



COMMUNITY ASSET TRANSFER

POLICY AND FRAMEWORK

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1. COMMUNITY OWNERSHIP AND MANAGEMENT OF ASSETS

1.1 Benefits

Effective and carefully managed transfer of assets to the local community can bring benefits not only to the Council, but also to its local statutory, voluntary and community partners. Such transfers can contribute to the Council's own efficiency savings by the release of 'surplus' or underused properties, or provides the potential to strengthen the role and future sustainability of local community organisations.

1.2 National policy context

Up to 2011 much of the policy environment for asset transfer was underpinned by the previous Government's 'Sustainable Communities' work and aspirations to empower local communities. This was informed by the outcomes of the Quirk Review of Community Management and ownership of public assets. That review concluded strongly in favour of local ownership and management of public assets.

Whilst the Quirk Review provided the original starting point, latest government policy has changed that context quite dramatically, with the introduction of the 'Assets of Community Value', otherwise known as the 'Community Right to Bid', and what are recognised as empowerment opportunities for local communities introduced through the Localism Act. It is intended that where appropriate, more power be devolved to local neighbourhoods and community organisations, which include the ability to apply to run local community halls and other facilities, including those owned by local Councils. Readers of this Policy/Framework should note that any asset transfers by this local authority at less than market value are a policy decision by North Hertfordshire District Council; and owners of other non NHDC assets, including those registered as 'Assets of Community Value' will apply their own policy for their transfer.

1.3 Community toolkit

Community organisations have a number of tools at their disposal to assist them in achieving management of a local asset. Which of these tools are available and appropriate in any particular situation will depend on the nature of the asset and the group. The two key options to be considered are:

1.3.1 *The Community Right to Bid*

Part 5 chapter 3 of the Localism Act 2011 provides for a scheme called 'Assets of Community Value'. Part of the community empowerment agenda, it requires a local council such as NHDC to maintain a list of Assets of Community Value. These are assets which have been successfully nominated by the community as meeting specified statutory criteria. Individuals cannot nominate such assets; they must be nominated by parish/town/community councils or groups with a connection in the local community.

Eligible community groups can nominate **both privately and publicly owned assets** for inclusion on the list of assets of community value.

If an asset has been listed and the landowner wants to sell that asset, they must tell the District Council. If a community group wants to buy that asset, they can trigger a 6 month moratorium (from the date the landowner informs the council they wish to sell) that gives them a chance to prepare a bid for it.

During this period, the owner cannot sell their property on the open market. This gives community groups an increased chance to save local shops, pubs or other local facilities by developing a proposal and raising the required capital.

It is important to remember that during the 6 month moratorium period a Community Group cannot force a landowner, including NHDC, to sell the asset to them. At the end of the 6-month period, the owner is free to sell the asset to whoever they wish and at any price; the spirit of the relevant legislation is to offer an opportunity for community groups to develop proposals, not necessarily to oblige an asset owner to dispose to the community.

Whilst NHDC officers are required to provide the decision making framework in regard to the Assets of Community Value function under the Localism Act 2011 and subsequent regulations, the authority obviously cannot enter into any negotiation or influence the transfer of any asset which is not within its ownership.

1.3.2 Applying to the Council for a Community Asset Transfer

A community group may at any time apply to NHDC for a Community Asset Transfer of **a property owned by NHDC**. Alternative proposals could also be received from different community groups. This could include any Council owned asset that has already been listed as an Asset of Community Value (and the interaction between Community Asset Transfer and Assets of Community Value is addressed in section 7) or could be an asset that has not been listed. With regard to Assets of Community Value - **Community groups will have until the end of the full moratorium, provided this has been triggered (i.e. six months), within which to commence stage 1 of the Community Asset Transfer Key Stages as set out in paragraph 6.1 of this policy and framework.**

A community group may come forward for a wide range of reasons relating to services, facilities or other community activities they wish to provide or promote through their use of a Council owned asset and the Council will then consider all suggestions in line with the CAT policy.

