

CABINET

10:00	Tuesday, 04 September 2012	Committee Room 1, County Hall
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Quorum: 3

Membership:

Councillor Peter Martin
Councillor David Finch

Councillor John Aldridge
Councillor Kevin Bentley
Councillor Stephen Castle

Councillor Ray Gooding
Councillor John Jowers
Councillor Derrick Louis
Councillor Jeremy Lucas
Councillor Ann Naylor

Cabinet Member responsibility

Leader of the Council (Chairman)
Deputy Leader, Cabinet Member for Finance
and Transformation Programme (Vice-
Chairman)
Adults Social Care
Economic Growth, Waste and Recycling
Education, Lifelong Learning and the 2012
Games
Children's Services
Communities and Planning
Highways and Transportation
Customer Services , Environment and Culture
Health and Wellbeing

The following are entitled to speak at Cabinet meetings but not vote:

Councillor Mike Mackrory
Councillor Theresa Higgins
Councillor David Kendall

Leader of the Liberal Democrat Group
Deputy Leader of the Liberal Democrat Group
Liberal Democrat Group (named substitute)

**For information about the meeting please ask for:
Judith Dignum (Secretary to the Cabinet)
01245 430044 / Judith.dignum@essex.gov.uk**



Essex County Council

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Please note that an audio recording may be made of the meeting – at the start of the meeting the Chairman will confirm if all or part of the meeting is being recorded.

Part 1

(During consideration of these items the meeting is likely to be open to the press and public)

		Pages
1	Apologies for Absence	
2	Minutes 170712	5 - 12
3	Declarations of Interest To note any declarations of interest to be made by Members	
4	Economic Growth Strategy FP-869-06-12 Report to follow	
5	Country Parks Strategy FP-900-08-12	13 - 20
6	Essex Countywide Traveller Unit FP-868-06-12	21 - 26
7	Community Asset Transfer FP-884-07-12 Consideration of applications for the transfer of assets to the community	27 - 50
8	Cabinet Member Decisions FP-878-07-12	51 - 54
9	Urgent Business To consider any matter which in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.	

Exempt Items

(During consideration of these items the meeting is not likely to be open to the press and public)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

10 Urgent Exempt Business

To consider in private any other matter which in the opinion of the Chairman should be considered by reason of special circumstances (to be specified) as a matter of urgency.

MINUTES OF A MEETING OF THE CABINET HELD AT COUNTY HALL, CHELMSFORD, AT 10.00AM ON 17 JULY 2012

Present:

Councillors	Cabinet Member responsibility
P J Martin	Leader of the Council (Chairman)
D M Finch	Deputy Leader, Cabinet Member for Finance and Transformation Programme (Vice Chairman)
J Aldridge	Adults Social Care
K Bentley	Economic Growth, Waste and Recycling
R Gooding	Children's Services
J G Jowers	Communities and Planning
D J Louis	Highways and Transportation
A Naylor	Health and Wellbeing
J R Lucas	Customer Services, Environment and Culture

Councillors M Mackrory and Mrs T Higgins were present as Opposition
Observers.

Councillors, W J C Dick, M Lager, G W McEwen, D Madden, M Page and R
Walters also attended.

1. Apologies for Absence

Apologies for absence were received on behalf of Councillors S C Castle.

2. Minutes

The minutes of the meeting held on 19 June 2012 were agreed as a correct
record and signed by the Chairman.

Arising from consideration of the minutes, Cllr M Mackrory asked when the
Leader of the Council would reply to Cllr Kendall's question concerning the
approved budget for consultancy in the 2011/12 Financial Year. The Leader of
the Council advised that a full response would be sent later on the day of the
meeting, but that the headline figures for expenditure were £39 million (approx)
in 2010/11 compared with £16m (approx) in 2011/12.

3. Declarations of Interest

Members declared interests in the following agenda items, as set out below.

Councillors D J Louis and K Bentley declared a prejudicial interest in agenda
items 8 and 13 (Award of Contract for Domiciliary Reablement Services part 1
and part 2) on the grounds that they are respectively a Director of a company

which bid for the contract and a Director and Chairman of Mosaic Publicity Ltd, which carries out work for Essex Cares.

Councillor Louis and Councillor Bentley left the meeting during consideration of the agenda items concerned (minutes 12 and 14 below refer).

4. Variation in the Order of Business

Upon the motion of the Chairman, duly carried, it was agreed to vary the order of business to postpone consideration of item 8 (Award of Contract for Domiciliary Reablement Services) until immediately after item 10 (Decisions taken by or in consultation with Cabinet Members).

5. 2012/13 Financial Overview as at the First Quarter Stage

The Cabinet considered report FP/695/011/11 by the Deputy Leader and Cabinet Member for Finance and Transformation Programme which provided an updated assessment of the financial position of the Council in 2012/13, based upon the position at the first quarter stage.

In considering the report, Members noted that the impact upon the capital payment profile of making the changes proposed were summarised in Appendix C.

In response to a question by Councillor Mackrory, the Cabinet Member confirmed that every effort would be made to ensure optimum usage of S106 funding in respect of capital works to schools.

Resolved:

- (1) That the current revenue forecast for a projected overspend for the year of £1.577m as detailed in Appendix A to the report be noted, together with a projected underspend of £3.253m against the approved capital payments guideline, after proposed adjustments.
- (2) That it be noted that, within the projections, £8500 is due to actions for which carry forward funds could be made available or spending plans adjusted. £4.442m of this relates to carry forward requests in Schools, Children's and Families for which change control notices (CCNs) have been written, and are due to be considered by the Deputy Leader and Cabinet Member for Finance and Transformation.
- (3) That the appropriation of £64,000 from the Grant Equalisation Reserve by the Customer Services, Environment and Culture portfolio be approved.
- (4) That the appropriation of £76,000 from the Redundancy Reserve by the Deputy Leader portfolio be approved.
- (5) That approval be given to withdraw from the General Balance £1.040m for use by the Deputy Leader in respect of Facilities Management Services.

- (6) That approval be given to a net reduction of the Council's Net Expenditure budget by £505,000 relating to a number of small adjustments to align budgets to reflect final funding settlements.
- (7) That the appropriation of £1.083m to the Personal Care Reserve by Adult Social Care be approved.
- (8) That the reduction of the capital payments profile and financing assumptions by £22.802m be approved.

6. 2012/13 Corporate Plan Progress Report as at the First Quarter Stage

The Cabinet considered a report FP/836/05/12A by the Deputy Leader and Cabinet Member for Finance and Transformation Programme which provided an updated assessment of the progress made in delivering Essex County Council's Corporate Plan Priorities in 2012/13, based upon the position at the first quarter stage. This included progress against specific performance measures within the 2012/13 Corporate Plan.

Arising from consideration of the report, the Cabinet Member for Customer Services, Environment and Culture commented that the decline in the numbers of library items issued reflected a national trend and was unsurprising given the rise of e-books. Initiatives were being embarked upon to increase library footfall, which was not subject to the same level of reduction.

In response to comments by Councillor Mackrory, the Leader of the Council undertook to ask the Cabinet Member for Education, Lifelong Learning and the 2012 Games to respond regarding action being taken to improve performance in relation to the education issues highlighted in the report.

Also in response to a question by Councillor Mackrory, the Cabinet Member for Health and Wellbeing acknowledged the importance of ensuring that residents were informed of changes to health services. The Council would be working with Clinical Commissioning Groups and GPs to progress the issue.

Resolved:

That the current performance outlined in the 2012/13 Corporate Plan Progress Report be noted, together with the risks to delivery and plans in place to ensure that these priorities are achieved.

7. 2011-12 Annual Report

The Cabinet considered report FP/836/05/12B by the Deputy Leader and Cabinet Member for Finance and Transformation Programme which showed where the Council spent taxpayers' money during 2011/12, demonstrated the Council's achievement in delivering against the EssexWorks priorities, showed the impact of the Council's achievements and identified where future focus on improvement was needed.

In introducing the report, the Leader of the Council stated that the Council's strict control of its finances had made it possible to maintain services and make improvements in some areas. The Council had also delivered on nine of the ten pledges, with reporting on the tenth still awaited. He congratulated the Chief Executive and her staff on achieving this in challenging financial circumstances.

In response to questions by Councillor Mackrory, the Cabinet Member for Highways and Transportation acknowledged that the overall level of satisfaction for Essex Highways and Transportation had fallen and set this against a background of intense change. He was confident that the position would improve significantly given the recent introduction of the new partnership with Ringway Jacobs, increased investment in infrastructure and implementation of the local highways panels. He also undertook to verify the figure quoted for numbers of vehicles removed from Chelmsford City Centre's roads each weekday following the opening of the Chelmer Valley Park and Ride

Resolved:

That performance achieved during 2011/12, as outlined in the Annual Report, be noted.

8. Tender for Adult Mental Health Formal Advocacy Service

The Cabinet considered report FP/873/06/12 by the Cabinet Member for Health and Wellbeing which sought approval to tender for a Working Age Adult Mental Health Formal Advocacy Service following a review of the Mental Health advocacy services, funded by both health and social care.

In response to a question by Councillor Mrs Higgins, the Cabinet Member for Health and Wellbeing undertook to verify whether the overall status of the advocacy service, as set out in the Equality Impact Assessment attached as an appendix to the report, had been correctly stated as 'low'.

