

**North Norfolk District Council**

**Community Asset Transfer Policy**

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## 1. Background and Purpose

1.1. The purpose of this policy is to set a clear framework to enable asset transfer from the Council to Third Sector Organisations (TSOs) and ensure transfers are sustainable and successful in the long term. The policy recognises the Right to Bid and Right to Challenge provisions under the terms of the Localism act 2011. Due reference should be made to guidance available from both the Department for Communities and Local Government (DCLG) and that of the Council's relevant Communities officers in respect of approaches received under those provisions. Also see 1.5 and 1.6 below.

1.2. The "Third Sector" is the voluntary sector of the economy which is neither public (such as central or local government) nor private sector (such as private individuals or profit-making business). With the Big Society and Localism initiatives, it is the Third Sector which is now being promoted as one of the most efficient and productive elements of a dynamic and healthy society. However, lower tiers of local government (parish and town councils) are included within this initiative.

1.3. For the purposes of this policy, a community asset is defined as an asset owned by the District Council which is not held for investment reasons and not essential for operational purposes. It may include operational assets such as Tourist Information Centres, Public Conveniences, Community Centres, Theatres and Sports Clubs. Asset transfer can relate to freehold transfer but, more commonly, a long-term (over 25 years) lease.

1.4. An asset transfer decision will usually be a choice between:

- Maintaining the status quo;
- Commercial disposal on the open market;
- Seeking the service and community benefits generated by a decision to transfer an asset to a TSO (Community Asset Transfer);

This policy relates to the situation when the last of these three choices is the appropriate one.

1.5. It is important not to confuse Community Asset Transfer with the provisions of the Localism Act relating to disposal of Assets of Community Value. Essentially, the Localism Act will introduce a moratorium on sale of “Assets of Community Value” to allow community groups a right to make a bid (at open market value). Registers of Assets of Community Value will relating to both public and privately held assets are to be compiled by relevant Local Authorities. The government has produced appropriate guidance in the respect.

1.6. The Localism Act also provides the Community Right to Challenge which a right is provided in the first instance to community or voluntary groups to request taking on themselves the provision of services provided by the local authority. In some cases, there may be a relationship between taking on a service and related local authority assets. However, at this stage, this policy considers the process for discretionary community asset transfer outside of the provisions of the Localism Act 2011.

1.7 The term ‘community asset transfer’ relates primarily to long leasehold or freehold transfer in order that the asset may be used or managed by a TSO at less than ‘open market value’ e.g. transferred as a gift or leased for a peppercorn or below market rental.

## **2. Policy context**

2.1. The 2006 *Local Government White Paper* confirmed the last Government’s intention to increase opportunities for community asset ownership and management, and promoted asset transfer as part of a local authority’s ‘place-shaping’ role. The Secretary of State for Communities commissioned Barry Quirk, Chief Executive of the London Borough of Lewisham to carry out a review into the barriers preventing community asset transfer. It also indicated that a fund would be established to help with this, later announced as the £30 million Community Assets Fund managed by the Big Lottery Fund.

2.2. The ‘Quirk Review’s’ findings *Making Assets Work* were published in May 2007. All the Review’s recommendations were accepted by the Government and published a week later as an implementation plan in *Opening the transfer window: the government’s response to the Quirk Review*. The Government’s plan for taking the

review forward included an asset transfer demonstration programme with local authorities and their partners, a guide to managing risks in asset transfer and a series of regional awareness-raising workshops.

2.3. The Quirk Review found that a careful increase in the community's stake in an asset can bring a wide range of additional benefits for the community, the organisation receiving the asset and the local authority facilitating the transfer. The benefits of community ownership and management can outweigh risks and opportunity costs.

2.4. The Government's Empowerment Action Plan published in 2007 included actions relating to the transfer of assets and to a programme of support for community anchors, including the availability of further funding to support the development of anchors.

2.5. In July 2008 the Communities and Local Government White Paper "Communities in Control: real people, real power" confirmed ongoing support for the Quirk review, announced the establishment of a national Asset Transfer Unit, extended the Advancing Assets programme by a further year and announced a £70m "Community Builders" fund. The origins of this agenda go back to the ODPM's 2003 *Communities Plan Sustainable Communities: Building for the future*). This acknowledged that sustainability is only possible where local communities play a leading role in determining their own future development.