As is noted in paragraph 5.5 of this document, the Council must comply with certain legal obligations when disposing of property. The effect of these obligations is that the authority has to assess the consideration it receives in return for the asset. The Council is not restricted to disposing of property purely for financial gain and may consider the whole package of benefits being offered. Therefore legally the Council may transfer an asset at nil value if it considers that there is social, economic or environmental benefit in doing so. However if disposal of an asset is justified in this way, then the Council is obliged to take steps to ensure the delivery of the social, economic or environmental benefit. As a result NHDC will wish to retain ultimate ownership of the property asset, as explained in "Background Information" at the end of this document.

2. PURPOSE OF THIS POLICY AND FRAMEWORK

This document sets out how the Council will approach applications for a Community Asset Transfer. It does not govern the function of listing of Assets of Community Value. For details on how to apply for an asset to be listed as an Asset of Community Value, please refer to our website

http://www.north-herts.gov.uk/index/community_and_living/community_rights.htm

It should also be noted that this document does not apply to lease renewals where third sector/community groups are already occupying and running a Council owned property. These are unaffected by this policy/framework.

This policy and framework establishes:

- the nature of the organisations from which NHDC will consider requests to acquire an asset,
- responsibilities of the parties to any transfer
- how that request will be answered/processed, and
- the basis on which terms for the transfer will be agreed.

3. DEFINITIONS USED IN THIS DOCUMENT

‘Asset of Community Value’	An asset that has been successfully nominated by an organisation under the Community Right to Bid and that now appears on NHDC’s register of Assets of Community Value.
‘Community Asset Transfer’	A long-term leasehold transfer arrangement entered into by the Council with an eligible community organisation at below market value to stimulate the social, economic and environmental wellbeing of people living or working in North Hertfordshire.
‘Community Right to Bid’	The process set out in the Localism Act 2011 by which an asset may be nominated by a community organisation for statutory protection as an asset of community value in the event of a sale by the owner.
‘Eligible Organisations’	A community organisation which meets the two criteria set out in section 4 of this document.
‘Property’	The land and buildings that the community organisation wishes to acquire, which in the case of open space includes all bedding areas, and surrounding infrastructure, such as footpaths, lighting, drains, gullies, culverts etc. which fall within the boundaries of that property

4. ELIGIBLE ORGANISATIONS

The Council will consider a Community Asset Transfer to any organisation that fulfils the following two criteria:

4.1 Category of organisation

The organisation must fall into one of the following categories:

4.1.1 Parish Councils

A parish council may apply to acquire an asset in its own area.

4.1.2 Unincorporated groups including Neighbourhood forums

An application to acquire property can be accepted from any unincorporated group with membership of at least 21 local people (to be consistent with the Assets of

Community Value requirement) who appear on the electoral roll within the local authority, or a neighbouring local authority. This will for instance enable applications by a local group formed to try to save an asset, but which has not yet reached the stage of acquiring a formal charitable or corporate structure. However, it should be noted that in order to complete an acquisition the group will need to establish a formal structure before an asset was transferred. (Stage 2 in the process set out in section 6)

4.1.3 *Community interest groups with a local connection*

These must have one or more of the following structures:

- a) A charity
- b) A community interest company
- c) A company limited by guarantee that is non profit distributing
- d) An industrial and provident society that is non- profit distributing (renamed as community benefit societies by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 - (relevant sections for implementation still awaited under statute).

In this context, non-profit distributing means that any surplus is not distributed to its members but is wholly or partly applied to the local authority area where the asset is based or to a neighbouring authority area.

4.2 Purpose of organisation

The organisation must provide a service across the wider community. This does not mean that the organisation has to provide a district wide service, more that its proposed operation does not in itself *preclude* any individuals or local groups who may wish to use the facility for example by lack of disabled access or facilities for older people.

It will also be important for the business plan for the future use of the property to include provision for ad hoc use and hiring to members of the public and groups for local, community events. It cannot be a business plan by a group for use of a facility solely for that group's own purposes, there must be evidence of wider community access.