Resolved:

That an open tender process for working age adult mental health formal advocacy services across Essex be undertaken for a 12 month period, to commence on 1 April 2013.

9. Award of Education and Social Care Transport Contracts

The Cabinet considered report FP/847/06/12) by the Cabinet Member for Highways and Transportation which detailed the outcome of the tender process for the statutory provision of transport to schools and social care establishments and sought approval to award contracts to the successful bidders. The contracts would commence with effect from 1 August 2012 for a minimum 12 month period.

Resolved:

- (1) That contracts for the delivery of statutory transport service into schools be awarded as set out in Annex 1 to the report for a minimum 12 month period, resulting in an estimated efficiency saving of £1.766, for the Schools, Children and Families Directorate.
- (2) That contract for the delivery of transport service to social care centres be awarded to external operators for a minimum 12 month period as set out in Annex 1 to the report, resulting in efficiency savings of £0.147m to the Adults, Health and Community Wellbeing Directorate.
- (3) That those contracts in the tender round currently operated by Community Link (Essex County Council's in-house fleet) be withdrawn from the tender process as the tender for these contracts did not include sufficient information relating to TUPE and other potential overhead costs, meaning that a fair tender was not possible.
- (4) That the routes referred to in (3) above be offered to Community Link for a minimum 12 month period at an additional cost of £15,115 to the Adults, Health and Wellbeing Directorate.

10. Urgent Business: Essex House Update

The Chairman agreed to consideration of the following item of urgent business on the grounds that there was a need to update the Cabinet on a current issue:

Essex House Update

The Cabinet Member for Customer Services, Environment and Culture updated the Cabinet on the current situation at Essex House, Colchester from which staff had had to be evacuated on two separate occasions. The building was currently closed pending further detailed investigations and arrangements had been made to relocate staff to other premises.

The Cabinet Member placed on record his thanks to staff across the Council for their co-operation and positive approach to dealing with this difficult situation. His comments were echoed by the Cabinet.

11. Decisions taken by or in consultation with Cabinet Members

The Cabinet received report FP/877/06/12 by the Secretary to the Cabinet listing the decisions taken since the last meeting.

12. Award of Contract for Domiciliary Reablement Services

Councillors D J Louis and K Bentley declared a prejudicial interest in this item and were not present during its consideration (minute 3 above refers).

The Cabinet considered report FP/858/06/12 by the Cabinet Member for Adults Social Care which advised that the restricted tender process in respect of the contract for domiciliary reablement services agreed by the Cabinet on 24

January 2012 had been completed and evaluated, resulting in a single winning bidder for all five lots. Approval was therefore sought to award the contracts for the five lots covering the whole of Essex to the winning bidder, Essex Cares.

The contracts would be awarded on 30 July 2012 (subject to completion of the Alcatel process), for commencement by 1 November 2012. The Cabinet noted that the County Council was the lead commissioner for health for this jointly commissioned, jointly funded reablement service which would operate on a locality basis (Mid, North East, South East, South West and West) covering the whole of Essex.

In introducing the report, the Cabinet Member advised that an Equality Impact Assessment carried out on 23 January 2012 had resulted in an outcome of 'low'.

Resolved:

That contracts for domiciliary reablement services for all five lots covering the whole of Essex be awarded to Essex Cares for a period of three years, with a break point at the end of year 2 should the requirements of the service change.

13. Exclusion of the Press and Public

Resolved:

That, having reached the view that, in each case, the public interest in maintaining the exemption (and discussing the matter in private) outweighed the public interest in disclosing the information, the public (including the press) be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as specified in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

14. Award of Contract for Domiciliary Reablement Services

(Exempt under paragraph 3 – information relating to the financial or business affairs of any particular person)

Councillors D J Louis and K Bentley declared a prejudicial interest in this item and were not present during its consideration (minute 3 above refers).

The Cabinet noted report FP/858/06/12/PtII by the Cabinet Member for Adults Social Care which contained exempt information referred to in the report on the same issue considered and decisions taken earlier in the meeting (minute 12 above refers).

The meeting closed at 10.45am.

17 July 2012

Chairman
4 September 2012

Cabinet	FP 900/08/12
Date: 4 th September 2012	

Country Parks Review

Report by Cabinet Member for Environment and Culture

Enquiries to Officer Julie Ellis, Ext 20277

1. Purpose of report

- 1.1 This report advises of the intention to advertise the opportunity of taking a commercial lease of Marsh Farm visitor attraction and separately, the opportunity to enter into a service or concession/partnership arrangement for the future operation of Cressing Temple Barns heritage site.

2. Recommendations

- 2.1 Agree to advertise for bids for a commercial lease of Marsh Farm visitor attraction to be run as a family visitor attraction in line with existing user rights.
- 2.2 Delegate authority to the Director of Property and Facilities, in consultation with the Deputy Leader and Cabinet Member for Customer Services, Environment and Culture to negotiate the final terms of the lease.
- 2.3 Agree that the land surrounding the visitor attraction, known as Marsh Farm Country Park, will remain under the management and in the ownership of ECC.
- 2.4 Agree to advertise opportunities for partnership working by way of a service contract or concession at Cressing Temple Barns heritage site.
- 2.5 Agree that the Cressing Temple Barns will remain under the management and in the ownership of ECC.
- 2.6 Agree that grant of the lease or award of any contract will be reported back to Cabinet for approval.

Background

Marsh Farm Visitor attraction and Cressing Temple Barns are two of nine sites in the Essex County Council (ECC) Country Parks estate. They provide different customer services and attractions when compared with the other country parks.

Marsh Farm visitor attraction has about 6 hectares which is visited by in excess of 110,000 visitors per year. The site consists of a small shop and tearoom and outdoor and indoor play areas; as it is a working farm there is a range of agricultural buildings housing pigs, sheep, poultry and cows. There is also specialist livestock including alpacas, llamas, goats, a pet barn and an aviary.

The attraction won the Farm Visitor Attraction of the Year Award 2011 (awarded by the National Farm Attractions Network in Feb 2012).

In 2010/11 ECC substantially invested in the visitor attraction to refresh the presentation of the site and improve the customer experience. This level of investment is needed on an on-going regular basis to provide value for money and to keep up with our competitors.

Cressing Temple Barns is a small scale visitor attraction, welcoming in excess of 47,000 people every year.

The site covers about 10 hectares, including the 11th century barns, walled garden, a conference room and meeting rooms, shop, tearoom and farm house. Cressing Temple is a scheduled monument and the barns are Grade I and II listed buildings.

Cressing Temple has various sources of income including hiring of rooms, "Tudor" event days for schools and public, larger scale events including Car Shows and Food Fairs, along with some private hires for weddings and other functions.

Compared to similar venues this site is not achieving its full potential.

Any proposals for the future management and operation of the site must be handled sensitively in line with the degree of protection the site is under.

The planning position on both sites is that they are "sui generis" which means that planning permission would be required for any other and there are no permitted rights to switch to another use class.

With regard to ownership ECC own the freehold of both sites. They are the subject of restrictive covenants but minor in nature and will not affect the proposals for either site.

Options/Proposals

The project has looked at the following options for each site.

a) Marsh Farm

- a lease option
- a service contract
- concessions

i) Lease option

Under the lease option, a lease of the visitor attraction will be granted to the successful bidder. The lease term is to form part of the negotiations once a successful bidder has been selected and subject to break and rent review clauses including an option to extend if the Council is satisfied that the lease should continue.

The lease will be a full repairing lease containing all the usual landlord and tenant covenants and restrictions. It is important to note that under a lease arrangement the new occupier can operate the site in the way they see fit provided it accords with planning, licensing and other statutory requirements and provided the lease covenants are met. There will be no requirement to retain the site exactly as it is now. The benefits of a lease are that risk is transferred to the new leaseholder. The disadvantage is that the Council relinquishes control over the use of the site other than to the extent provided for in the lease.

If, under this option, it is deemed there is a transfer of a legal entity to the new operator, TUPE will apply. The impact and cost of TUPE transfer will be assessed as part of the evaluation process.

ii) Service Contract

With a service contract, the contract would be advertised by way of OJEU notice and a European procurement exercise would be undertaken in line with European and domestic legislation. Tenders would be evaluated against a set of criteria. A contract would be entered into and the contractor would have to deliver the service against the prescribed specification. The Council would retain control of all aspects of the operation and delivery of the visitor attraction but would also retain all risks. There is a possibility of introducing a of profit share arrangement into the payment mechanism for the contract in order to incentivise the contractor. There would be a TUPE transfer of some staff.

The disadvantage of this is that a service contract would include terms and conditions which may limit the scope of the successful bidder's mode of operation on site and the procurement would lengthen the process meaning that hand over would be longer than that of the lease option. For these reasons this option is not being recommended.

iii) Concession and Partnership Option

A concession is a business operating on another property under a contract, for example a coffee shop or food and beverage operator. A partnership is a contractual agreement between two parties agreeing to undertake a common goal but in this context not a traditional arrangement where profits and losses are shared proportionally. ECC do not wish to be involved in the day to day operation of the site which the concession or partnership option would necessitate and this view has been reinforced through analysis of the soft market testing exercise where there was interest in managing the attraction as a whole. The advantage of a concession or partnership is that ECC would retain some control over the running of the site. However, it is recommended that ECC might prefer to see a single supplier managing the attraction thereby alleviating the need for costly management involvement.

