside shrubbery. There has been no public use or enjoyment of this land for the period of enclosure and its size offers no opportunity for useful public use. The long term benefit of the property has been considered and as it serves no current purpose for the Council or other residents it is felt that it is beneficial to dispose of the site for a capital receipt. Selling the site will prevent any future liability for the Council. The receipt will increase funds brought into the Council for it to continue fulfilling its Statutory and wellbeing objectives.

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

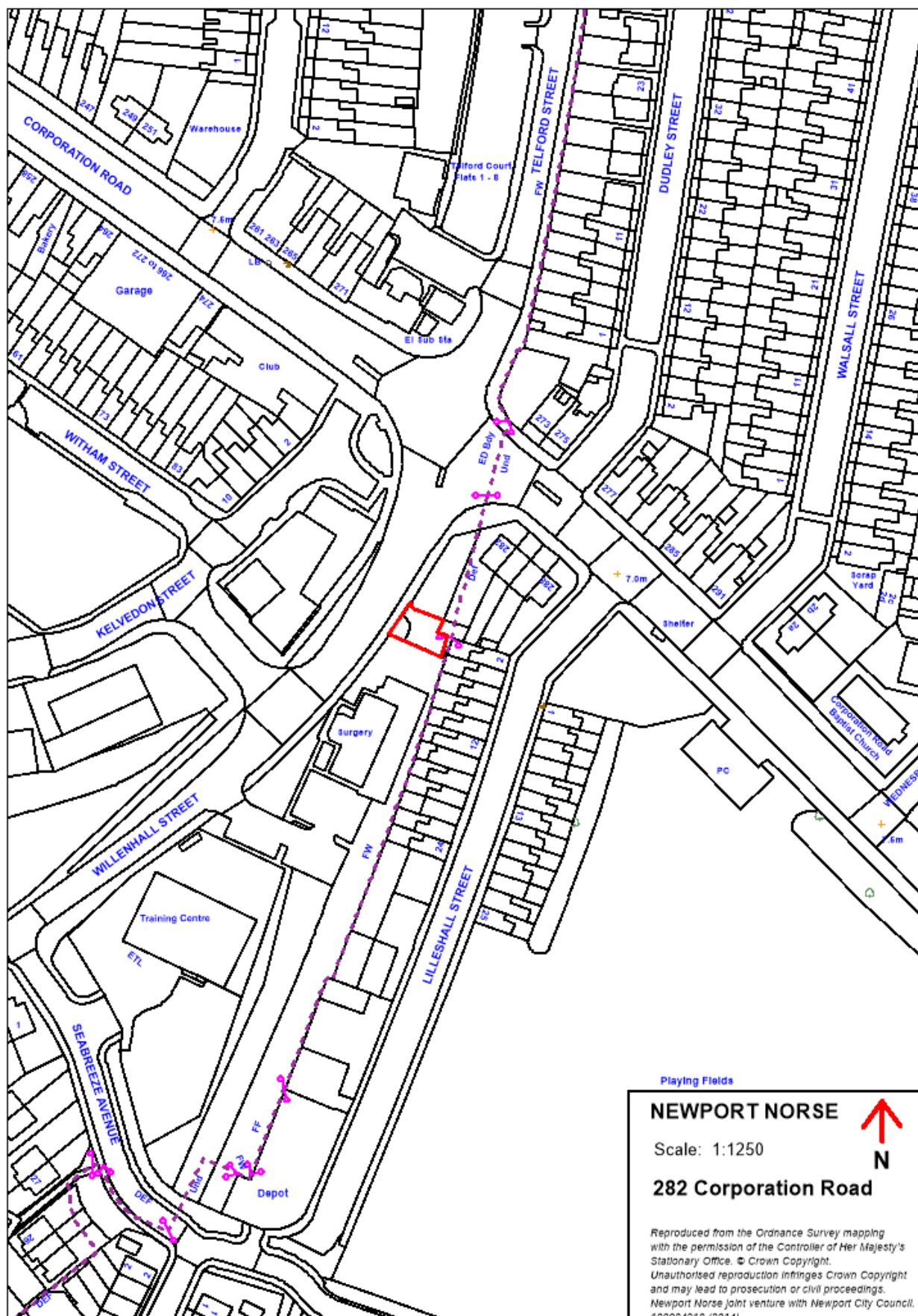
Consultation

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

Plan attached.

Dated: 22 May 2019



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Report

Cabinet Member for Assets and Member Development

Part 1

Date: 22 May 2019

Item No: 03

Subject The Substation At Allt Yr Yn Close, Allt Yr Yn, Newport

Purpose To inform the Cabinet Member for Assets & Member Development (Deputy Leader) of the action taken by Western Power Distribution, (WPD), to replace a substation at Allt Yr Yn Close.