5. BASIC PRINCIPLES

5.1 Available options

In assessing proposals for a Community Asset Transfer, the Council will consider the relative benefits and risks of the following options in order to justify its decision;

- To do nothing, i.e. to retain in Council ownership of the Property
- To dispose of the Property on a commercial basis in order to realise capital so that expenditure on other services or investment in other schemes could be made possible
- To proceed with a Community Asset Transfer so that the tangible benefits generated by the proposed transfer of the Property can be seen for the wider community

5.2 Ground rules

The 'ground rules' by which Community Asset Transfers are identified, supported, assessed and taken forward are as follows (all apply, although in no particular order of importance);

- A 'community orientated' solution will first be explored, where the Council actively seeks an asset transfer partner
- Any proposed Community Asset Transfer must support the aims and priorities of the Council, represent sound public value, enable good quality, sustainable community provision and remain accessible to the wider local population. The Property will need to be declared 'surplus to requirements' or be 'under used' in terms of its occupancy rates (the only exception to this being where a Community Asset Transfer could be used to achieve wider regeneration objectives/community ownership in a wider scheme). Alternatively, the asset may be listed as an Asset of Community Value
- Any request received for a property that is still required by the council will not proceed past the "initial request" stage (section 6.1 below).
- Where the Property does, or could, provide a rental income to the authority, the council will not generally agree to a Community Asset Transfer unless the terms of that transfer provides an increased level of income to NHDC as part of the transfer agreement. Assets where there is potential for development and hence receipt of capital will first be considered for commercial disposal for the authority, and only subsequent to seeking disposal unsuccessfully will they be released for potential community transfer.

5.3 Nature of proposals

From the start of the application process the Council will be mindful of whether the proposals have taken into account the Council expectations as set out in section 7 'Basis of Transfer'. In considering any approach to the council, applicants should therefore be aware that:

5.3.1 *Maintenance and building management*

The community group will be expected to bear all costs of managing and maintaining the property, and transfer of an interest should not be seen to imply any ongoing financial assistance, either immediately or in the future, from NHDC.

For instance, the organisation or group taking on the building must ensure they comply with all relevant and latest legislation, such as Health & Safety and COSHH (Control of Substances Hazardous to Health). In addition the group would need to either take out buildings insurance on their own behalf, or reimburse the Council with the cost of this should the council agree to continue to insure it. The group would also need to have public liability insurance that it arranged and paid for itself.

More information is available on the management of community assets, and general information on running a successful, but safe community facility from <http://communitymatters.org.uk/content/464/4-Running-your-organisation>

5.3.2 *Asset protection*

Transfer of any asset will normally be through a standard lease agreement of up to 99 years, with the organisation seeking transfer bearing all related costs. Should the organisation cease to exist, fail financially i.e. be liquidated, then the possession of the asset will revert to the council in order that it can be considered for use by NHDC or transferred to another partner agency. Such conditions will be built into the relevant lease arrangements.

5.3.3 *Improvements and alterations*

In terms of maintaining the fabric of any asset, the Council will encourage community groups or those taking on a property to ensure it is maintained or improved for the use

of the community. However, any improvement should only take place with the prior agreement of NHDC in order to ensure that the building or asset remains fit for its original and/or expected purpose. Similarly, as any lease arrangement expires, the Council would require any property to be returned in at least its condition at time of transfer (except where modernisation has been agreed in the interim) but with due consideration of wear and tear.

The asset being transferred should be retained for the original purpose for which it was released to the external group, and it will be the responsibility of those taking on the management of the asset to seek Council permission in advance if there were anticipated to be any variation in this regard during the lease period. The over-riding goal will remain to encourage community engagement in both the management and use of community assets

5.3.4 *Service delivery*

Community groups and third parties must demonstrate and ensure that at least the same standards of service delivery will apply pre- and post- transfer. For community land, i.e. a park or green open space, this could be by use of existing contractors' maintenance conditions, or Memorandum of Understanding/Service Level Agreement, or similar, as applicable, to establish those criteria from the outset.

5.4 Alternative Eligible Organisations

In agreeing any transfer, the Council would need to be satisfied that any application received represented best consideration within the context of a Community Asset Transfer, and that there were no other Eligible Organisations who could demonstrate they could take on its management, or to run it better, at the time of transfer.

Where Cabinet has not already made an 'in principle decision' in relation to the Property as detailed in paragraph 6.4 of this document, then the Council will consider proposals from as many community groups as express an interest. Each group will be invited to submit an initial request and each option will be reported to Cabinet for consideration.

5.5 Legal considerations

Any application will be considered against the Council's legal obligations in respect of property disposal. Namely:

5.5.1 *S123 of the Local Government Act 1972*

A local authority may not dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained unless the local authority has the prior consent of the Secretary of State.