Accordingly, the lease option is the recommended option for Marsh Farm. It is proposed:

- That ECC will proceed to lease Marsh Farm by way of a commercial lease, which will contain appropriate rent review and break clauses.
- The final terms of the lease are to be agreed around Marsh Farm be delegated to the Director of Property and Facilities, in consultation with the Deputy Leader and Cabinet Member for Customer Services, Environment and Culture.
- ECC will retain ownership and operational management of the adjoining Country Park.

b) Cressing Temple Barns

The options are as described above for Marsh farm.

The option to grant a lease will not allow ECC to maintain the level of management and control required in running the site particularly in respect of ECC branding. Unlike Marsh Farm, Cressing Temple is regarded as a viable option for events such as weddings, medieval banquets and Tudor days, particularly relating to education if ECC is able to work with a partner willing to invest capital as required.

The Concession or Service Contract options are favoured on the basis that ECC would prefer to retain some control over operational matters including branding. This view was reinforced through analysis of the soft market testing exercise and will be investigated through the Pre-Qualification Questionnaire process, including consideration of these options via lots or a complete bid.

Due to the diverse nature of the site, including historic barns, the café, gardens and conference centre facilities, it is felt that it might be best to engage a concession for this site but other options can be explored through the EU process. Whichever form of contract is entered into it will contain adequate safeguards for ECC, for example, the ability to terminate the contract due to breach or under performance by the contractor. Soft Market Testing also identified that the market was limited in terms of the delivery of the whole site however there was significant interest by multiple organisations who could deliver one or more individual parts of the service.

The Service or Concession Contract option is recommended for Cressing Temple Barns as it would allow ECC to retain legal ownership of the barns and some control over the management of the site and the type of activities available whilst at the same time providing an opportunity for ECC to develop a partnership with an external operator who would bring in commercial or specialist expertise.

Next Steps

Following Agreement to proceed, ECC will enter into a procurement phase which will include placing a lease advert through ECC agents (Lambert Smith Hampton and Whirledge and Nott) for Marsh Farm visitor attraction and also in a separate stage commence an OJEU (Official Journal of the European Union) procurement process to advertise for a Service or Concession contract for Cressing Temple Barns thus providing a transparent and robust solution

Relevance to ECC's corporate plan and other Strategic Plans

This project supports one of the key priorities of the ECC Vision Statement to improve public health and wellbeing by helping deliver the following outcomes:

- Helping Essex residents to live full and independent lives
- Encouraging healthy and active lifestyles and tackling the wider causes of ill health
- Protecting and enhancing the environment in Essex

Internal and External Consultation

Since the start of the project we have engaged in internal and external consultation through:

- A Scrutiny task and finish group is engaged, Members have visited Marsh Farm, Cressing Temple and Great Notley sites. Councillor Lucas has presented updates to the group.
- Staff engagement; the Country Parks staff have received regular updates and frequent meetings and communication have been provided to staff at Marsh Farm and Cressing Temple. The plan is to provide regular updates through weekly management meetings and monthly staff forums.
- To understand the level of interest and possible engagement in this offer the project undertook a short "Soft Market Test", this was carried out through Lambert Smith Hampton and lasted 6 weeks. The advert received expressions of interest from over 30 companies with a further third providing more details. This confirmed that the project would identify suitable partners.
- The project team includes representatives from several areas in ECC including Property, Legal Services, Human Resources, Procurement, Internal Audit, Finance as well as Internal and External Communications.
- Councillor Lucas has written to South Woodham Town Council, Witham Town Council and local members to highlight plans and seek comment and has met with members of Chelmsford City Council/South Woodham Town Council to discuss plans.

Legal Implications (Monitoring Officer)

Marsh Farm

The basis for the disposal of Marsh Farm is to be by way of a commercial lease. The terms are to be negotiated following the selection of a suitable bidder and will contain appropriate protection for ECC. As it is proposed the lease will be at a full market rent consent of the Secretary of State for a disposal is not required. ECC will comply with its statutory obligations per S123 of the Local Government Act 1972 and amending legislation and guidance.

Consideration will need to be given to assignment of existing contracts for hired plant and machinery as well as the care of existing livestock on the site.

In respect of Marsh Farm Country Park the land is designated as a Public Open Space. It is not entirely clear whether the visitor attraction part of the site would be caught by the requirement to advertise under section 123 of the Local Government Act 1972 but it is recommended that the disposal be advertised under section 123 to reduce the risk of challenge. Before deciding whether to dispose of the site by way of lease the decision maker would need to take into account the responses to any consultation.

Cressing Temple

Cressing Temple will be the subject of an OJEU process enabling ECC to evaluate the technical and business standing of interested providers and to evaluate their proposals for the future operation of the site in accordance with Part A of the Public Contracts Regulations 2006.

Finance and Resources Implications

The costs of this proposal are estimated as follows:

- Professional fees of £58,000
- TUPE actuary estimates of £8,000
- Legal expenses of £46,000
- Total costs £112,000

Based on current forecast outturn estimates, this can be met from within the 2012/13 service budget. There are estimated opportunity costs to be applied to this project totalling £198,000.

The financial data shown in the matrix below reflects the income and expenditure for Marsh Farm and Cressing Temple.

Key financial Data for 2011-12

	Marsh Farm £000	Cressing Temple £000
Gross Income	(1,049)	(236)
Gross Expenditure	1,115	277
Of which, Salary Costs	681	210
Controllable Net Expenditure	66	41
Centrally controlled Expenditure*:		
Essential Building Maintenance	-	55
Asset Charges	24	4
Legionella / Asbestos Surveys		
Net Expenditure (incl. centrally controlled)	90	100

** This excludes IAS19 technical adjustments and holiday pay accruals. Neither does it include any recharges from Strategic Support Services such as Finance, HR, IS and Business Services.*

From this table it can be seen that for 2011-12 Marsh Farm incurred an expenditure of £90,000 and Cressing Temple a figure of £100,000 for 2011-12.

Income Figures for Previous 3 Years

	2008-09 £000	2009-10 £000	2010-11 £000
Marsh Farm	740	719	876
Cressing Temple	237	262	241

Project Benefits

Marsh Farm

It is estimated that the leasing of Marsh Farm could realise an income which will benefit the Country Park service.

Cressing Temple

The 2011/12 net expenditure for Cressing Temple was £100,000. If a partnership is considered, a proportion of staff expense would be saved, estimated at £50,000. In addition, if concessions are agreed, a profit share and/or an annual lease would be considered.

The final agreements and values are not possible to estimate at this time, and will need to consider any staff affected by TUPE. The final figures will inform the final lease/contract decision to be taken.

Risks and Constraints

It is expected that staff will transfer to an alternative employer under TUPE based on initial discussions. In the event that TUPE does not apply, the additional costs of redundancy would need to be considered.

The following constraints have been identified:

- Should no acceptable offers occur, ECC will need to consider other options.
- Liabilities (leases, contracts, and other existing commitments such as wedding bookings) may impact the overall cost and payback.
- For Cressing Temple, bidders may be put off by the lengthy, costly and involved OJEU process.
- Costs and liabilities surrounding the TUPE process may deter bidders
- Service Occupancy Agreements

The lease must include reference to the Service Occupancy Agreements associated with tied houses of four Marsh Farm and one Cressing Temple members of staff. This may deter bidders as they will not wish to have the additional level of management. The right to occupancy of the house will TUPE with the service; therefore the preferred bidder will be required to undertake the management of these houses, but ECC will remain as landlord and retain ownership of the properties.

The preferred bidder may attempt to undertake changes to employees' contracts that impact the Service Occupancy Agreement. To avoid this it is proposed that a clause be placed in the contract to state that any change to the employee contract or the Service Occupancy Agreement must be passed through the legal representatives of ECC before any agreement is reached.

Human Resources Implications

The Human Resources team associated with this project have provided a timeline for TUPE of staff attached to Marsh Farm visitor attraction and Cressing Temple. Pension costs have been identified for both sites; these will be supplied to inform any interested supplier of the expected costs involved. This includes a requirement of the preferred bidder to lodge a pension bond to cover future pension entitlements. If the supplier becomes an admission body then the initial on-going contribution rate to be paid by the new employer is 20.8% of payroll for a closed agreement.

Several staff at the sites benefit from tied houses through a service occupancy agreement; this has been discussed with property and legal representatives and form part of the negotiations with the successful bidder.

Staff will be consulted in line with legal requirements and good practice in relation to the proposed transfer and their response to consultation will be taken into account in the decision making process.

Equality Impact Assessment

The Equality Impact Assessment has been completed and is held by the appropriate department within Environment Sustainability and Highways as well as with the Diversity and Equality team. Although the service already meets the needs of the equality strands positive actions have already been undertaken taken to address possible inequality including changes to accessibility and concessionary arrangements.

Background papers;

1. Soft Market Test Briefing Pack
2. Equality Impact Assessment

Cabinet	FP/868/06/12
Date: 04 September 2012	

Essex Countywide Traveller Unit (ECTU)

Report by Cabinet Member for Communities & Planning, Cllr John Jowers

Enquiries to Officer Roy Leavitt, Head of Environmental Planning (01245 437 522)

Purpose of report

To update the Cabinet on the development and funding arrangements for the ECTU partnership and to seek agreement for ECC to enter into Joint Committee arrangements with other local authorities within Essex, the Police and Essex Fire and Rescue Authority. The Cabinet is required to agree to accept delegation of powers from these authorities in order for it to carry out the functions of the Joint Committee.

