

Meeting of:	<b>Cabinet</b>
Date of Meeting:	<b>Monday, 15 July 2019</b>
Relevant Scrutiny Committee:	Environment and Regeneration
Report Title:	O'Shea Chip Shop - 1 Western Shelter, Barry Island – new lease
Purpose of Report:	To seek approval to grant a new lease for the O'Shea Chip Shop, Unit One, Western Shelter, Barry Island to include additional land to the side of the current leased area, subject to the S123 (2A) process as set out in the report
Report Owner:	Cabinet Member for Neighbourhood Services and Transport
Responsible Officer:	Miles Punter - Director of Environment and Housing Services
Elected Member and Officer Consultation:	<p>Matt Sewell - Accountant Neighbourhood Services</p> <p>Lorna Cross - Operational Manager - Property</p> <p>Committee Reports - Legal</p> <p>Cabinet Member for Neighbourhood Services and Transport</p> <p>Local Ward Members Cllr Nic Hodges and Cllr Steffan Wiliam</p>
Policy Framework:	This a matter for Executive decision by Cabinet
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>• This report seeks Cabinet approval to advertise the loss of Public Open Space of a small parcel of land which it is proposed to be included in a new lease for Unit 1, Western Shelter in accordance with s123 Local Government Act 1972.</li> <li>• The additional land has been used as an informal dining area. It is proposed that this situation be regularised by granting a new lease for Unit 1 Western Shelter to include the additional parcel of land. The rental for the new lease will be reviewed and increased to reflect the additional land area.</li> </ul>	



## **Recommendations**

1. That authority is delegated to the Monitoring Officer/Head of Legal and Democratic Services to advertise the proposed loss of a small parcel of Public Open Space (in accordance with s123 (2A) of the Local Government Act 1972) which it is intended to be included in a new lease for Unit 1 Western Shelter.
2. That, if objections are received as a result of the advertisement process outlined in recommendation 1, these objections will be reported back to Cabinet.
3. That Cabinet authorises the disposal of the additional parcel of land by including it in a new lease agreement for Unit 1 Western Shelter, should there be no objections from the S123 (2A) advertisement process..
4. That the Monitoring Officer / Head of Legal and Democratic Services is authorised to draft and execute a new lease agreement for Unit 1 Western Shelter to include the additional parcel of land provided there are no objections from the S123 loss of Public Open Space advertisement process.

## **Reasons for Recommendations**

1. The land is currently legally designated as Public Open Space and as such the Council is obliged to advertise the potential loss of POS pursuant to Section 123 (2A) of the Local Government Act 1972. .
2. In order that Cabinet may consider any objections and to comply with the provisions of the Act.
3. To allow the land to be incorporated into a new lease for Unit 1 Western Shelter if there are no objections to the loss of Public Open Space.
4. In order to regularise the situation by lease.

## **1. Background**

- 1.1 The Council currently leases out multiple retail units under the Western Shelter, Barry Island. Unit 1 Western Shelter trades as a 'Chip Shop' under the name "O'Shea's". The Lease for this unit expired in 2017 and the leaseholder is therefore "holding over" on the terms from the expired lease. The Lease referred to is a "protected" lease pursuant to the provisions of the Landlord and Tenant Act 1954 which affords the leaseholder the right to renew his expired lease for a further term of 20 years if he so wishes.

- 1.2** It was brought to the attention of Estates officers that additional land outside the lease area for Unit 1 Western Shelter was being used informally and without the consent of the Council's owning department. Instructions were sought from the Council's Neighbourhood Services team who agreed that the use of the land should be regularised and that it was possible for the additional land to be included in a new lease for Unit 1 Western Shelter (subject to Cabinet Authority). Terms were subsequently agreed with the tenant for a new lease for Unit 1 incorporating the additional adjacent land. The level of market rent has been determined by the Estates Team by the use of local comparable evidence.
- 1.3** As part of its business, the Chip Shop encourages a café style outdoor dining environment by placing tables and chairs outside and adjacent the unit for their customers' convenience.
- 1.4** Vehicular access across the area in front of the retail units needs to be maintained for emergency and Council vehicles to ensure the safe running of the beach as a resort. The area to be disposed of does not form part of that access and does not inhibit the access in any way.
- 1.5** There is precedent for the removal of the Public Open Space Designation in this area as a similar exercise was undertaken for Kiosk 3. The disposal of that parcel of additional land was advertised in accordance with s123 (2A) of the Local Government Act 1972 previously and a new lease granted which included an uplift in the market rent to reflect that additional area of land.

## **2. Key Issues for Consideration**

- 2.1** The land under consideration is currently designated as Public Open Space and this report seeks consent to undertake the process required to remove the designation. Only when the designation is removed will a lease including the additional land be capable of being granted.
- 2.2** The process for the removal of the designation is set out in section 123 (2A) Local Government Act 1972. The process requires that the Council advertises the potential loss of Public Open Space and to consider any objections.
- 2.3** The additional land is currently being used informally by the tenant of Unit 1 Western Shelter which is in contravention of the public open space designation of the area of land and is outside the area currently leased to the Tenant of Unit 1 Western Shelter. The tenant benefits from the increased amount of dining space and wishes to formalise this arrangement and is willing to increase the rent payable for the unit as a result.
- 2.4** Subject to there being no objections to the Public Open Space advertisement, it is proposed that a new lease be granted which incorporates both the additional

land together with the current leased area for Unit 1 Western Shelter, for a term of 20 years. The new lease will be at market rental.

