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Exmouth Town Council Asset Transfer Policy

1. Introduction

The purpose of this policy is to establish a clear framework and set of guidelines for Exmouth Town Council to evaluate the transfer of assets or services from another authority or organisation.

It outlines due diligence requirements, assessment criteria for both assets and services, and identifies essential first questions to inform a comprehensive business case.

2. Key Principles of Assessment

a. Asset Evaluation Criteria

Each potential asset transfer should be evaluated based on the following points:

• Ownership and Tenure

- Determine whether the asset is owned or leased by the transferring authority.
- Establish if the proposed transfer is freehold or leasehold.
- Clarify any potential legal liabilities associated with either freehold or leasehold transfer, including specific indemnities required. Seek legal advice if deemed necessary.

• Occupancy and Use

- Identify any current tenants and the basis of their occupancy agreements.
- Review any restrictions on use, covenants, or overage agreements that may affect future use or disposal.
- Legal advice may be necessary to establish if existing tenancy agreements will transfer to Exmouth Town Council and to address potential future liabilities relating to these agreements

• Condition and Maintenance

- Review any available condition surveys (noting that independent assessments may be prudent).
- Assess existing maintenance plans and adherence to them.
- Examine historical spend on maintenance and repairs and review the current condition.
- Determine whether Exmouth Town Council is expected to assume responsibility for current or deferred maintenance obligations upon transfer; obtain legal input on potential indemnities or warranties from the transferring authority regarding the asset's condition.

• Statutory Testing and Compliance

- Review the state of statutory testing (e.g., electric, gas, asbestos surveys) and ensure compliance is up-to-date.

- Include provision to ensure that the responsibility for statutory testing is clarified before transfer. Seek legal guidance on any compliance certifications required to avoid future liability.

• Financial Implications

- Examine typical operational expenditures, such as business rates, insurance, and other ongoing costs.
- Determine the date of the last insurance valuation and consider potential cost adjustments.
- Request a breakdown of income/expenditure related to the asset over a representative period (e.g., 5-10 years).
- Investigate if a dowry (financial support) accompanies the transfer or if the asset will be brought to a standard condition before transfer.

• Strategic Fit and Risk Assessment

- Assess the asset's development potential value or intrinsic value and identify any downside risks.
- Consider if the asset is listed or protected under relevant regulations and if it aligns with the Council's broader strategic or long-term plans.
- Clarify if legal protections or indemnities are advisable for risks related to listed or protected assets. Obtain legal advice on clauses to limit liability in cases of unforeseen regulatory changes.

b. Service Evaluation Criteria

Services transferred should align with the Council's strategic priorities and consider the following:

• Nature of Service

- Determine if the service is statutory or discretionary.
- Establish baseline standards and requirements, including legal compliance obligations.

• Fit with Council Capabilities

- Evaluate if Exmouth Town Council is well-positioned to manage and deliver the service effectively.
- Assess resource needs, including additional skills, vehicles, or facilities required for service delivery.

• Financial and Staffing Considerations

- Review budgetary implications, including potential dowries, income sources, and ongoing costs.
- Determine if TUPE (Transfer of Undertakings Protection of Employment) applies, and if so, conduct due diligence on the cost base, team performance, and employment terms.
- Assess how the integration of the service impacts the Council's job evaluation and collective agreements.
- Seek specific advice on employment law and TUPE implications to prevent future liabilities. Clarify if indemnities or warranties may be needed from the transferring body regarding employment obligations.

c. Business Case Development

A business case should be prepared for all potential transfers to ensure clarity and informed decision-making. Core questions to address include:

• Rationale for Transfer

- Understand the reason the transferring authority wishes to divest this asset/service and its significance.
- Clarify what is being transferred and any limitations.

• Strategic and Operational Fit

- Assess how the transfer aligns with Exmouth Town Council's strategic plan and any broader district plans to ensure a coherent approach to local assets/services.

• Support and Future Obligations

- Determine the support available if the Council takes on the asset/service and implications of not proceeding with the transfer.

• Transparency and Community Engagement

- Ensure clear communications and community engagement to avoid any misinterpretation regarding the transfer's impact.

3. Approval and Governance

- Each potential transfer will be reviewed by the Town Council, with final approval contingent upon a thorough review by professional advisors as required.

- The Council will refer to relevant best practice guidelines and ensure alignment with all legal and regulatory frameworks recommendations and ensure alignment with all legal and regulatory obligations.

4. Legal and Insurance Considerations

- Consult legal and insurance advisors throughout the transfer process, especially in drafting and approving terms regarding liability, indemnity, and potential future claims.
- If deemed necessary, Exmouth Town Council should require an indemnity from the transferring body to cover unforeseen liabilities and future claims.

5. Sustainability Considerations

- The Council will integrate environmental considerations into its operational decisions. This includes taking into account the Council's environmental and sustainability policy, as well as any emerging factors relating to climate change, when evaluating asset acquisitions.
- The Council aims to ensure that all asset transfers align with its commitment to sustainability and contribute positively to its environmental goals.

This policy provides a structured approach for evaluating both assets and services, incorporating due diligence as outlined. Regular reviews and updates of this policy are recommended to ensure compliance with evolving legal standards and council objectives.

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