Decision Areas and Recommendations

- To agree to enter into the Joint Committee for the purposes of providing an operational unit which will establish a sustainable service which will co-ordinate and, where appropriate, undertake or contract for, work relating to traveller issues throughout Essex, including fire safety on sites, improving education outcomes, health and social care, management of local authority sites and management and enforcement of unauthorised encampments.
- To agree to accept delegated powers from partner authorities across Essex to act on their behalf in respect of the above functions, and
- To agree that the Council will through the already establish ECTU oversee the day to day Operations of the functions.

It is anticipated that the ECTU will be fully funded and operational from 01 October 2012

Background, context, and area of the County affected

It was decided that the formation of a single countywide multiagency Unit, similar to that developed through the Northamptonshire model, would be mutually beneficial to all partner agencies and would deliver an efficient, effective, economic and consistent approach to traveller service provisions across Essex and provide interaction with and inclusion of the Traveller and settled communities.

The drivers for forming a single countywide multiagency Unit within Essex were:

- a high number of unauthorised encampments in the county each year (around 300) and the resources required to effectively manage this;
- the significant health inequalities experienced by Gypsy, Roma and Traveller communities (e.g. life expectancy is 10-12 years less than the rest of the population and 17.6% of Gypsy and Traveller parents will experience the death of a child compared with 0.9% of the rest of the population);
- Gypsies and Travellers having the worst educational attainment of all ethnic groups; and
- A disproportionately high number of incidents and fires on sites in comparison with other dwellings in Essex (234 fires across 230 sites last year).

The Joint Committee will be a partnership of local authorities within Essex comprising of City, Borough, District and Unitary Councils, and will also include the Essex County Fire and Rescue Service (ECFRS). The Unit will also have the benefit of working with the Essex Police Authority and Essex Primary Care Trusts (PCT's) who will work with the Joint Committee and contribute financially but will not be a voting member.

The key areas of activity for the ECTU will include:

- Improving fire safety on sites;
- Improving education outcomes;
- Improving health and social care outcomes;
- Management of local authority sites;
- Managing unauthorised encampments;
- Reducing the risk of unauthorised developments; and
- Providing outreach services to authorised sites not under ECC site management.

Essex County Council will act as host Council for the Unit, and will be responsible through its officers for the operational requirements of performing the functions of the Joint Committee. The Council has recently merged its site management and outreach services to widen their scope to enable delivery of the objectives of the Unit as previously agreed by Cabinet on 24 April 2012 (Appendix 2).

Relevance to the Corporate Plan 2012-2017 and other Strategic Plans

The ECTU will directly contribute to the following priorities in the corporate plan:

- Improving public health and wellbeing;
- Protecting and safeguarding vulnerable people;
- Enabling every individual to achieve their ambitions by supporting a world-class education and skills offer in the county; and

- Giving people a greater say and a greater role in building safer and stronger communities.

In addition, forming the ECTU will directly contribute to the Essex Diversity and Equalities Strategy 2012-2015 by addressing and focusing service delivery on the three key priority groups:

- Gypsy, Roma and Traveller;
- Vulnerable Families; and
- People with impairments or disabilities.

As well as the three priority Diversity and Equality themes:

- Education and skills;
- Housing; and
- Rural isolation.

An Equality Impact Assessment has been carried out and the key findings are below, also an action plan has been developed to mitigate areas of concerns:

Education - School attendance is poor and Romany Gypsies and Irish Travellers have the worst formal education outcomes of all ethnic groups.	The Unit will support activities of existing services to improve attendance and achievement. The Unit will work with communities to raise the profile of education and skills and support access to schools. If children are missing from education without any due reason, the Unit will make referrals to Education Welfare
Health - Data indicates that adult social care is significantly under accessed by the population	The Unit will promote understanding of adult social care (including Direct Budgets) and its potential benefits. The Unit will support access to social care and facilitate onsite assessments of need where required
Health - Data demonstrates that Gypsies and Travellers are subject to a range of health inequalities, including higher rates of disability and chronic long term conditions (where data exists)	The Unit will support access to mainstream health services such as GP's and also work with PCT's to undertake specific interventions and campaigns either on or off site i.e. to increase immunisation rates
Health - Mortality rates of young children are far higher in Gypsy and Traveller communities than the population as a whole	The Unit to work with GP's and PCT's to increase links with health services, early engagement with health services during a pregnancy and to maintain links following birth to ensure essential health tasks i.e. immunisations are undertaken
Fire Safety - Gypsies and Travellers are far more likely to have fire incidents in comparison with population as a whole.	The Unit to work with communities to ensure sites have fire safety plans, disseminate fire safety guidance and advice to all sites and to roll out gas cylinder exchange programmes to high priority sites

Internal and External Consultation

All partners' representatives (City, Borough, District, Unitary, PCT's, ECFRS & Essex Police) attend monthly Operation Board meetings to discuss the set up and future operation of the Unit.

The project from inception through to implementation stage has been developed by partners working together and regular updates have been provided to Portfolio holders throughout the project. A communication plan has been developed for use during the implementation of the project. A further plan is being developed for Operational use and will form part of the 'Statement of Accountability' which will also cover service level agreements and processes for delivery which will be approved by the ECTU Operation Board.

Conclusions

Once the Unit is operational the Joint Committee, led by the Council, will be responsible for overseeing the Unit. An Agreement which sets out in detail the Terms of Reference for the Joint Committee is being prepared and is currently subject to discussion with each of the partners. It includes the responsibilities of the Unit in agreeing future Annual Business Plans, agreeing an annual budget and strategy for the level of service provision against the budget, development of a toleration policy, and approving an Annual Report to include performance measures

The Joint Committee shall meet at least twice in each fiscal year. An objective of the ECTU is to maximise the effectiveness of all agencies by implementation and development of policies and best practice. The Unit will increase uptake of mainstream provision thereby removing the need for specialist interventions for Gypsy, Roma and Traveller groups.

Legal Implications

It is proposed to proceed with the formation of a Joint Committee with the local authorities and ECFRS (Essex Police and PCT's will join as a non voting authority). The agreement is currently with the legal teams of the authorities for consideration and comment. There will be a single feed back from a legal representative of PLP which will considerably assist in avoiding delay and duplication.

It is likely that the main issues will be the devolvement of powers to the unit and the cost implications.

Following agreement being received the formation of the Joint Committee will need to be approved by each authority's executive before final sign off.

Current legislation does not allow PCT's or Police authorities to join a Joint Committee. The Police Authority is content to attend the Joint Committee as a non voting member. Discussions are taking place with the PCT's to establish a partnership with them whereby they can be involved with the decision making surrounding health and Social care, following which it is envisaged that they will also join the Joint Committee as a non voting member.

Accordingly it is proposed to enter into a service agreement with the PCT's under section 75 of the Health Act 2004. However, consideration will need to be given to the position of the health authority following the abolition of PCT's in April 2013.

Consideration is also being given to whether the provisions of TUPE apply to this situation.

Finance & Resources Implications (Section 151 Officer)

Partners of the Joint Committee will contribute to the costs of the ECTU as detailed in the Draft Essex Countywide Joint Committee Agreement (Appendix 1), this document is currently being agreed by legal teams across the partnership and is expected to be signed off by end August.

It has been agreed at the Operation Board meeting that partners will be invoiced in October to cover the first six months of the partnership up to 31 March 2013 and then annually from April 2013.

The Essex County Council share of the ECTU costs amount to £147,000. These costs can be met from within existing resources

Key Risks

Risk Description	Risk Mitigation
Failure of the Essex Countywide Traveller Unit has an impact on the reputation of ECC and partners : Bad publicity Lack of engagement amongst partners ECTU fails to deliver benefits <i>ECTU0001</i>	Effective communication Joint committee meetings with members and key partners. Annual business plan to be produced for joint committee. Implement KPI monitoring and reporting tools Implement KPI monitoring and reporting tools to demonstrate delivery and benefits
Gypsy/Traveller Unit project (Essex Countywide Traveller Unit) unable to proceed or to develop in accordance with the full Business Case: ECTU project will not be implemented, or implemented at a reduced level Impact on reputation of ECTU Impact on reputation of ECC and/or partners of ECTU Breaches in data security Unable to record or access ECTU data timely and/or effectively <i>ESH0055</i>	Meet legal requirements Regular legal updates from ECC legal through the implementation board meetings. Regular ECTU Operation Board meetings so that issues can be raised and resolved; Qualified legal team advising Implement a secure IT system for use by all partners Work closely with ECC ICT to develop new system. Clear requirements / specification. Current system / spreadsheet to be used as a temporary measure

	<p>Discuss issues with all partners; involve Cabinet member; get realistic timetable and action plan devised/delivered; Action plan being drafted</p> <p>Contact to be continued: Consultation continuing with members to ensure sense of ownership and involvement. Regular ECTU Operation Board meetings so that issues can be raised and resolved.</p> <p>Budget secured</p>
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Background papers

- 1) Draft Essex Countywide Joint Committee Agreement
- 2) Cabinet Report (24 April 2012)

Cabinet	FP/884/07/12
Date:	Part 1

Community Asset Transfer Policy

Report by the Deputy Leader and Cabinet Member for Finance and Transformation programme

Enquiries to Officer: Simon Hughes, Property Commissioner, Essex County Council (01245) 433085 or simon.hughes@essex.gov.uk

Purpose of report

Community Asset Transfer (CAT) is the process by which smaller parcels of land and assets held by Essex County Council (ECC) are transferred to local community groups. This has the advantage of empowering the community (in line with the Government's Localism agenda) and also in reducing the on-going maintenance costs to the Authority where there is limited medium or longer term use of the asset proposed.

