

## **CONFIDENTIAL - DRAFT HEADS OF TERMS – BEER PILOT**

The purpose of this document is to inform further two way dialogue and agreement of heads of terms for respective parties to then instruct Solicitors. These Heads of Terms are **Subject To Contract and Draft only.**

### Background

EDDC Cabinet debated this matter on 2<sup>nd</sup> October 2019 and determined:

- a) The transfer of assets as identified within this report to Beer Parish Council for nil consideration.
- b) Responsibility for agreeing detailed terms and conditions for the freehold / long leasehold transfers to be delegated to the Council's Deputy Chief Executive.

### Proposal

Transfer of the following assets freehold / or under very long lease to Beer Parish Council:

- Beer Head Car Park (southern strip and central areas only)
- Star Bank
- Play area above Pumping Station along with possibly the Underleys play area (HRA still to be consulted and will be subject to separate decision making)
- Jubilee Gardens PC's
- Jubilee Gardens Access ' Hardstanding view point – includes income received currently of £700 per annum from RNL
- Jubilee Gardens
- Charlies Yard
- Beach Court Car Park

The proposal is for the freehold or long leasehold transfer of those assets. The Parish Council would have flexibility to sell / sublet / assign provided that any financial returns are reinvested in the Beer community and that the uses remain broadly for public enjoyment and benefit and that the key services remain in some form. That said, as an example, Beer Parish Council would be permitted to convert the public convenience building into a café/ ice cream kiosk provided that a public convenience provision were retained either within the building or close to – it could be smaller and the income generation from the remainder of the building could be used to support ongoing costs. Likewise Charlies Yard could be built on provided that the use benefitted the community.

For avoidance of doubt, areas to be retained by EDDC include:

- Beach – due to complexities around day-to-day management and because of regularisation of agreements being needed but this does generate a commercial income
- Cliff – Parish Council are not prepared to accept this liability. This is a concern to EDDC, has been worked through at length and has now been accepted by Officers as part of this wider asset transfer
- Majority of Beer Head Car Park

- Bottom section of Beach Access Road
- Central Car Park

### Business Case

Development of a Business Case has been driven by Beer Parish Council using data provided initially by EDDC around costs and incomes attached to those assets in Beer, updated where possible. The rationale and figures have been checked by respective Service Leads at EDDC and also reviewed with Strategic Lead - Finance. The rationale is broadly as follows:

- All Beer assets (those being transferred and those not being transferred) currently cost EDDC £106,805 but generate £232,879 therefore providing a surplus income of £126,075 per annum.
- Of those assets to be transferred there is a nett cost to EDDC of circa £55,000 per annum.
- Post transfer, nett costs to Parish Council would be circa £57,500 per annum.
- Parish Council would require an annual payment from EDDC from car parking revenue of circa £57,500 per annum to offset that increase in cost to them, this tapering to zero after 7 years.

The Business Case summary is described below:

- The proposal is to transfer the Beach Court Car Park to the Parish Council. EDDC will continue to manage this car park for which the Parish Council will pay EDDC's costs, hence including the net income figures within. The Parish Council would be responsible for signs, lines, surfacing, boundary repairs etc. This will generate the Parish Council £12,000 in year 1.
- The Parish Council have assumed they will capitalise on rental income opportunities from lettings of shelters and PC's. This is to be phased in and appears reasonable. EDDC to pay Parish Council a dowry of £45,500 in year 1 (this along with the £12,000 income from Beach Court car park equating to the £57,500 referenced above in 5.1), tapering down in equal tranches to £0 in year 8. This is a cost to EDDC but is balanced by the fact that those assets being transferred currently cost EDDC £55,000 per annum. In essence, together with Beach Court Car Park we are providing the Parish Council with £57,500 in year 1, reducing each year.
- The Parish Council will pay StreetScene £30,000 in year 1 and in exchange StreetScene will provide those same works to those assets to be transferred as pre-transfer. This payment and the associated obligations on StreetScene to do the works will taper to zero after 5 years. This fundamentally addresses the big stumbling block to the previous business case where EDDC were having to carry their fixed costs as a loss. This works as long as the StreetScene fixed costs can in fact reduce over this same period i.e. through not filling vacant posts, restructuring of rotas etc assisted through other asset transfers also happening across the wider locality. If these savings can't be made, EDDC will need to absorb those costs through a Transformation or other budget but balanced against the significant wider savings to EDDC which increase year on year.
- The Parish Council have assumed following their own investigation that for those works they take on, they can deliver at 55% of EDDC's costs, taking on these works gradually.

