

Report

Council

Part 1

Date: 23 April 2024

Subject **Amendment to Constitution - Scheme of Delegation for Assets**

Purpose To update the Officer Scheme of Delegation for decisions relating to Assets, to be adopted within the Constitution.

Author Head of People, Policy & Transformation

Ward N/A

Summary The report outlines a review of the officer Scheme of Delegation for Assets as set out in the Council's Constitution. This proposal is to update the schedule for delegated property transactions to ensure that the Council's governance for asset transactions supports effective decision making and better aligns with other delegated decisions contained within the constitution. These changes are within and subject to the financial controls and democratic process of the Council as set out in the Constitution.

Proposal Council is asked to approve and adopt the amendments to the paragraph 10.9 of Part 3.3 of the Officer Scheme of Delegation within the Council's Constitution, as set out below.

Action by Head of People, Policy & Transformation
Monitoring Officer

Timetable Immediate

This report was prepared after consultation with:

- Strategic Director – Corporate and Transformation
- Head of Asset Management and Valuation, Newport Norse
- Head of Law and Standards / Monitoring Officer
- Cabinet Member – Infrastructure and Assets
- Head of Housing and Communities
- Democratic Services Committee

Signed

Background

In accordance with the Council's Scheme of Delegation to Officers (Constitution part 3.3, paragraph 10.9), a number of powers with regard to minor property transactions are delegated to the Head of People, Policy and Transformation. The values of certain asset transactions have been in place for some time, are no longer aligned with current asset values, and are out of step with other delegated decisions contained within the constitution.

Changes to service demands are placing increasing demands on the Council's asset property portfolio. To ensure there is effective and efficient decision making regarding assets, there is a need to ensure that decisions are made and recorded at an appropriate level, through amendments to the current scheme of delegation for minor property transactions. Changing the Scheme of Delegation as recommended would enable property decisions to be streamlined, albeit with decisions regarding major property transactions continuing to be taken by members.

An analysis of a range of other local authorities in Wales has been undertaken and concludes we are currently out of step with other Councils where the focus is on major property transactions, setting financial limits ranging from £100,000 to £1,000,000 as examples. These ranges are more reflective of property values, and more closely aligned to other delegations such as those governed by the Council's Contract Standing Orders (CSO).

Should the proposed amendments be adopted, officer decisions regarding property transactions would be subject to numerous controls, including the statutory duty to ensure best value in disposals of local authority land, the requirement to act within the scope of the Council's Capital Programme and prudential indicators, and budgets applicable to the service area in question. This includes the requirement to consult with ward or Cabinet members where the proposed transaction is likely to have an impact on the community. Importantly, it should be noted that nothing in the proposed delegations will serve to circumvent the financial controls set out in Part 4 of the Constitution, or elsewhere. Decisions regarding the setting of the Capital Programme, budgets and prudential indicators will remain outside the scope of officer delegation.

Decisions relating to assets are also subject to internal officer controls, financial and capital monitoring requirements, where appropriate project management oversight, and legal /property services advice as well as the wider constitution and legislative requirements

Proposal

The current scheme of delegation requires Cabinet and Ward Members to be consulted on a wide range of minor transactions, and formal reports for a variety of decisions. The values outlined in the scheme have diminished over time, applying to increasingly minor transactions.

Formal member reports and decisions are currently required for any disposals or acquisitions exceeding 100 square metres, and granting or acquiring interests exceeding £1,000 per annum as well as any lease over 7 years. Due to increased demands and changes relating to asset management, it is proposed that the scheme of delegation is amended. Ward members will continue to be consulted where there is a wider impact or direct interest on the community or residents within a ward.

Proposed changes to the scheme of delegation

Current officer delegation	Proposed delegation
i. To dispose of and acquire freehold interests or grant and acquire leasehold interests on parcels of land not exceeding 100 square metres in extent	To acquire, purchase and dispose of interests in land and property where the consideration for the transaction does not exceed £100,000. Where the transaction relates to the portfolio of any Cabinet Member(s), the decision shall be taken in consultation with that (those) Cabinet Member(s).