The attached policy has been developed to provide a clear transparent basis for the consideration of applications for the transfer of assets to the community.

Decision Areas and Recommendations

- Members are asked to adopt this policy

Background, context, and area of the County affected

Community Asset Transfer (CAT) is the transfer of ownership or management of land or buildings ('assets') from the Council to a local community group or third sector organisation ('Group').

The *Quirk Review* of 2007 recommended that local authorities consider CAT as a viable option for achieving a range of local benefits. CAT has since been utilised by a number of local authorities and the potential benefits of CAT include:

- Improved public services, including the restoration of unused buildings, or services better targeted to the local community
- Greater access for all to services and facilities that respond to community needs
- Increased local employment
- Direct community revenue/profit
- Improved skills within the community e.g. project planning, practical renovation, partnership working and more
- Increased community group presence, prestige or capacity
- Greater community group security, independence, empowerment and financial sustainability – and associated ability to apply for external funding and loans

- More effective partnership working between ECC and the third sector.

The Localism Act received Royal Assent in 2011. It contains key components relating to the transfer of assets to the local community which strengthen the general power of competence – this provides local authorities with the legal capacity to do anything that an individual can do, within the Law.

The Local Government Act 1972 (General Disposal Consent 2003) still provides for local authorities to dispose of an asset at an undervalue of up to £2 million. However the Localism Act 2011 gave the third sector rights to ‘buy’ assets .

ECC recognises the opportunity through CAT to empower the County’s third sector and strengthen the wider community in line with the Council’s strategic aims at the same time as minimising its future financial liability.

It is recognised that a more formal policy is required to support and facilitate the transfer of property to the third sector. This is in recognition of the Localism Act 2011, increased interest for a number of sites from community groups and the potential risk of challenge on individual CAT decisions if an appropriate policy to inform those decisions was not in place.

Deputy Leader and Cabinet Member for Finance and the Transformation Programme and the Cabinet Member for Communities and Planning asked that a review be undertaken into approaches for CAT and a policy be prepared founded on the principles that:

- Transfer is at nil-cost to ECC
- There is a clear and transparent process in place
- Different transfer arrangements will apply for different sized organisations
- ECC’s position (particularly around generating Capital receipts from the sale of property in its ownership) is protected.

The policy has been developed by the Council’s property agents Lambert Smith Hampton in consultation with Policy Services and Essex Property and Facilities.

Proposals

The Policy sets out the basis on which an asset would be transferred to a ‘Group’ and adopts a different approach for different sized organisations:

- For Parish Councils and large charities (those with turnover of more than £1m p.a) the asset will be transferred on a Freehold basis. A clawback of 75% would apply in the event of redevelopment.
- For all other groups the asset will be transferred with a Leasehold interest of up to 999 years.

The criteria for the transfer of an asset are that:

- The asset is not required for ECC’s operational purposes or for the delivery of another ECC strategy (such as the property transformation agenda), and has been declared as surplus to requirements.
- The asset has a value of £50,000 or less (current use value).

- Assets with a current use value of over £50,000 (and where eligibility criteria are met as set out in sections 2 and 3 of the Policy Paper “Essex County Council Community Asset Transfer) could be acquired by Groups using the existing ECC’s Assisted Purchase Scheme, whereby a Group may purchase the asset at market value subject to a discount of 25% to a maximum discount of £80,000.
- A clear business case to establish the running and use of the asset is provided by the Group.
- No dowry will be provided to the Group by ECC nor improvements made to the asset prior to transfer.
- The Group would meet their and ECC’s reasonable legal and surveying costs.
- No on-going support would be provided by ECC, but this would not restrict the Group from applying for any funding or commissioning opportunities that may emerge.

This approach provides a balance between protecting ECC’s interests and empowering the community to take over and run the smaller assets that are currently held by ECC. A process for assessing applications is outlined in the attached policy.

Assets could end up in the ownership of bodies who operated outside of Essex, although this is most likely with the big national charities

Essex County Council could add additional protections into the lease or transfer documentation of non-Essex based organisations (say for example that they would need to ensure a level of access for Essex residents) if required. This will be considered on a case by case basis and appropriate protections put in place.

Subject to the adoption of this policy, each individual CAT would need to be a decision made by the Cabinet Member responsible for property (currently the Deputy Leader, Cllr David Finch) by a CMA.

Alternative Options

There is the option to not proceed with the policy and to rely on the Localism Act 2011 as the sole method by which communities can manage property. However, ECC has a stated aim to empower community groups and this policy will allow a method to transfer assets both consistent with and beyond the aims of the Localism Act.

Conclusions

The policy meets the objectives set out above by the Cabinet Members at the start of the review; it is recommended that the policy be adopted.

Relevance to ECC’s corporate plan and other Strategic Plans

This links with the ‘Essex Works 2012 to 2017 Business Plan’ in particular the objective around “Giving people a greater say and a greater role in building safer and stronger communities”

Internal and External Consultation

The policy has been developed with Essex Property and Facilities, and representatives from Policy Services. The proposals were considered by the Political Leadership Team on the 16th July 2012.

No formal external consultation has been undertaken.

Legal Implications (Monitoring Officer)

*Information should be presented to demonstrate any legal implications of the decision(s) being made. **This section must be completed by the Monitoring Officer.***

In order to ensure consistency in application of any power of ECC it is useful to promulgate a policy to manage the expectations of likely benefactors and to inform future strategy, here in relation to ECC's property estate. The proposed policy preserves ECC's right to recover any increased value if the use of premises changes and confirms the likely nature of the interests to be transferred as well as other requirements which can commonly be expected by those seeking to exercise the rights under the Localism Act 2011. It may be appropriate to review the operation of the policy as applications proceed.

Finance and Resources Implications (Section 151 Officer)

The proposed policy sets out criteria for Community Asset Transfers for assets with current use value of £50,000 or less. Assets over £50,000 will be assessed under the existing Essex County Council's Assisted Purchase Scheme.

The proposed policy ensures the basis of assessment of applications includes criteria set out in the *Quirk Review of 2007*. This includes ensuring a wide range of financial and non-financial benefits to the wider community and ECC.

Though there is no current indication of the level of interest which the proposed policy could generate, it is estimated that within ECC's current asset portfolio about 300 assets would qualify for transfer under the scheme. However current knowledge of the community envisages that approximately 50 assets would be of immediate interest to Community Organisations. This is subject to ECC service needs and the assets formally declared surplus to requirements.

There are currently 6 expressions of interest on a number of sites. It is estimated that there could be 5 to 10 successful application in a year. Impact on the council's asset base of £1.7billion is expected to be minimal.

Within the current Capital Disposal Programme, there are very few properties which would qualify for transfer under the proposed policy. The approval of the policy is not expected to impact on the current capital receipt targets.

The estimated volume of transfers will result in a reduced though minimal cost of maintenance, both revenue and capital, to ECC. The proposed policy ensures that no on-going contribution from ECC will be required following transfer of assets. Also, in the event of significant redevelopment, transfer or change in community use of the site, ECC would seek to clawback 75% of the current value of the site.

Human Resources Implications

There are no Human Resource Implications.

Equality Impact Assessment

This decision has been screened for Equality and Diversity issues, and the impact is considered to be low. In transferring assets to the community, Essex County Council will be empowering groups and improving community relations.

The review of the policy in three years will provide an opportunity to demonstrate how the community have been supported through this policy.

Background papers



Freehold HOTS



Leasehold HOTS



CAT FAQs



CAT Policy Paper



Important Considerations for Groups Considering CAT

1. FAQs

Experience from other local authorities and agencies shows that the potential risks of CAT generally arise when a sufficient or realistic assessment has not been undertaken of the ability of a Group to meet ongoing liabilities associated with the asset. This could occur if an asset has high renovation or running costs or if it does not have the potential to generate sufficient revenue for the Group. The Group should also be aware that any repair and maintenance liabilities could hinder the progress of their initial aims and ambitions for the asset. From the outset, it is important that each Group is aware of such key risks and considerations. The following FAQs are intended to provide some key points for closer deliberation.

- *Will ECC cover any fees incurred in the CAT application process?*

ECC will provide a dedicated member of staff to answer queries and problems with the process, but no financial assistance will be provided. At the outset, it is important that the Group considers a long-term expenditure projection for the asset to ensure it is clear about, and able to deal with, liabilities moving forward. ECC will be available for discussion and advice on such matters. It is expected that the Group will cover ECC's reasonable surveyors and legal fees and the cost of obtaining an EPC where required.

- *Will ECC undertake a Schedule of Condition (SOC) before the CAT, and/or provide long-term assistance with renovation and maintenance of the Group's asset?*

ECC will not undertake an SOC nor provide any financial support for repair, maintenance or refurbishment. It is ECC's intention to undertake transfers under a Full Repairing and Insuring (FRI) lease except in certain circumstances where a freehold transfer will be considered. The Group will take on all liabilities and sole responsibility for the appropriate upkeep and maintenance of the asset, to include compliance with the terms set out in the lease, and is strongly advised to take appropriate professional advice on this matter. ECC reserves the right to transfer back the asset should any breach of terms arise.