2.6. The Localism Act was given royal assent in November 2011. The Government's agenda is to continue and extend the previous government's policy of asset transfer for community benefit. The Council's Asset Management Plan will ultimately be adjusted to take account of the new Localism Act provisions (re Assets of Community Value and the Community Right to Challenge mentioned above.)

2.7. As mentioned above, this policy does not concern "market value" transfers which are dealt with as part of the Council's Asset Management Plan.

2.8. The Council has a long record of commitment to supporting community groups and the principles of Community Asset Transfer. The following local policy

documents cite asset management and transfer to the third sector/partners as central objectives:

- The Corporate Plan
- The Asset Management Plan

### **3. Policy statement**

3.1. The Council recognises that the way its physical assets are managed can have a positive impact on the long-term strength of the third sector and local communities more generally. Through asset ownership and management, TSOs can grow and become more secure, gaining access to sources of additional investment that the Council itself may not be able to access. The aim is to ensure that the way assets are managed underpins the wider corporate aims and where appropriate, will use asset transfer as a means of enabling TSOs to become sustainable on a long-term basis.

3.2. The Council's existing assets include land, buildings and other structures used for a variety of different social, community and public purposes. For some of these assets community management and ownership could deliver:

- benefits to the local community; e.g. closer association and influence over the management of the facility making it more responsive to local needs with reduced overhead running costs (enabling fees and charges to be kept relatively low) ;
- greater use of the facility with the potential to increase new social and economic opportunities for communities that extend their capacity to support localities and organisations where they live and improved health and other well being outcomes for the community.
- benefits to the Council and other public sector service providers; e.g. improved levels of volunteering, civic participation, and engagement in positive activities in the area; reduced financial implications for the Council, including staff and asset overhead costs and business rates.
- benefits for the organisation taking ownership; both financial and non financial; e.g. charitable tax exemptions, improved access to funding opportunities at local, regional and national levels for both capital and revenue based support; accessible staff and/or volunteer learning and

development opportunities as part of a career path; building partnership with other organizations and users to promote economic development and social enterprise.

3.3. Public assets are rarely used by everyone, their 'value' being locked-in to a particular use or a particular group of people. However, changing ownership or management can offer such groups opportunities to capacity build in order to make assets and their services more accessible, more innovative, more flexible and more relevant to communities, increasing their value in relation to the numbers of people that benefit and the range of opportunities offered. Community-lead ownership can offer additional opportunities to secure resources within a local area and to empower local citizens and communities.

#### **4. Legal Context**

4.1. As Community Asset Transfers, under this policy, will be at under market value, community benefit will have to be demonstrated pursuant to s123 Local Government Act 1972 as further refined by Local Government Act 1972: General Disposal Consent (England) 2003.

4.2. Under this statutory guidance, community benefit is judged in terms of whether the disposal will secure the promotion or improvement of the economic, social and environmental well being of the inhabitants of the district. In these respects an assessment will be made of the TSO's Business Plan, their experience/skills to deliver the Plan and to complement the Council's Corporate objectives such as promoting tourism, environmentally sustainable economic growth and healthy lifestyles.

4.3. Independence of the TSO from the Council will need to be demonstrated in order to maintain clarity of roles and responsibilities in any partnership arrangements or agreements.

4.4. It is important to note that Community Asset Transfer will not involve a freehold transfer in most cases. Even in a situation where a TSO is a fully constituted charity with corporate status, a long lease at peppercorn rental will, in general, be the

preferred option in relation to the use of valuable assets as a leasehold structure provides legal mechanisms through which the Council's interests of provision of community benefit can be protected in the long term.

4.5. In cases where the organisation is an unincorporated association which is not registered as a charity, it is likely that the only appropriate option will be a shorter term lease (e.g. up to 15 years) but, again, with below market rental. The reason for this is that the Council would always wish to avoid the intractable legal problems which can occur when land is transferred into the name of private individuals on trust for an unincorporated association. For example, if a property is held by a number of individuals as trustees, then upon their retirements or deaths the property must be formally assigned to new trustees. However, it is easy for small voluntary organisations to omit to take on such an onerous task of formal legal transfer (which can only take place by deed). This may ultimately lead to a situation in which all the original trustees retire or die and the true legal owner is untraceable. For this reason (inter alia), any TSO which seeks to take a long lease or freehold, must first gain charitable status and/or incorporate as a not-for-profit company.