Under a general consent by the Secretary of State, a disposal at less than best consideration is permitted where the undervalue is less than £2million provided it meets any one or more of the following objects:

- (i) the promotion or improvement of economic well-being;
- (ii) the promotion or improvement of social well-being;
- (iii) the promotion or improvement of environmental well-being.

The Council will need to consider whether the terms of the proposed transfer to the community organisation can be justified under these conditions.

5.5.2 *State Aid*

State Aid refers to forms of assistance from a public body given to certain organisations which has the potential to distort competition and affect trade between member states of the European Union.

The European Commission monitors and controls State Aid in the EU. Member States are obliged to notify and seek approval from the Commission before granting State Aid. This gives the Commission the opportunity to approve or refuse to approve the proposed measure. The Council will need to consider whether the terms of the transfer proposed by the community organisation could amount to State Aid and if so, whether exemptions exists that might allow the transfer to proceed legally.

5.5.3 *Property held on charitable trust*

The Council holds some property on charitable trust. Transfers of such property can only take place where the terms of the transfer accord with the terms of the trust and are otherwise approved by the trust sub committee, comply with Charity Law and, if required, seek approval of the Charity Commission.

6. KEY STAGES

In considering any Community Asset Transfer application the Council will seek to follow the process set out below. (See also section 7.2 for the interaction with “Assets of Community Value”). By nature, this can be a complex process as it involves taking on responsibility for a building and enabling community uses. The key milestones in this process are set out with indicative maximum timescales (notwithstanding other priority tasks). Examples from across the country demonstrate that the time lapse between submission of an application and the asset actually being transferred can be considerable. It is essential that all parties recognise and acknowledge this from the outset, whilst also working to achieve as efficient a process as possible.

8 weeks	Initial request i.e. (Stage 1)
6 weeks	Review of proposal
6 weeks or first Cabinet after that time	Initial report to Cabinet
4 weeks	‘In principle’ decision
4 months	Detailed development stage (i.e. Stage 2)
6 weeks or first Cabinet after that time	Report back to Cabinet
2-4 months	Preparation of legal documentation
1-6 months	Transfer
Ongoing	Post transfer -ongoing Partnership and support

6.1 Initial request (i.e. Stage 1)

6.1.1 *Point of contact*

As part of our intention to streamline the process and provide a single point of access, each request should be submitted to the Head of Finance, Performance and Asset

Management who will ensure its receipt is acknowledged, and ensure its content is reviewed with the relevant responsible officer or service. This process may require some initial dialogue with the Community Group to obtain all relevant information before proceeding to “Review of Proposal”.

6.1.2 *Format of request*

Any Community Asset Transfer request coming from a voluntary, community or indeed statutory partner agency will be required to supply an initial Expression of Interest (EOI) providing:

- details of their organisation, including their structure, purpose, confirmation of their experience in project development, ability to manage the Property for the duration of the lease proposed, their governance/formal management arrangements and evidence of financial position/most recent accounts
- address and location plan for the Property
- a narrative of the group’s plans for the Property, including why they wish to take it on, anticipated sources of finance, and how they will ensure it remains available for, and of benefit to, the local community
- details of any proposed transfer terms known at this stage including confirmation as to whether the Council’s expectations (as set out in this policy under section of 8 ‘Basis of Transfer’) can be accommodated
- any local support for the proposal (members of the local community and any elected members in support)

NB – where a property has not been declared surplus to requirements, the interested group will not be able to gain access to non-public areas.

6.1.3 *Initial consideration of request*

During the initial request stage there will be an open dialogue with the community organisation. The Expression of Interest will be considered by the Council’s Asset Management Group who may request further information or clarification in preparation for a review of the proposal, or may reject the request if it is established that there remains a service need for the asset.

This initial request process is estimated to take up to eight weeks from date of receipt until date of definitive response to the requester.