- *For how long will assets be made available for CAT?*

ECC will make its list of assets available on the Council's website for a minimum of six months. Placing an asset on the list of potential transfers is deemed as providing notice of ECC's decision to dispose of the asset. ECC is committed to CAT as a first resort for disposal of its non-operational assets as it believes that community groups are best placed to manage and deliver these assets of community value. However, if no CAT proposals are received by an eligible Group within this period, ECC will look to alternative disposal methods. In this case, the provisions and timescales relevant to the Localism Act will apply (see Section 2).

- *How long will the CAT process take?*

No one CAT application or process will be the same, and both the Group and ECC will need to exercise patience and work in partnership. ECC recognises that applicants may have specific areas of difficulty in meeting tight timescales, particularly where new organisations are being formed. ECC has therefore set a standard policy on process and timescales. This is for guidance only and may be varied by officers to suit the particular circumstances of each case if there is no detrimental effect on the overall CAT programme. In the event that a conflict arises, the specific approval of the Deputy Leader and Cabinet Member for Finance and Transformation is required to vary the timescale.

- *Once managing an asset through CAT, will the Group still be eligible to apply for ECC funding or commissioning?*

Yes. The terms of agreement in any CAT will not exclude the Group from applying for Council-led (or external) funding or commissioning opportunities that may emerge. Wider experience shows that additional support is often required particularly in relation to technical expertise around asbestos, health and safety, Equalities Act compliance, fire risk, legionella and related risks. The Group should consider in advance how such issues will be addressed.



- *What bearing does the Localism Act have on ECC's CAT policy*

See section 2, below, for details of the Localism Act's provisions and timescales bearing relevance to ECC's CAT policy.

- *Where can we find further information?*

ECC will provide further information and actively update its website, but there a number of useful sources for further information and advice on both the CAT process and on asset management itself, including, but not limited to:

- The Asset Transfer Unit (ATU) - <http://atu.org.uk/>

The Government funds the Unit to provide a national information, advice and resource hub for community groups, as well as Councils and other public bodies.

- To Have and To Hold – <http://www.atu.org.uk/Document.ashx?ID=266>

A comprehensive guide to community asset development, produced by the Development Trusts Association/the Asset Transfer Unit.

- 'My Community Rights' website - <http://mycommunityrights.org.uk/>

Practical help and guidance on the community rights provisions of the Localism Act 2011, run by Locality.

- Community Matters' *VISIBLE* standards - <http://www.visiblecommunities.org.uk/>

Aimed at small and medium sized multi-purpose community organisations, these standards act as a framework to allow Groups to demonstrate their development against a range of benchmarks including asset and organisational management indicators, to ensure certain minimum standards are met.

In the event that a Group has further queries please contact simon.hughes@essex.gov.uk

2. The Localism Act 2011

The Localism Act was enacted in November 2011. In the event of no community group expressing an interest for CAT of a listed asset, ECC may look to 'dispose' of the asset by alternative methods including to private parties. In such alternative cases of disposal, the following relevant provisions of the Localism Act will apply.

- The *General Power of Competence* provides local authorities with the legal capacity to do anything that an individual can do, within the Law. The Local Government Act 1972 (General Disposal Consent 2003) still provides for local authorities to dispose of an asset at an undervalue of up to £2 million.
- The '*Community Right to Bid*' is not an explicit provision of the Localism Act, though the term is applied by the Department for Communities and Local Government and others in reference to the requirement on local authorities to maintain a '*list of assets of community value*' which have been nominated by the local community or council. When listed assets come up for sale or long lease (in excess of 25 years unexpired term), a *six-month moratorium* will give the community group(s) time to develop a bid and raise the money to buy or lease the asset. This mechanism allows community groups the chance to register an interest in an asset and to assemble the required technical skills, capabilities and documentation to bid to take on its long term control. The Act does not place provisions on asset owners on whether, when or to whom they may sell and at what price; and nor is there any requirement for owners to confer rights of first refusal to community groups - the community group simply has the right to *bid* for the asset. These provisions are expected to come



into force by Regulations in Autumn 2012, though no date has yet been set. Placing an asset on the list of potential transfers is deemed as providing notice of ECC's decision to dispose of the asset.

- The *Community Right to Challenge* requires local authorities to consider expressions of interest from community groups to run local *services*, and where the authority accepts an expression of interest, to carry out a procurement exercise for the service. If a community group were to bid to run a service that utilised an ECC-owned asset, ECC may grant leases at a peppercorn rate if it wished to retain the asset for future delivery.

ECC's decision on whether to charge an open market consideration for the benefit of an interest in an asset will follow the provisions of the Localism Act in the event that ECC's CAT Policy cannot be pursued due to a lack of interest by community groups. This may be determined on a case by case basis. Factors influencing such a decision may also include proposed uses, extent of revenue-producing opportunities, and benefits to the community. In all cases involving transfer of ownership/occupation appropriate legal mechanisms will be put in place to protect the Council's financial position. Any proposed asset transfer at less than best consideration will be subject to formal valuation in accordance with the Royal Institution of Chartered Surveyors Valuation Standards.



Policy Paper

Essex County Council Community Asset Transfer

1. What is Community Asset Transfer?

Community Asset Transfer (CAT) is the transfer of ownership or management of land or buildings ('assets') from the Council to a local community group or third sector organisation ('Group'). CAT is often undertaken at low or no cost of transfer, or with preferential rates or terms. It is usually carried out on a leasehold basis. The local authority acts as the owner of last resort, with the length of the lease dependant on the Group, situation and asset.

Essex County Council (ECC) recognises the potential benefits of CAT for the local community and is committed to pursue CAT. This document sets out the general terms by which ECC intends to pursue its CAT policy. Together with the supporting documents it is intended as a support and guide for both interested Groups and relevant Council staff.

The *Quirk Review* of 2007 recommended that local authorities consider CAT as a viable option for achieving a range of local benefits. CAT has since been utilised by a number of local authorities and the potential benefits of CAT include:

- Improved public services, including the restoration of unused buildings, or services better targeted to the local community
- Greater access for all to services and facilities that respond to community needs
- Increased local employment
- Direct community revenue/profit
- Improved skills within the community e.g. project planning, practical renovation, partnership working and more
- Increased community group presence, prestige or capacity
- Greater community group security, independence, empowerment and financial sustainability – and associated ability to apply for external funding and loans
- More effective partnership working between the Council and the third sector.

As the *Quirk Review* concluded, 'optimising the use of public assets is not the primary objective [of CAT]: the over-riding goal is community empowerment'.ⁱ ECC recognises the opportunity through CAT to empower the area's third sector and strengthen the wider community in line with the Council's strategic aims and minimising its future financial liability. This document sets out a clear and consistent path for all parties involved.

2. ECC Community Asset Transfer Policy

ECC will transfer selected assets to interested community groups where this will bring benefits to the Group and the community at large in line with the Council's strategic objectives. This will give community groups the opportunity to manage cherished assets in the best interests of their local community while empowering the area's vital third sector.



Any queries relating to the Council's CAT policy should in the first instance refer to the FAQs in the 'Important Considerations for Groups Considering CAT' document.

It is important that Groups are clear from the outset as to the expectations and requirements under which CAT may take place, and the processes and commitments for which they are responsible. The core principles of ECC's CAT policy are as follows:

- The asset is not required for ECC's operational purposes or for the delivery of another ECC strategy (such as the property transformation agenda), and is declared as surplus
- The asset has a value of less than £50,000 (current use value)
- Assets are defined as either land or buildings.
- Assets with a current use value of over £50,000 (and where all further eligibility criteria are met) would be eligible for ECC's Assisted Purchase Scheme, whereby a Group may purchase the asset at market value subject to a discount of 25% to a maximum of £80,000. In this event the Deputy Leader and Cabinet Member for Finance and Transformation retain the right to exercise discretion over the nature of the asset disposal, taking into account the type of asset, its potential for community use and the social and economic context. For full details of the ECC's Assisted Purchase Scheme please contact Dr Thomas Nutt at tom.nutt@essex.gov.uk
- A clear business case is provided by the Group (see Section 5)
- For groups other than Parish Councils and large charities (see Section 3) the asset will be transferred on a leasehold basis (see Section 4 for further information on leasehold & freehold arrangements for relevant Groups)
- No dowry will be provided to the Group by ECC nor improvements made to the asset prior to transfer
- The Group would meet their own and ECC's reasonable legal and surveying costs
- No ongoing support would be provided by ECC, but this would not restrict the Group from applying for any funding or commissioning opportunities that may emerge.

ECC will review its CAT policy every three years.

ECC's CAT policy provides the basis for community groups to bid for and manage selected assets. Community Groups may wish to identify assets that they think will be suitable for transfer.

Before producing a business case – Community groups should contact Essex County Council to see whether an asset would be suitable for transfer.

However, Essex County Council may also place assets that they think are suitable for transfer on a publicly available list that community groups can check. Placing an asset on the list of those available for transfer by ECC provides notice of ECC's nomination of that asset as having community value under the Localism Act 2011.ⁱⁱ By placing an asset on the list ECC provides



notice of its decision to dispose of the asset, and goes a step further than the provisions of the Localism Act by pre-emptively offering Groups the opportunity to transfer the asset, rather than simply offering the right to make a bid.