## **5 The Community Asset Transfer Process**

The Council will consider requests for Community Asset Transfer in the following manner via the Asset Management Board which will be reported to after each stage below:

- Initial application and response (1&2)
- Full application (3)
- Agreement of Heads of Terms and Asset Management agreement (4&5)
- Cabinet Decision (6)
- Legal Transaction (7)

The seven key stages in this application process including the requirements on an applicant together with an eighth stage which is in respect of post transfer, as set out below:

### **Stage 1: Initial application**

A TSO which believes it could successfully take over and run a Council-owned property should submit an initial application and expression of interest to the Head of



Service for Assets. They should use the application form shown in Appendix 1 or submit a more informal request. An informal request will probably be no more than 2-3 sides of A4 and it should contain the following information.

- Name of Organisation
- Contact details
- Address for correspondence
- Telephone number
- Email address
- Status of organisation (charity, club, new group)
- Charity or Company registration number
- Date when organisation established in present form
- Governance arrangements (e.g. constitution, set or rules etc)
- Proposals for incorporation, registration as CIC or application for charitable status (if these have not yet been achieved).
- Number of members
- Number of members of management committee
- Number of staff/volunteers
- Insurance policy/public liability/professional indemnity levels of cover
- Details of lease and name of current trustees (if currently a sitting tenant holding as unincorporated association)
- A short statement saying why the asset is needed
- If the applicant is a sitting tenant, a statement saying why an extended lease or freehold transfer is needed
- Future objectives upon transfer
- Details of indications of support from sponsors.

### **Stage 2: Initial response**

All initial applications will be report to the Asset Management Board with a recommendation to continue or to reject, providing reasons for rejection which will be shared with the applicant.

If the Asset Management Board agrees that the proposal has merit, the applicant will be asked to submit a full application.

### **Stage 3**

#### **Full application**

A full application to be submitted by a TSO will include the following:-

- 1) A statement of objectives (a mission statement for the organisation).
- 2) Full details of legal form of the organisation (NB for consideration of a grant of a long leasehold interest of over 15 years, it must have corporate or charitable status or both).

3) Details of the asset applied for and the holding sought with reasons including details of funding and external funding commitments or opportunities.

4) A **business plan** for the whole organisation (not just a specific project) demonstrating the following:-

How the asset will be used

- A summary of wider benefits for the organisation, the public and the Council.
- Stakeholders engaged in current and future management and use of the asset
- Core activities and services delivered currently
- Proposed projects, activities and actions that will be developed through future management of the asset
- Organisational management (structure, number, posts both paid and voluntary)
- Experience and track record including experience/expertise of management board etc
- Robustness of governance structure (in place or being developed)
- Details of partnership working if any
- Community involvement and engagement currently and in the future
- User involvement (including membership information, age profile of users, public use, educational use)
- Financial projections including a three year cash-flow forecast, projected income and investment (grants/loans) including any relating to development of the asset and consideration of overheads such as utilities and business rates
- Analysis of funding opportunities with realistic assessment of risk
- Projected facility user numbers and rates of use over three year period
- Effective management of the asset (bookings, health and safety, repair and maintenance)
- Professional advice or details of advisers to be used and how this will be funded

5) Sitting tenants should additionally demonstrate:

- Effective management and maintenance of the asset to date

- Last three years' accounts
- Sufficiently wide and diverse membership
- Effective bookings system
- Suitable occupancy agreements for any third party use

#### **Stage 4: Consideration, valuation and negotiation**

Following submission of a full application, the Head of Service for Assets will appoint a member or members of his/her team to correspond with the TSO to consider professional valuation of the asset (if that is deemed necessary and, if so, how the valuation is to be funded) and to draft Heads of Terms. The Council will also arrange for an internal title report to be produced to identify any legal issues such as restrictive covenants which may affect the asset.

While stated briefly, this stage will probably be the longest in duration. It may take several months to complete and involve significant, detailed work and correspondence. If it is not possible to agree Heads of Terms, the reasons will be given to the applicant and alternatives (such as short term lease or licence) will be explored. By way of additional policy guidance, in assessing the merits of the application and negotiating Heads of Terms, the Council will ask itself the questions set out in the Appendix 2 below.