6.2 **Review of proposal**

The criteria that will be applied when considering the Expression of Interest are;

6.2.1. *Nature of organisation*

The application must be made by an Eligible Organisation

6.2.2 *Capacity of organisation*

The applicant must have demonstrated:

- that it has the skills to manage the property
- that it has both capacity and capability to take full account of legislative need, including health and safety, building regs requirements, equality of access etc.
- that it has, or can evidence it can access, the financial resources to manage the facility property for the duration of the proposed lease, including for instance increased maintenance arising from age or when the fabric of any building should deteriorate
- that it has sufficient funds to instruct a solicitor (or can obtain suitable free legal advice) should the transfer proceed to the stage of preparation of legal documentation

- a structure by which the organisation will remain accountable to the community in its management of any asset, including opportunity for public access, and the benefits it will afford
- that it can provide at least the same service as that formerly in existence at a property or open space prior to its transfer

6.2.3 *The property*

The property should meet one or more of the following conditions:

- it has been:
 - declared surplus to requirements by the council; or
 - identified as under used in the definition determined by the Council's Community Halls strategy; or
 - registered as an Asset of Community Value; or
 - it could be used to achieve wider regeneration objectives/community ownership in a wider scheme
- it is not already under contract to be used or acquired by an alternative organisation
- it has not previously been agreed for disposal by Cabinet, unless such option has been attempted and failed

An application which does not conform with the criteria listed in this document will receive a letter confirming it has been unsuccessful, and the reasons for that decision.

Provided an application is successful in its having satisfied the most basic criteria from the list above, it will be for the Asset Management Group to determine the risks, opportunities, financial implications or benefits of the proposal. These issues will be included in the formal report which will be presented first to the Senior Management Team and then to Cabinet. Whilst it will be for the Asset Management Group to consider what additional matters to include in the report, issues that are likely to be considered are identified in Paragraph 5 above.

Having first gained the thoughts of the Asset Management Group (and the relevant service area via the appropriate AMG representative) and SMT, the Head of Finance, Performance and Asset Management and appropriate Service Head will then consult with the Portfolio Holder for Finance & IT, Service Portfolio Holder, and relevant ward councillors, mindful of potential conflicts of interest i.e. their being a trustee of the organisation seeking transfer. Feedback from the ward councillors will then be considered alongside the comments of the Asset Management Group and a report prepared for Cabinet, in order to seek final approval to progress.

The review of the proposal is estimated to take up to six weeks, following confirmation to the requester that it is proceeding.

6.3 Initial report to Cabinet

Whilst the initial request will be made to the Head of Finance, Performance and Asset Management, it will be important to identify the 'sponsoring service'. This will be the service area that provides or could provide a service from the Property.

The role of the sponsoring service is to co-ordinate formal report(s) to Cabinet and recommend whether or not to support the proposal. This service will be supported by the Head of Finance, Performance and Asset Management as the Council's strategic lead on asset transfer.

This report will contain all relevant information to assist Councillors in making a decision in regard to the transfer of the Property. The report will therefore include details of the organisation, its structure and governance arrangements, the Property (value, condition, state of repair, use) and importantly how the wider community could benefit from the transfer, how the community organisation benefits, and any benefits to the Council.

The report must also take account of the benefits and risks of the proposed transfer identified by the Council's Asset Management Group.

It is possible that members will need to be made aware of sensitive information relating to the financial and business affairs of the community organisation and the authority. Therefore part of the initial report to Cabinet may be contained in a separate Part II report.

This process of taking a report to Cabinet is estimated to normally take six weeks (plus the time to the next scheduled Cabinet after that time period).

Requests from other Community Groups regarding the same asset will be accepted up until the point of making this report to Cabinet.

6.4 In principle decision

If Cabinet are minded to support the proposed transfer, then at first a 'decision in principle' will be made.

In effect, it will represent a decision to proceed with exploring further the feasibility of the transfer of the Property to the Eligible Organisation. It will therefore still be subject to a viable business plan being developed and received from the organisation, and narration of their business development process, which will inform the conditions of the lease. Other issues to be resolved at this stage, if applicable, will include preliminary views on any planning permission or change of use required, staffing and TUPE considerations as well as any external funding conditions.

It will be the responsibility of the Democratic Services Manager to inform successful applicants within 28 days of the Cabinet decision being made. In the event that the recommendation is not successful, the Head of Finance Performance and Asset Management will be required to provide the response, within the same timeframe, but with specific reference to the reasons the proposal was not supported on that occasion. If the Community Group wishes to appeal, this process is outlined in 6.10.