- The Parish Council have also assumed 15% of Parish Council works will be undertaken by volunteers therefore without cost.
- The Parish Council have allowed for a contingency / sinking fund of 10% of maintenance costs.
- The Parish Council make a very modest loss in years 1 and 2, incomes accumulating to circa £5,500 by year 5 but then by year 6 rely on generating commercial income over and above that currently forecast, most likely through Charlies Yard or some new premises on Jubilee Gardens and supported by income from events. If the Parish Council fail to achieve this, there will be a loss to them of circa £29,000 over 10 years. Opportunities do exist to generate additional cashflows of circa £10,000 plus per annum as referenced in 4.1 of this report and possibly as high as £25,000 per annum after time.
- EDDC lose £2,500 in year 1 but thereafter generate a positive cashflow equating to circa £300,000 over 10 years but have of course relinquished the income at Beach Court car park and any other income generating opportunities from those assets transferred.

In summary, the Parish Council are taking on a not insignificant risk here but in exchange for giving them local control of the assets, their use, maintenance and management and decision making around changes in use and income generating opportunities. The Parish Council will need to generate real savings and / or additional income to ensure a balanced budget by year 10 or sooner. EDDC will make savings of circa £300,000 over 10 years but to do so are transferring assets of circa £315,000 market value as of 2019.

#### Key matters for consideration

In considering this proposal, the Council have / will satisfy itself of the following:-

- The Parish Council will evidence and ensure they have the appropriate skills, knowledge and expertise to sustain the service provision in the long term
- The Parish Council will be required under any agreement to have in place clearly defined structures, roles and responsibilities to deliver the services
- The Parish Council will be required under any agreement to have in place clear decision making processes with an approved constitution, governance and management controls
- The Parish Council will be required to meet with all insurance, equality standards, child protection, health and safety and licensing requirements
- The proposal has the support of the local community
- The proposal must evidence that implementation of the devolving of service provision and the assets associated with them promote or improve the economic, social or environmental well-being of the area or residents in order to satisfy best consideration requirements under the Local Government Act 1972
- The Council is satisfied that there is no State Aid given the transfer of public functions between one public body and another(See 6.3 below)
- Potential positive or adverse implications for staff have been considered

Where and if outstanding, these matters will be addressed prior to entering into any agreement for transfer of assets to the Parish Council.

## Pre-Requisites for Transfer

- Assets to be transferred must be in a serviceable condition with no serious outstanding defects. This might be by undertaking works prior to transfer or attaching a financial sum for the Parish Council to implement but it has been made clear this will not be a large sum and will not allow for works identified as needed in the short term future, something which previously was being requested. There is therefore a further less quantifiable saving to EDDC. In essence if some building component is broken, it will be repaired, but anything that is dated or in poor condition but functioning adequately will not.
- A service level agreement between StreetScene and the Parish Council setting out the scope of works to be undertaken and funded, detailing how this service will then be tapered down over 5 years.

## General Conditions

There would be no circumstances whereby EDDC would be required to take the assets back. If the Parish Council fail to maintain the assets suitably to enable public access (save for natural disasters / uncontrollable circumstances) then EDDC for 1<sup>st</sup> 10 years only could if it chose to (but with no obligation) step in, do works and recharge, having 1<sup>st</sup> given notice of said intention.

Costs – Each party pays own costs connected with transfer.

Beer Head Car Park ([plan to be provided](#))

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public recreation and camper van parking only.

- Southern outlined strip will be used solely as public recreation space and the intention is that this strip will be transferred from Parish Council to XX for a peppercorn. To be fenced by Parish Council / successor within 12 months of transfer to a specification agreed by EDDC, such consent not to be unreasonably withheld. Permissive footpath is to remain.
- Northern plot will be used solely for un-serviced camper van parking only. Parish council to allow those parking to use EDDC ticket machine and for this parking revenue (from camper vans within this land only) to be paid back to Beer Parish Council on an annual basis. EDDC Parking Service to retain a management fee, to be agreed. To be fenced by Parish Council within 12 months from date of transfer to a specification agreed by EDDC, such consent not to be unreasonably withheld.
- Pedestrian and vehicular rights of access to be granted by EDDC to Parish Council to access both plots limited to proposed uses. There is to be no contribution towards maintenance costs.

Freehold Disposals – No disposal within 5 years other than in respect of Memorial Walk (southern plot). Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

Incomes from capital receipts / rents received by Parish Council – For a term of 10 years to be re-invested in those assets being transferred.