ii. To grant/acquire interests in property with an annual value not exceeding £1,000	To enter into, amend or surrender leases of land and property with an aggregate annual sum payable by the tenant (including rent, insurance rent, service charge/s and all other sums payable pursuant to the lease) not exceeding £100,000. To grant and obtain any consents sought or required in relation to any lease to which the Council is a party.
iii. To grant/acquire easements for services	To enter into, grant, amend or surrender licences, permissions, wayleaves, easements and other legal interests in land or property.
iv. To grant licenses to graze animals and/or mow grass for haymaking	Delete clause (included above).
v. To grant/acquire licenses to use property	Delete clause.
vi. To grant/acquire leases for a period of less than 7 years	Delete clause.
vii. To grant the release or discharge of covenants relating to Council land and property.	No change proposed.
The relevant Cabinet Member(s) and Ward Member(s) shall be consulted before any decisions are taken in relation to minor property transactions that relate to their portfolios or wards	In addition to any other requirement above to consult with Cabinet Members, the relevant Cabinet Member(s) and Ward Member(s) shall be consulted where there is a direct or <u>wider impact</u> on the community or residents within a ward arising from any proposed transaction. The provisions of these delegations do not override any duty to ensure compliance with the Council's rules relating to capital acquisitions and transactions or other financial controls set out in Part 4 of this Constitution or elsewhere. All transactions must be within the Council's approved Capital Programme, the relevant budget/s and any applicable prudential indicators.

Decisions regarding dwellings provided to meet the council's statutory homelessness duties are dealt with through the Head of Housing and Communities delegated powers, following the relevant assessment.

All decisions, whether Cabinet Member or Head of Service are subject to appropriate reports, recording and relevant legal and financial advice and controls. Officer decisions are also subject to Strategic Asset Management Group review, financial and budgetary controls, Capital Assurance requirements, and strategic asset management principles.

Heads of Service to make arrangements for relevant record keeping and sign off within the management structure and property service arrangements based on the values established in contract standing orders and financial regulations. Measures are also currently being put into place to ensure the effective recording of officer decisions.

The Cabinet Member will continue to receive regular reports on progress relating to property matters through portfolio briefings.

Therefore, the **amended scheme of delegation** would be:

Decisions delegated:

- *To **acquire, purchase and dispose** of interests in land and property where the consideration for the transaction does not exceed £100,000. Where the transaction relates to the portfolio of any Cabinet Member(s), the decision shall be taken in consultation with that (those) Cabinet Member(s). [N.B. there is a proposed minor variation to the Democratic Services Committee approved scheme here to remove the word “freehold”, in order to cater for circumstances where a premium is payable to acquire a lease].*
- *To enter into, amend or surrender **leases** of land and property with an aggregate annual sum payable by the tenant (including rent, insurance rent, service charge/s and all other sums payable pursuant to the lease) not exceeding £100,000.*

To grant and obtain any consents sought or required in relation to any lease to which the Council is a party.
- *To enter into, grant, amend or surrender licences, permissions, wayleaves, easements and other **legal interests** in land or property.*
- *To grant the release or/ discharge of **covenants** relating to Council land and property*

In addition to any other requirement above to consult with Cabinet Members, the relevant Cabinet Member(s) and Ward Member(s) shall be consulted where there is a direct or wider impact on the community or residents within a ward arising from any proposed transaction.

All decisions must be within agreed Council policies, and within revenue budget allocation for the service areas affected or capital funding availability.

The provisions of these delegations do not override any duty to ensure compliance with the Council’s rules relating to capital acquisitions and transactions or other financial controls set out elsewhere. All transactions must be within the Council’s approved Capital Programme, the relevant budget/s and any applicable prudential indicators.

Following the relevant assessment, dwellings provided to meet the council's statutory homelessness duties are dealt with by the Head of Housing and Communities.

Financial Summary (Capital and Revenue)

There are no financial impacts arising from the proposal which is in line with other matters relating to levels of delegation as set out in contract standing orders. In that respect, all acquisitions, either freehold or leasehold will require service area or corporate funding availability and be included within the Council’s approved capital programme following Cabinet / Council approval.

From 2024/25, all leasehold acquisitions are categorised as ‘capital expenditure’ and this has significant financial impact on the Councils capital strategy and a small number of prudential indicators which govern this. The Councils 2024/25 strategy includes this and will require on-going review.

Risks

It is important to identify and manage any project or scheme’s exposure to risk and have in place controls to deal with those risks.

Risk Title / Description	Risk Impact score of	Risk Probability	Risk Mitigation Action(s)	Risk Owner
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	Risk if it occurs* (H/M/L)	of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect?	Officer(s) responsible for dealing with the risk?
That decisions are not effectively scrutinised.	M	L	As set out in the report, proposal to scrutinise at an appropriate level, subject to existing governance arrangements.	Head of People Policy and Transformation.
That decisions are not taken in a timely manner to support Council priorities.	M	M	Currently an increasing number of decisions are taken at Cabinet Member level resulting in delays. This report proposes a more effective way of working. Strategic asset management principles and policies. Actions as outlined in this report, to clarify roles and processes.	Head of People, Policy, and Transformation. Head of Law and Standards.
That opportunities are not maximised, creating, or sustaining budget pressures, for example homelessness.	L	M	Actions outlined in this report to ensure that decisions regarding dwellings are taken in a timely manner following appropriate assessment.	Head of Housing and Communities.