Author Housing and Asset Manager

Ward Allt Yr Yn

Summary Western Power Distribution have replaced an ageing substation from land that they owned to land that is within Newport City Council's ownership and is Covenanted Open Space. Unfortunately, this was an urgent matter and completed before the appropriate Legal documentation. As a result, it is recommended the Council dispose of the land to WPD. However, WPD would be required to indemnify the Council from the breach of the Open Space covenant as recommended by the Head of Law and Regulation.

Proposal That the subject land be declared surplus and disposed of on terms recommended by Newport Norse and approved by the Head of Law and Regulation.

Action by Head of Regeneration, Investment and Housing

Timetable Immediate

This report was prepared after consultation with:

- Strategic Director - Place
- Head of Finance – Chief Finance Officer
- Head of Law and Regulations – Monitoring Officer
- Head of People and Business Change
- Newport Norse
- Western Power Distribution

Signed

Background

Newport Norse were notified of a request for urgent works at a substation in Allt Yr Yn Close where Western Power Distribution (further referred to as WPD) own a parcel of land housing a substation. The substation is located adjacent to Newport City Council owned land.

The request was received on 31st July 2018 notifying that WPD would like to build a new substation, next to the existing one, on the Council owned land. This is in order to avoid any periods without power in the surrounding areas. The Council's Legal team involvement was required to confirm the Council's ownership and to make the appropriate checks to see if the disposal of the land was feasible.

The Legal team confirmed the land was within the Council's ownership; however, they also noted that the land was covenanted Open Space and therefore could not be disposed of. When this was relayed to WPD they responded saying as a preventative measure for loss of power the works had already begun with the new substation and was already in situ on Council owned land.

Given the circumstances Legal were consulted with again to find out the position and their comments were that it was a fait accompli, i.e. as it has already happened there wasn't anything they could do about it. As a result, the Legal team suggest that the land transaction be recorded to WPD, however they would request that WPD indemnify the Council adjust the breach of the Open Space covenant. They also advised that such a transaction would require Cabinet Member approval.

When collaborating with WPD on the matter, they suggested they will transfer their freehold land to Newport City Council to replace the land that has been taken by the new substation. This would result in the Council having more Open Space in the long term than original, however this would have an impact on maintenance budgets going forward.

It is recommended that the site be disposed of to WPD but in accordance with the advice from Legal that WPD indemnify Newport City Council against the Open Space covenant. It is also recommended that if the additional costs of maintenance are not within budget, some remittance is sought from WPD to cover these additional costs.

Financial Summary

There is currently no income being received or capital receipt as the land is Covenanted Open Space. The only financial implication is factoring the additional cost of maintaining the extra land received from the replacing of the substation. The HoF has commented that if possible, the legal agreement should allow for WPD contribution to reasonable excess costs in order that this can be actioned and enforced, if needed.

Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
On-going Maintenance	L	L	Factor the additional cost of the extra land to maintain.	Newport City Council

Links to Council Policies and Priorities

Property Rationalisation Programme
Medium Term Revenue Plan (MTRP)

Options Available and considered

1. Take no action
2. Dispose of the land to Western Power Distribution and on the advice from the Legal department seek indemnity for Newport City Council against the Open Space covenant. Seek remittance from Western Power Distribution to cover any additional maintenance costs.

Preferred Option and Why

Disposing of the land to Western Power Distribution to mitigate Newport City Council's liability for breaking the Open Space covenant.

Comments of Chief Financial Officer

There is no loss of income or capital receipt as a result of the disposal of the land. However, if WPD transfers the additional piece of land to the Council, there will be an increased financial burden to the council in the form of additional maintenance costs. Therefore, the legal agreement dealing with the transfer should allow for the possibility of WPD funding additional costs in order that the Council can action this, if this is possible.

Comments of Monitoring Officer

The proposed action is in accordance with the council's legal powers to acquire and dispose of land under sections 120 and 123 of the local Government act 1972. Given that WPD have already constructed their sub-station of this are of council land, then the land should be formally transferred to them in order to regularise the position. Because the land is covenanted as open space, then the transfer should contain an appropriate indemnity from WPD in respect of any claims against the Council for breach of this covenant. If the Council agrees to take their existing sub-station site as exchange land in substitution of the lost open space, then there should be a requirement to pay some form of commuted sum if the future maintenance obligations would exceed previous costs in relation to the sold open space.

Comments of Head of People and Business Change

There are no staffing implications to this report.

From a Well-being of Future Generations (Wales) Act 2015 perspective the sustainable development principle has been considered when writing this report and this is evidenced in the appropriate section of the report.

Comments of Cabinet Member

Cabinet Member has been briefed on the report.