An asset will be listed for a minimum of six months which for the purpose of the Localism Act 2011 represents an extended interim moratorium period for local groups to register an interest in an asset. Once a group submits an expression of interest in an asset in the form of a high level business case (see Section 5) it will have a further six month period to submit a full business case. This forms the full moratorium period under the Localism Act. ECC retains the right to extend this period at its own discretion. Further details relating to the relevant provisions of the Localism Act as they relate to this CAT policy can be found in the Frequently Asked Questions.

3. Which Groups are Eligible to Acquire Assets under CAT?

To be eligible for the transfer of assets under CAT, ECC sets out the following eligibility criteria for an interested Group, with flexibility depending on its business case (see Section 5):

- Must have charitable status and be a registered company, or hold an appropriate alternative legal status on which ECC may reserve judgement e.g. Charitable Incorporated Organisation (CIO; when this status is made available by Regulation); Community Interest Company (CIC); co-operative or community benefit Industrial & Provident Society etc.

OR

Be a Parish/Town Council or 'large charity' (defined as UK-based charities, registered with the Charities Commission and with a turnover of more than £1m p.a.)

- In exceptional circumstances private organisations may be considered if they present a demonstrable case for benefitting the local community and/or environment
- May be of any size and membership number
- Should generate demonstrable social, economic and/or environmental benefits for the local community. It should be community-led or clearly show how its governance structure ensures strong links and/or influence by the community
- Should encourage diversity and work to improve community cohesion and reduce inequalities.
- Have robust systems, governance and policies, as evidenced by meeting all the basic requirements listed in the 'pre-VISIBLE' quality standard developed by Community Matters,ⁱⁱⁱ or an equivalent, nationally recognised standard or quality mark
- Be of sufficient financial standing and have demonstrable capacity to manage the asset, including members with relevant experience and skill (see Section 5)
- Contribute to the Council's corporate and strategic objectives.



4. Terms on Which Properties Would Be Transferred

ECC has two broad definitions of community group to distinguish between the types of transfer available:

- Parish/Town Councils or 'large charities' (see Section 3) – for these Groups, ECC will encourage the transfer of the Freehold of the selected asset, given satisfactory review of the business case and published accounts. In the case of Freehold transfer a clawback of 75% of the net sale price would apply in the event of redevelopment
- Other charities and community groups/associations (as prescribed in Section 3 and with a turnover of less than £1m p.a.) – for these Groups, ECC will grant a Leasehold interest of up to 999 years though in many cases leases are expected to be significantly shorter. ECC has published its standard terms for transfer of assets under CAT on a Leasehold basis.

In each case of transfer, ECC will carefully consider the Group's business case (see Section 5) and take into account the needs and capabilities of the Group, the type and condition of the asset, and any further or future requirements or scenarios related to the asset. Where possible ECC will be flexible in designing lease clauses for scenarios such as sub-letting or future restructuring, but remains clear that it will not provide initial nor ongoing financial and/or maintenance support. In certain circumstances ECC may also require a Service Level Agreement on certain assets however this will be assessed on a case by case basis.

5. How to Express an Interest in CAT

ECC will actively advertise assets to the voluntary sector by posting and regularly maintaining a list of transferrable assets on the Council website. Six-monthly updates on the list will be sent by ECC to the relevant district-based Council for Voluntary Service and/or local Borough, Parish or Town Council asking if they, or associated Groups in their area, may wish to express an interest. In the case of Groups not directly linked to or associated with these bodies, it will be necessary for the Group to approach relevant district-based Council for Voluntary Service and/or local Borough, Parish or Town Council for information and to forge a communication link. Such a link will ensure that all future notices of listed assets are made known to the Group.

Expression of Interest and high-level business case

When a Group wishes to express its interest in a CAT, it should submit an Expression of Interest including a high-level business case. This should include:

- **The Group's status** (type of organisation, status and details of legal entity, governance structure, financial headlines/assumptions, brief history and experience or summary of values)
- **How the use of the property** will meet the aspirations sets out in the Quirk review
- **The nature of the Group's interest** and its intention (usage and activities) for the asset in question



- **A clear case for how this intention will benefit the local community and/or environment, and how public access to the asset will be maintained.** For the purposes of this policy, 'public benefit' is defined as any use where the primary purpose is to provide a facility of benefit to the general public and to the population of the immediate area in particular
- **Details of the Group's capacity and capabilities for managing the asset** – including a list of key members and any key skills, qualifications and experience relevant to the asset's management (e.g. related to project planning/management, renovation work, social work, accountancy etc.) and clear evidence of good governance, robust financial systems in line with VISIBLE standards
- **A proposed leasehold arrangement** (i.e. length of leasehold and any requirements proposed in advance, recognising that ECC will not provide any dowry or asset improvements prior to transfer)
- **Evidence of any other support gained or sought from external agencies.**

ECC will respond to the Expression of Interest and high-level business case setting out whether or not it considers them to be acceptable.

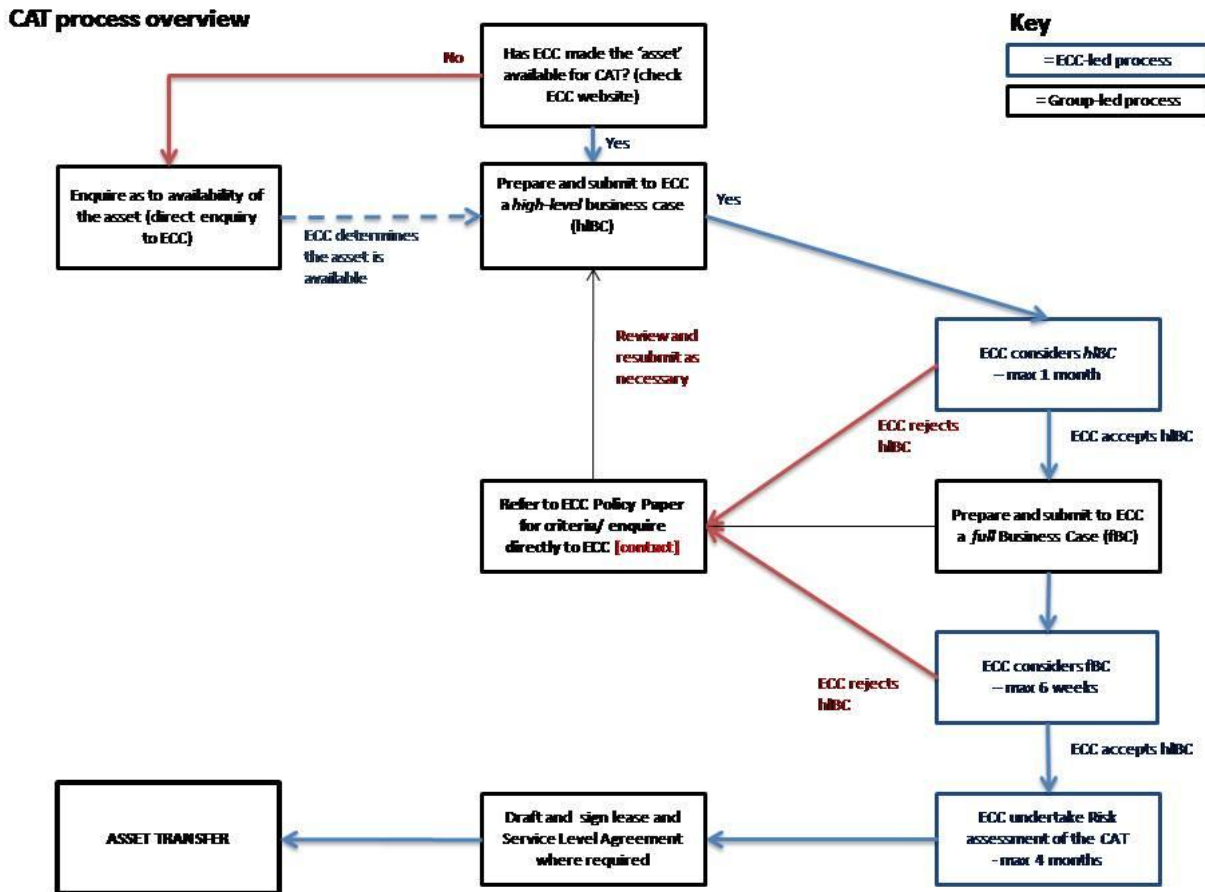
Where the high-level case is accepted by ECC, the Group will be asked to submit the following further details as a *full* business case:

- **Any clarifications on the high-level business case**
- **Detailed evidence that the CAT is financially sustainable** over the proposed leasehold/freehold arrangement and how ECC will not incur future financial liabilities, e.g. cash flow forecasts, projected utilisation rates, details of financial support gained, pledged or expected, full details of all Group members' experience and skills
- **Health and safety considerations** of renovation, maintenance and ongoing management, and how the Group is qualified to ensure these are met
- **A usage plan** demonstrating how the asset will be managed and operated on a day-to-day basis
- **A robust risk assessment** of the asset and details of any alternative arrangements should the CAT prove unmanageable or unsustainable.

Figure 1 presents a simple flow diagram of the process by which Groups may engage with the Council in CAT. It is expected that each CAT process will follow its own set of circumstances and partnerships, so the Council is prepared to be flexible to individual needs.