- 2.5 Appendix (1) shows the “held over” lease area of Unit 1 Western shelter and the proposed additional area of land.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1 The inclusion of the additional land within a new lease for Unit 1 Western Shelter will increase the area available for the tenant to trade from which will assist in increasing the viability of the business in the long term whilst also providing an increased source of revenue to the Council through additional rent.
- 3.2 The current outside dining arrangements are not defined so the establishment of a specific area will assist in preventing any access problems for vehicles and pedestrians.
- 3.3 Officers have worked with the leaseholder to establish the size and location of the new space so that all are content.

### **4. Resources and Legal Considerations**

#### **Financial**

- 4.1 The proposed new lease (to include the additional area of land) will be at current market rent as determined by Estates Officers with the use of local comparable evidence.
- 4.2 The leaseholder is to pay the Council's legal and surveyor's fees.

#### **Employment**

- 4.3 Although no additional jobs will be created, the leaseholder employs local people and this will help to ensure the continued viability of the business.

#### **Legal (Including Equalities)**

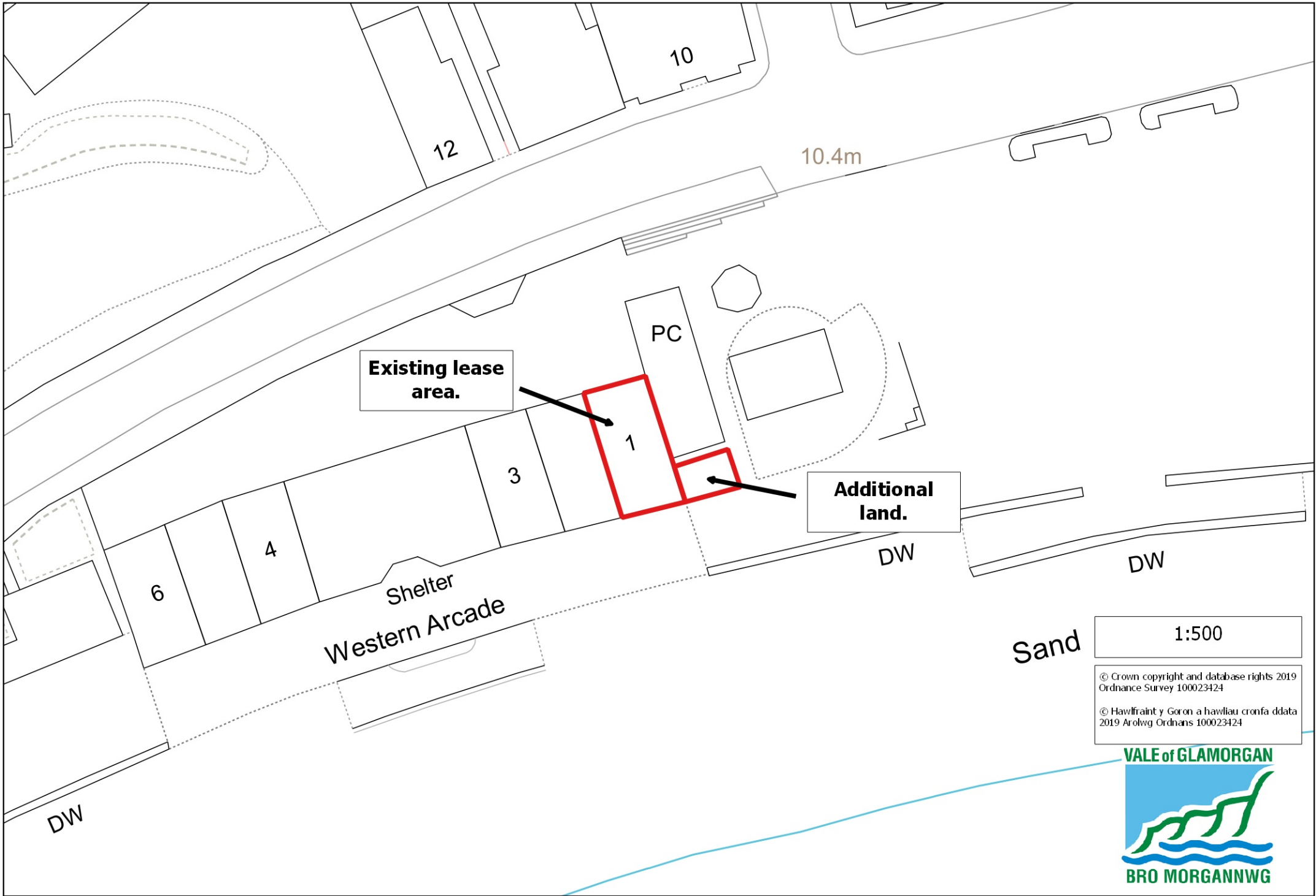
- 4.4 As the proposal includes an area of the promenade space under the shelter, the leasing of the additional area must first be advertised as a disposal of Public

Open Space in accordance with the requirements of s123 (2A) of the Local Government Act 1972.

- 4.5** Any objections to the disposal of the Public Open Space will be reported separately to Cabinet for consideration prior to any final decision being taken. If no objections are received the matter will be progressed as set out in the Recommendations of this report.
  
- 4.6** The existing lease has expired but the leaseholder retains the right to renew the existing lease for a further term of 20 years. It is in the Council's gift whether to agree to the inclusion of the additional area of land in a new lease or not.

## **5. Background Papers**

None.



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