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The effective management of property transactions underpins all of the Council's policies and priorities and the recommended changes in this report ensure that there is effective governance at the appropriate level of transaction.

Options Available and considered

- (i) Agree the recommended changes.
- (ii) Not agree the changes and keep the current working practices/policy and Constitution in place.
- (iii) Propose alternative amendments to the scheme of delegation.

Preferred Option and Why

Option 1(i) – To agree the proposed changes to the Constitution, in line with the other parts of the officer scheme of delegation.

Comments of Chief Financial Officer

Whilst individual property decisions will continue to have financial consequence, this report is specifically about improving the responsiveness and timeliness of operational decision making.

There will still be a need to ensure that any acquisitions, on a case by case basis, are included on the Council's approved capital programme and therefore affordable through either service area revenue budgets and corporate capital funding and headroom availability and the necessary authority through Cabinet and Council have been secured. Similarly, any disposal over £10,000 continues to be regarded as a capital receipt, to be used/held corporately to support capital expenditure.

Comments of Monitoring Officer

In common with other local authorities, the Council has a scheme of delegation which allows certain decisions to be taken by cabinet members or officers. As set out in the report, the Council's current

Scheme of Delegation allows the Head of People, Policy and Transformation to make decisions regarding minor property transactions, however, this is not consistent with the norm across other authorities, many of which delegate decisions which are of a considerably higher value than is currently the case at this Council.

Allowing decisions with regard to property acquisition and disposal to be taken by a Head of Service within defined parameters and in accordance with Council policy will enable more efficient decision-making and enable members to focus on key, higher value transactions. It is noted, however, that the amended scheme of delegation includes a requirement for consultation with Cabinet members and ward members in certain circumstances which will ensure that members are made aware of transactions which may affect their portfolio or ward. The amended scheme also makes clear that the amended powers do not in any way circumvent the Council's financial controls set out in Part 4 of the Constitution and elsewhere.

As the report sets out, officer decisions to acquire, dispose of or otherwise deal with interests in land must be recorded and that record must set out the details of the property and the transaction, the name of the officer taking the decision and the delegated authority under which the decision was taken. It is proposed that a centralised register for such decisions will be set up.

Comments of Head of People, Policy and Transformation

This report has been presented to Democratic Services Committee and is recommended to Council to approve the suggested changes and amendments to the Officer Scheme of Delegation for Assets.

The principles of open and transparent governance are consistent with the Council's Corporate Plan 2022-27 supporting Objective 4 (An inclusive, fair and sustainable council – Newport City Council is an inclusive organisation that places social value, fairness and sustainability at its core). The principles of the Well-being of Future Generations (Wales) Act 2015 and its five ways of working were supported when forming the proposal through working in collaboration and involving officers both across the Council and partners.

There are no direct HR implications arising from the proposed change.

Scrutiny Committees

None – recommendations previously considered at Democratic Services Committee.

Fairness and Equality Impact Assessment:

- **Wellbeing of Future Generation (Wales) Act**
- **Equality Act 2010**
- **Socio-economic Duty**
- **Welsh Language (Wales) Measure 2011**

An FEIA is not required at this stage, however, this proposal is considerate of the 5 ways of working within the Wellbeing of Future Generations (Wales) Act.

- Long Term – Ensures that property decisions will be streamlined, with the full democratic process used more appropriately for major decisions over the long term, while ensuring short-term needs are not adversely impacted.
- Prevention – Ensures that the focus for Cabinet and ward members will be on decisions where there is a wider impact or direct interest on the communities they serve. This will ensure there is effective and efficient decision making when considering assets preventing potential delay issues.
- Integration – Supports the Councils Well-being Objectives, the seven Well-being Goals, and will re-align our focus in comparison with other local authorities in Wales.
- Collaboration & Involvement – In forming the proposal officers across the Council have worked in collaboration and involved other partners (e.g. Newport Norse) in its development.

Consultation

In their meeting of 18th March 2024, Democratic Services Committee considered the proposed amendments to the Constitution and recommended the option presented to Council for approval.

Background Papers

Constitution – scheme of delegation [Officer Scheme of Delegation \(p26\)](#)

Constitution – responsibility for functions – [terms of reference](#)

Schemes of delegations for other Councils

Democratic Services Committee meeting – March 2024

Dated: 3rd April 2024