Figure 1: CAT Process Overview



6. How and When a Decision Will be Taken on an Application for CAT

Once the Expression of Interest and high-level business case is submitted by a Group (see Section 5 for details of each stage), ECC commits to the following timescales for each stage of the application process, subject to variation:

- The ward members at a Parish (where they exist), District and County level will be informed of the application and asked to comment.
- Assessment of the Group's *high-level* Business Case – max 1 month
- Assessment of the Group's *full* Business Case – max 6 weeks (The Group will be notified if documents are missing. Copies of paperwork will be sent to a number of areas of the Council for checking, such as to legal services and finance. As soon as any comments are received these are passed on to the Group for necessary action or comment)
- Risk assessment of the CAT to ensure viability, sustainability and community benefits – max 4 months
- Transfer of the asset, including close partnership working to agree plans, terms and legal and contractual commitments – max 6 months



Due to the unique and variable nature of the CAT process, ECC is unable to guarantee that these timescales will always be kept, and regular reviews will be undertaken of the process and timescales.

ⁱ HMG, 2007. Making Assets Work: The Quirk Review of community management and ownership of public assets. Available at <http://www.communities.gov.uk/publications/communities/makingassetswork>

ⁱⁱ Further information on the relevant provisions of the Localism act 2011 can be found in the Frequently Asked Questions document. The Localism Act 2011 can be found in full at the following address - <http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

ⁱⁱⁱ Community Matters' VISIBLE standards - <http://www.visiblecommunities.org.uk/>



Typical Heads of Terms: ECC Community Asset Transfer

Landlord	Essex County Council
Landlord's Agent	
Landlord's Solicitors	
Tenant	
Tenant's Solicitors	
Property	The Demised Premises comprise.....as identified edged red on the attached plan
Term	Essex County Council will consider granting leases of <u>up to</u> 999 years albeit that the expectation is most leases would be significantly shorter than this. Lease to be contracted outside of the provisions of the Landlord and Tenant Act 1954
Break Clause	It is anticipated that the lease would include periodic break clauses (potentially after 3 years and every five years thereafter). Each party could break the lease on provision of 6 months written notice. For the avoidance of doubt, ECC could seek to action the break clause if: <ul style="list-style-type: none"> 1) The organisation ceased to exist 2) The organisation had its charitable status revoked 3) The building was in a condition whereby the local building control had deemed it unsafe and our surveyors were not satisfied that appropriate corrective actions in place
Premium	No premium will be payable upon grant of the lease
Rent	£1.00 (one pound) per annum, if demanded, for the duration of the term
Use of property	
Repairs, Decoration and Maintenance	The tenant will be required to keep the whole of the Demised Premises in good repair, decoration and maintenance at all times.
Alterations	Non-structural alterations are permitted. Structural alterations are permitted with the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed
Alienation	Subletting will only be allowed with the Landlord's prior written consent provided that the



	<p>undertenant will not have a right to renew its underlease when it ends and that no interest extends past the end date of the lease.</p> <p>Assignment of the lease is permitted to other charitable organisations/third sector companies where the new group meets all of the criteria in the policy (i.e. it must be the same financial standing as the original group). Assignment is subject to written consent of the Landlord, such consent not to be unreasonably withheld or delayed</p>
Insurance	<p>Tenant to be responsible for insuring the demised Premises for its full reinstatement value for the duration of the lease.</p> <p>A copy of the valid insurance certificate to be made available to the Landlord upon request.</p>
Rates and utilities	<p>Tenant to pay for all utilities, Rates, and any costs and expenses incurred, associated with their use and occupation of the premises.</p> <p>If the Property is used wholly or mainly for charitable purposes, or the tenant occupying it is established for charitable purposes only, or is occupied by people administering a trust established for charitable purposes only, the tenant will automatically be entitled to an 80% reduction on its business rates bill. The tenant will need to apply to the local authority to receive it. The local authority also has discretion to further reduce the rates.</p>
Temporary lettings	<p>The grant of licences, tenancy at wills, local hiring arrangement and private hiring arrangements will be permitted subject to the following conditions:</p> <ul style="list-style-type: none"> • That the Demised Premises is not used for any illicit, immoral or political purposes • That the arrangements are not in contravention with any terms of the lease • That the Tenant retains ultimate control of the Demised Premises at all times • That the arrangements are of a temporary nature • That the Tenant uses any proceeds of such arrangements for furthering the objectives of the organisation.
Compliance with Statute	<p>The Tenant to be responsible for compliance with Statute</p>
Funding	<p>The Landlord will not provide any funding or dowry as part of this transaction</p>
EPC	<p>The Landlord will provide an Energy Performance Certificate (EPC), the costs of which are recoverable from the Tenant</p>



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Costs	Tenant to pay the reasonable surveyors and legal fee for both parties (ECC fees to be covered are not expected to be in excess of £1,500 excluding VAT)
VAT	To be charged where appropriate

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Typical Heads of Terms: ECC Community Asset Transfer (Freehold)

Transferor	Essex County Council
Transferor's Agent	
Transferor's Solicitors	
Purchaser	
Purchaser's Solicitors	
Property	The Premises comprise.....as identified edged red on the attached plan
Term	Freehold transfer will be considered where the Group is a parish council or a large charity (with a turnover in excess of £1m p.a.)
Use of property	
Repairs, Decoration and Maintenance	The Purchaser will be required to keep the whole of the Premises in good repair, decoration and maintenance at all times.
Other restrictions	Assignment of the freehold is permitted to other charitable organisations/third sector companies only with the prior written consent of the Landlord [for which there will be a fee], such consent not to be unreasonably withheld or delayed
Compliance with Statute	The Purchaser to be responsible for compliance with Statute
Funding	The Transferor will not provide any funding or dowry as part of this transaction
EPC	The Transferor will provide an Energy Performance Certificate (EPC) the costs of which are to be paid by the purchaser whether the transfer is concluded or not.
Costs	Purchaser to pay the reasonable surveyors and legal fee for both parties (ECC fees to be covered are not expected to be in excess of £1,500 excluding VAT but this figure is reviewable annually)
VAT	To be charged where appropriate
Redevelopment	If the use of the premises is to be changed, ECC reserve the right to require the premises to be returned to them or apply a clawback of 75% of the current value of the premises ie the Group will have to pay ECC 75% of the current value of the land if redevelopment occurs. The following is



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	classed as redevelopment:- the sale of the land to a third party, any planning approval for a change of use (on all or part of the site), a lease of the site to a third party for [] years or more.
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Cabinet	FP/878/07/12
Date: 04 September 2012	

DECISIONS TAKEN BY OR IN CONSULTATION WITH CABINET MEMBERS

Report by the Secretary to the Cabinet

Enquiries to: Judith Dignum 20044 dd 01245 430044

Deputy Leader and Cabinet Member for Finance and Transformation Programme

FP/879/07/12	The freehold transfer of part of the former Sawyers Hall College Site to Becket Keys Free School.
FP/880/07/12	To approve the addition of a scheme at Thurstable School to create an additional science laboratory to the 2012/13 capital programme.
FP/872/06/12	To approve implementation of the pensions 'automatic-enrolment' project which ensures ECC is compliant with The Pensions Act 2008 at a cost of £370,000.
FP/882/07/12	To approve outline business case for the 'Target Operating Model' and draw down the costs from the Transformation Reserve.
FP/685/11/11*	Smarte East Professional Services.
FP/883/07/12	All Saints Maldon C of E (VC) primary school : site rationalisation.
FP/891/07/12	To authorise the sale of Tabor House at less than the estimated minimum sale proceeds.
FP/807/03/12*	To approve the project at The Endeavour School, Brentwood.
FP/840/05/12*	To approve the addition of a project at Shenfield High School to the 2012/13 and 2013/14 Capital Programme.
FP/893/07/12	Approval to the allocation of the Section 106 Developer Contributions - Colchester Garrison.

FP/885/07/12*	Canvey Skills Centre – Lease to Prospects College.
FP/895/08/12	2012/13 Budget realignment for Children's Services portfolio.

Cabinet Member for Highways and Transportation

FP/513/04/11*	To Award the Contract for the Administration of Customer Services for the English National Concessionary Travel Scheme in Essex 1.10.12 to 31.03.15.
FP/892/07/12	Chapel Lane Hadleigh – 30mph speed limit with consideration to a 20mph speed limit after the Olympics.

Cabinet Member for Education, Lifelong Learning and the 2012 Games

FP/801/03/12*	To enlarge the premises of Tany's Dell Primary School.
FP/881/07/12	Appointment of School Governors by Essex LA – Schedule 323.
FP/890/07/12	Appointment of School Governors by Essex LA - Schedule 324.
FP/896/08/12	Appointment of School Governors by Essex LA – Schedule 325.
FP/757/01/12*	To award the contract for the provision of an Alternative Education Service from 1.09.12.
FP/855/06/12*	Agreement to the formation of a single Education Services Organisation.

Cabinet Member for Communities and Planning

FP/864/06/12	To approve the commencement of the First Review of the Statement of Community Involvement (SCI).
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Cabinet Member for Adults Social Care

FP/837/05/12

Award of Contract to Runwood Homes Ltd re Older People Services.

Cabinet Member for Economic Growth, Waste and Recycling

FP/894/08/12

Virement to fund the costs of Country Parks Review project.

Cabinet Member for Customer Services, Environment and Culture

FP/897/08/12

That £75,000 be made available to Colchester BC towards release of artefacts from Nanjing Museum for the exhibition and Colchester Museum.

*** Key Decisions**