Existing public use and enjoyment of the asset will continue with exception of where the asset is partially enhanced enabling commercial activities in support of general asset maintenance. It is acknowledge that the public use of a particular asset might change, but if removed, will need to be compensated with something new in a form of another. For periods after 10 years the Parish Council will have absolute flexibility over uses of assets subject only to EDDC's consent being needed for changes, not to be unreasonably withheld along with the overage provisions.

Star Bank (plan to be provided)

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public recreation

Freehold Disposals – No disposal within 5 years. Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

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Trees – A tree survey will be undertaken by EDDC before transfer and if necessary (and possible) trees will be removed before transfer.

Play Area (plan to be provided)

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public recreation

Freehold Disposals – No disposal within 5 years. Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

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#### Beach Court Car Park (plan to be provided)

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public parking and events

Freehold Disposals – No disposal within 5 years. Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

Incomes from capital receipts / rents received by Parish Council – For a term of 10 years to be re-invested in those assets being transferred.

Existing public use and enjoyment of the asset will continue with exception of where the asset is partially enhanced enabling commercial activities in support of general asset maintenance. It is acknowledge that the public use of a particular asset might change, but if removed, will need to be compensated with something new in a form of another. For periods after 10 years the Parish Council will have absolute flexibility over uses of assets subject only to EDDC's consent being needed for changes, not to be unreasonably withheld along with the overage provisions.

Management - EDDC will continue to manage this car park for which the Parish Council will pay EDDC's costs. The Parish Council would be responsible for signs, lines, surfacing, boundary repairs etc. Parking prices to be fixed in agreement with EDDC, such consent not to be unreasonably withheld but not to adversely impact on demand for EDDC's car parks.

#### Jubilee Gardens and hard standing access / look out areas (plan to be provided)

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public recreation and events

Freehold Disposals – No disposal within 5 years. Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

Incomes from capital receipts / rents received by Parish Council – For a term of 10 years to be re-invested in those assets being transferred.

Existing public use and enjoyment of the asset will continue with exception of where the asset is partially enhanced enabling commercial activities in support of general asset maintenance. It is acknowledge that the public use of a particular asset might change, but if removed, will need to be compensated with something new in a form of another. For periods after 10 years the Parish Council will have absolute flexibility over uses of assets subject only to EDDC's consent being needed for changes, not to be unreasonably withheld along with the overage provisions.

Fencing at top of cliff – Responsibility for maintenance to rest with EDDC.

Railings from look- out area overlooking beach – Responsibility for maintenance to rest with Parish Council.

Public Conveniences (plan to be provided)

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public conveniences. It is accepted that whilst a facility needs to remain, that facility can be remodelled to encompass just part of the building with the remainder being used for commercial purposes.

Freehold Disposals – No disposal within 5 years. Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

Incomes from capital receipts / rents received by Parish Council – For a term of 10 years to be re-invested in those assets being transferred.

Existing public use and enjoyment of the asset will continue with exception of where the asset is partially enhanced enabling commercial activities in support of general asset maintenance. It is acknowledge that the public use of a particular asset might change, but if removed, will need to be compensated with something new in a form of another. For periods after 10 years the Parish Council will have absolute flexibility over uses of assets subject

only to EDDC's consent being needed for changes, not to be unreasonably withheld along with the overage provisions.

Charlies Yard (plan to be provided)

Interest to be transferred – Freehold (needed for funding)

Price – Peppercorn if demanded

Use – Public recreation and events, accepting access might be restricted during those events. It is accepted that commercial premises might be constructed on this land.

Freehold Disposals – No disposal within 5 years. Thereafter 50% overage on nett increase in value from date of transfer, tapering to 0% after 20 years from date of transfer.

Leasehold Disposals – The Parish Council is to require EDDC's consent for any lettings for the 1<sup>st</sup> 5 years from date of transfer.

Incomes from capital receipts / rents received by Parish Council – For a term of 10 years to be re-invested in those assets being transferred.

Existing public use and enjoyment of the asset will continue with exception of where the asset is partially enhanced enabling commercial activities in support of general asset maintenance. It is acknowledge that the public use of a particular asset might change, but if removed, will need to be compensated with something new in a form of another. For periods after 10 years the Parish Council will have absolute flexibility over uses of assets subject only to EDDC's consent being needed for changes, not to be unreasonably withheld along with the overage provisions.

Cliff face to rear – Parish Council to ensure access to cliff face is not restricted so as to impact on maintenance.

Supporting Structure – Parish Council to be responsible.