

# POLICY AND RESOURCES COMMITTEE

25 July 2017

Is the final decision on the recommendations in this report to be made at this meeting?

**Yes,  
in  
Part**

## Policy on Disposal of Property

<b>Final Decision-Maker</b>	Policy and Resources Committee
<b>Lead Head of Service</b>	Estelle Culligan
<b>Lead Officer and Report Author</b>	Estelle Culligan & Lucy Stroud
<b>Classification</b>	Public
<b>Wards affected</b>	All

### **This report makes the following recommendations to this Committee:**

1. To adopt the Policy on Property Disposals, attached as Appendix 1 to this report.
2. To agree and recommend to Council an addition to the terms of reference of Heritage Culture and Leisure Committee as follows:  
"To declare Open Space surplus to requirements for the purposes of advertising and disposing of open space under section 123 of the Local Government Act 1972 or any other similar enactment and to take the final decision on disposal."  
(With delegation to the Director of Finance and Business Improvement to deal with all disposals up to the value of £100,000).
3. To agree and recommend to Council the amendment of the terms of reference of Policy and Resources Committee as follows (additional words in italics):  
"To make decisions regarding land and property including acquisition (by agreement or compulsorily), disposal, appropriation and development, *with the exception of the declaration of Open Space surplus to requirements for the purposes of advertising and disposing of open space under section 123 of the Local Government Act 1972 or any other similar enactment and the final decision on the disposal of Open Space.*"

### **This report relates to the following corporate priorities:**

- Keeping Maidstone Borough an attractive place for all
- Securing a successful economy for Maidstone Borough

### **Timetable**

<b>Meeting</b>	<b>Date</b>
Committee Policy and Resources Committee	25 July 2017
Council – for amendments to terms of ref	27 September 2017

# Policy on Disposal of Property

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The Policy is proposed to assist both officers and committee members in taking decisions about disposal of Council owned property.
  - 1.2 The report also recommends changes to the procedure for declaring open space surplus, approving advertising the disposal of open space and the final decision to dispose.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 There is currently no adopted Policy which covers the disposal of Council owned property.
- 2.2 Officers in the Property team make recommendations for disposals based on their criteria which is known and understood within the team. However, those committees currently involved in decisions about disposing of land (Heritage Culture and Leisure and Policy and Resources) rely on fairly brief reports and there is no policy to guide them.
- 2.3 If adopted, this concise Policy would form the basis on which all decisions on disposals are taken. Officers could refer to the Policy in their reports and committee members would understand the criteria on which to base their decisions.

### 2.4 The Legislation

- 2.5 Under section 123 of the Local Government Act 1972, a Council may dispose of their land in any way they wish, subject to a few caveats:
  - The disposal must be for the best consideration. An exception to this requirement may arise where the disposal will contribute to the promotion or improvement of economic wellbeing; the improvement of social well-being; the promotion or improvement of environmental well-being and; the difference in the value of the land and the price for disposal does not exceed £2 million (General Disposal Consent Regulations 2003).
  - The Council cannot dispose of any land which is open space unless it advertises its intention to do so for a period of two consecutive weeks and takes into consideration any objections made about the disposal before making a final decision.
  - A short tenancy (a lease of less than 7 years) can be disposed of for less than best consideration.

## **2.6 The Council's Procedure**

- 2.7 Part 3.7 of the Constitution contains the Council's rules for land transactions (Contract Procedure Rules Relating to Land Transactions). Policy and Resources Committee has the responsibility for dealing with all disposals, with officer delegation up to the value of £100,000. All operational land must be declared surplus before sale and, in respect of open space, section 10 states "Before making a final decision on the proposed appropriation or disposal of Open Space, the Head of Finance shall advertise the proposal in accordance with the provisions of the relevant Act and shall consider any representations made as a result of the advertisement in making any decisions."
- 2.8 In practice, the Council has operated a two stage process, with one committee taking the decision to declare open space surplus (usually Heritage Culture and Leisure) and another committee (Policy and Resources) taking the final decision to dispose. It makes sense for one committee to deal with both parts of the decision and it is recommended that Heritage Culture and Leisure is the appropriate committee.
- 2.9 It is suggested that the Committee adopts the Policy on Disposals attached to this report and agrees to amend the terms of reference of Policy and Resources Committee and Heritage Culture and Leisure Committee to enable HCL to deal with all stages of disposing of Open Space. The officer delegation to deal with all disposals under £100,000 would remain. The recommendation to amend the terms of reference would be reported to the next meeting of Council on 27 September to approve. The Contract Procedure Rules relating to the sale of land would also be amended in relation to the sale of Open Space.
- 2.10 In practice, most decisions on dealing with small scale disposals including dealing with the provisions relating to disposal of open space, should be dealt with by the Director of Finance and Business Improvement under the appropriate delegation.

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## **3. AVAILABLE OPTIONS**

- 3.1 The proposals are:
- 3.2 To adopt the Policy
- 3.3 To agree to amend (and recommend the amendment to Council) the terms of reference of Heritage Culture and Leisure Committee and Policy and Resources Committee accordingly to simplify the procedure.
- 3.4 The Committee could decide to keep the two stage process which currently operates. This is not recommended, since this is not straightforward. It would also continue to lead to differences in views and decision-making between the two committees.
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#### 4. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

4.1 The report and Policy has been discussed with group leaders and they are supportive of the adoption of the Policy and the amendments to the process.

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#### 5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

5.1 If approved, the Policy will be adopted with immediate effect. The proposed amendments to the Constitution will be reported to the meeting of Council on 27 September for final decision.

#### 6. CROSS-CUTTING ISSUES AND IMPLICATIONS

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Impact on Corporate Priorities</b>	The Policy and amendments to the procedure will enable decision on disposals to be made more efficiently.	Interim Head of the Legal Partnership
<b>Asset Management</b>	Adoption of the Policy and amendment of the process will make the process of declaring property surplus and disposing of it more efficient	Head of Property and Procurement
<b>Risk Management</b>	No implications	Interim Head of the Legal Partnership
<b>Financial</b>	There are no direct financial implications arising from this report. In disposing of property the Authority must comply with S123 of the Local Government Act 1972 and with normal and prudent commercial practices.	S151 Officer
<b>Staffing</b>	No implications	Interim Head of the Legal Partnership
<b>Legal</b>	The legal background is set out in the body of this report.	Interim Head of the Legal Partnership
<b>Equality Impact Needs Assessment</b>	No implications	Interim Head of the Legal Partnership
<b>Human Rights Act</b>	No implications	Interim Head of the Legal

		Partnership
<b>Procurement</b>	No implications	Head of Property and Procurement

**7. REPORT APPENDICES**

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

- Appendix I: Policy on Disposals