Local issues – Ward Member Comments

Cllr David Fouweather

I note the report and have no objections. The generator is located on a piece of ground near the entrance to Allt-yr-yn Heights and is not used for any play or leisure provision by residents.

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in

better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Children and Families (Wales) Measure

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Wellbeing of Future Generations (Wales) Act 2015

Although the action by WPD was taken without the involvement of the Council it was taken with the prevention of loss of power for the local community and residents. Through their actions WPD have preserved the supply of electricity to the area, without the risk of periods of no electricity. They have also increased the size of the Open Space surrounding the substation, allowing for a greater area for the public to use, albeit one that houses a substation. This will enable the community to remain cohesive and sustainable for the long term future. It was not possible for the Council to engage in any consultation with local residents and others as the decision was out of the Council's hands as an operational necessity to maintain a power supply to the area.

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Consultation

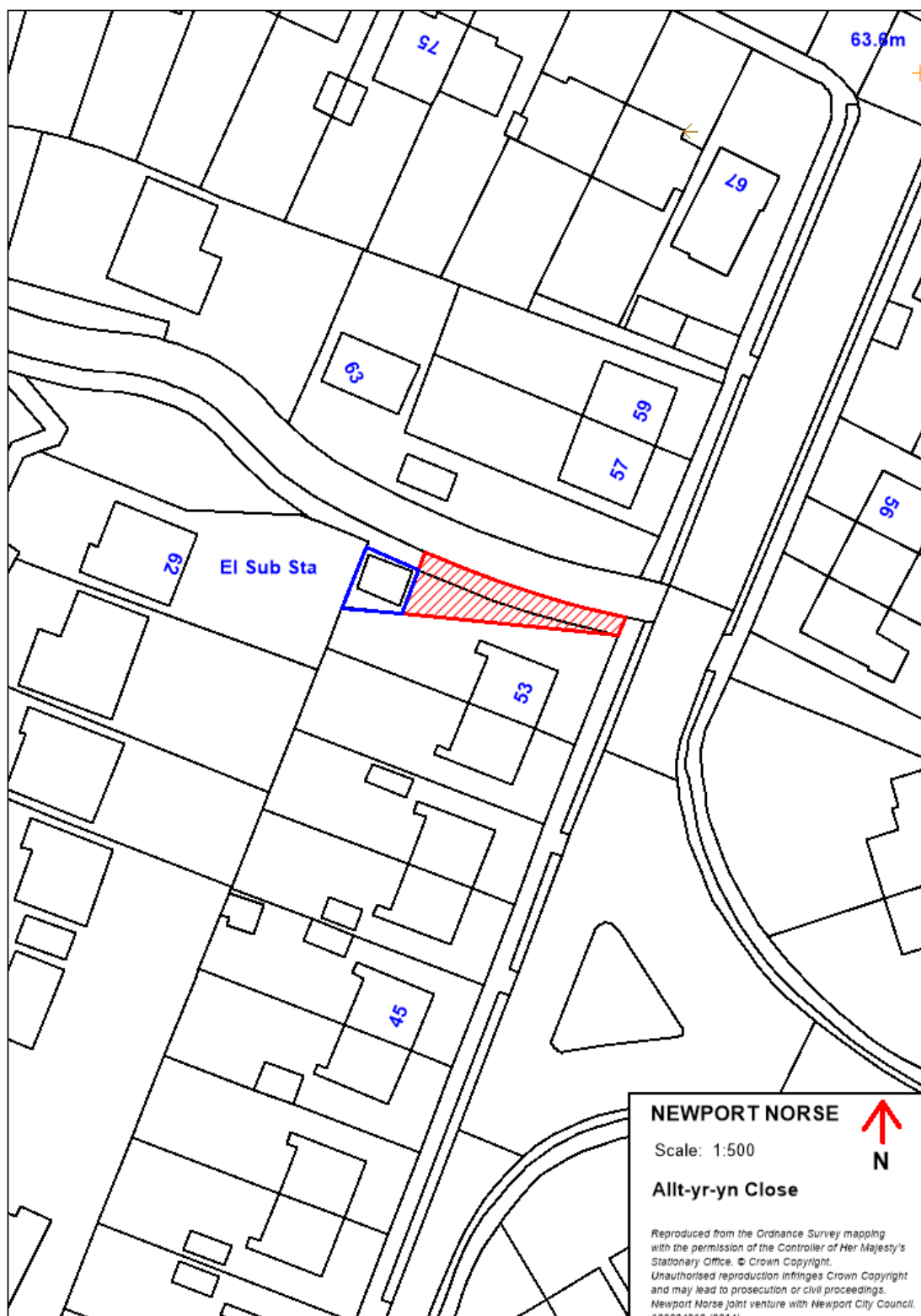
Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

Site plan attached.

Date: 22 May 2019





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