#### **Stage 5: Report to AMB**

If Heads of Terms are agreed, the Head of Service for Assets will submit a report to the Asset Management Board containing the full application and the business plan with recommendation as to the specific details of the proposed asset transfer which have been provisionally agreed with the TSO i.e. heads of terms, leasehold conditions, asset-lock proposals etc.

The Asset Management Board will consider the report and decide whether the transfer should proceed and add further conditions, or not as it deems necessary. In the event that the AMB recommend the proposed asset transfer, a report will be submitted to Cabinet recommending that authorisation is granted to proceed.

The impact on Council resources needs to be assessed by the Asset Management Board. This might include:

- The level of initial and ongoing support/advice required from services e.g. Property, Legal, Environmental, Planning
- Any capital contribution, match funding or loans required
- Initial involvement in setting up a legal trust body, social enterprise or legally constituted community group
- Ongoing obligations that may fall to the Council under the terms of a Lease and associated costs that it incurs as a result of those obligations
- Consideration of an exit strategy in the event that the asset transfer fails.

#### **Stage 6: Report to Cabinet**

Cabinet will consider the report and add any conditions they deem appropriate or not and, should they agree with the recommendation will provide delegated authority to the Council's Legal and Democratic Services Manager to carry out the transaction.

#### **Stage 7: Legal transaction**

The applicant will be informed of the Cabinet's decision and in the event that the decision is to proceed with transfer, the legal process of Asset transfer will be carried out between the Council's lawyers and the applicant TSO's lawyers. Again, while simply stated, the legal process may take several months depending on the complexity of the title or proposed lease and the readiness of the applicant to engage in the legal process that is required for transfer of the asset to be completed.

#### **Stage 8: Monitoring and Support**

Once completed, the performance of the applicant TSO will be monitored with advice and support provided when deemed necessary to assist and enhance its future and viability.

**Appendix1: Application form**

<b>COMMUNITY ASSET TRANSFER APPLICATION FORM</b>	
<b>Name of Community Group or Organisation</b>	
<b>Contact address</b>	
<b>Email</b>	
<b>Telephone number (s)</b>	
<b>Status of organisation (charity, club, new group)</b>	
<b>Charity and/or Company registration number</b>	
<b>Date when organisation established in present form</b>	
<b>Governance arrangements (e.g. constitution, set or rules etc)</b>	
<b>Proposals for incorporation, registration as CIC or application for charitable status (if these have not yet been achieved)</b>	
<b>Accounts available (Y/N)</b>	
<b>How many years accounts?</b>	

<b>Number of members</b>	
<b>Number of members of management committee</b>	
<b>Number of staff/ volunteers</b>	
<b>Insurance policy/public liability/professional indemnity levels of cover</b>	
<b>Details of lease and name of current trustees (if currently a sitting tenant holding as unincorporated)</b>	
<b>If the applicant is a sitting tenant a statement saying why an extended lease or freehold transfer is needed</b>	
<b>Future objectives upon transfer</b>	
<b>Details of indications of support from sponsors</b>	
<b>Any other relevant supporting information</b>	
<b>A short statement saying why the asset is being requested for transfer</b>	

## Appendix 2 Assessment of application

- Is it part of long-term support to / engagement and partnership with the third sector?
- Is it sustainable in the long term (for both the TSO and the Council) and are the terms and conditions imposed upon the TSO not unduly onerous but reasonable and affordable (TSO governance arrangements, robustness of Business Plan and terms of any Service Level Agreement)?
- Does it complement the Council's corporate strategy and priorities, allowing a comparison with open market disposal?
- Does the assessment of the TSO's Business Plan identify clear economic, social or environmental outcomes and demonstrate the TSO's ability and experience to deliver these?
- Can the community benefit be demonstrated under the Local Government Act 1972: General Disposal Consent (England) 2003, if the Council is considering disposal for less than open market value?
- Does the TSO have policies and commitment towards actions on staff/volunteer training and development, safeguarding children, equalities and climate change, or is seeking to provide to meet the conditions of asset transfer?
- Has the proposed transfer been appraised alongside the options of - (i) Maintaining the status quo; (ii) Expenditure on other services made possible as a result of a decision for 'commercial' disposal?
- What are the risks of service failure, TSO failure, misuse/disuse of assets, premature changes to any proposed SLA and what is the exit strategy that is in place and the best possible transfer type (leasehold, freehold), if still appropriate?