6.5 Detailed development stage (i.e. Stage 2)

6.5.1 Preparation of the business plan

During this stage significant work needs to be undertaken by the community organisation toward completion of a viable business plan. The community organisation and the Council will maintain a regular dialogue, during which relevant information will be shared, which will include areas such as any legal requirements or covenants affecting the asset, any condition surveys, financial information and maintenance schedules. This is intended to move the Council and the community organisation to a position where Heads of Terms can be agreed.

This stage will require considerable work by the community organisation to support its application, usually including:

- Multi year Business Plan with full financial forecasts
- Two years accounts for the community organisation (as available and accepting that a newly formed group could not meet this request). The group / organisation must

provide full details of all forms of income and expenditure, by way of accounts certified by the Group’s treasurer and an independent named person with the accompanying minute of the meeting at which the statement of accounts was approved.

- Details of community consultation undertaken
- Outline proposals for development of the Property
- Indication of realistic potential sources of funding (preferably supported by communication or ‘in principle’ support from the funder(s))
- Details of anticipated community benefit

It is recognised that the cost of completing this stage has both financial and time implications for a community group. However, running an asset also has such implications.

Consideration will be given to the level of detailed information actually required in each case, recognising that less information would be expected from a group with modest “stewardship” only ambitions and/or requests involving smaller areas of land.

The Business Plan put forward to the Council by the community organisation will be the single most important document to inform the decision about whether to proceed with the transfer. It will illustrate not only the plans for use of the Property, but also how its use will be marketed, income generated and reinvested, and how this will ultimately benefit the wider local community.

Any business plan presented must therefore contain the following core information, although groups should feel free to include any additional information as they see fit, bearing in mind that this plan will also be required by potential funders;

BUSINESS PLAN REQUIREMENT	BACKGROUND
Summary	Who you are, what your main activities are, what you want to do with the property, how you intend to do it
About your organisation	Track record of financial and operational management, current projects and plans, partnerships and people to which you are already committed, governance arrangements and legal structure. Confirmation of who will be the responsible person(s) for management and maintenance of the property.
Summary of the project	Project objectives, proposed programme for taking on the property, proposed impacts/benefits, proposals for management and operation of the property (paid staff, apprenticeship/job creation, and/or volunteers) and any plans for modernisation/alteration anticipated at this stage
Market	<i>Need</i> – what local needs will the project be responding to, who will the beneficiaries be, how many will benefit in a year (i.e. specific groups or individuals depending on the asset) <i>Supply</i> – who else is delivering similar activities in the area, is there potential for collaboration or competition and how will you respond to this? <i>Demand</i> – who will your ‘customers’ for this facility be? Will you target or increase use by certain ages, groups? Will the facility offer increased or different community opportunities in 10, 20 or more years’ time? Establish who are potential competitors, what services they provide, financial

	<p>implications for new provider and those established already.</p> <p><i>Pricing</i> – what is the rationale for pricing? (i.e. for services provided at the facility, or rental of space etc and any concessions)</p>
Promotion	<p>What will your marketing strategy be? What methods will you choose, i.e. online, leaflet, direct to customer etc and how will you do it? Who will market the facility, your group or an external agency?</p>
Resources	<p>Source of funds to initiate and underpin delivery of the plan, including level of commitment already obtained from funders.</p> <p>Where any funding is being sought from the Council to supplement other funding sources, a full grant bid must accompany the Business Plan.</p> <p>Financial projections, which should include</p> <ul style="list-style-type: none"> - cashflow for first year - budget for 3-5 years - examine profit and loss and any capital expenditure <p>Explanatory notes – explaining the rationale for projections and assumptions made. This should include assumptions about timings and level of commitment for both income and expenditure</p>
Risk assessment/management, and mitigation	<p>Identification of the different risks associated with the project and description of the implications of those risks occurring. Risks should be evaluated both in terms of likelihood that the risk will occur and also the level of impact were it to do so. A description of what the organisation strategy will be to prevent the risks from occurring, or coping with them if they do, should also be included</p>

Any organisation applying will also be required to submit copies of governing documents, summaries of external advice provided, expressions of support from partners, parish/community councils, community groups, or potential funders, and copies of latest certified accounts

6.5.2 *Review of the business plan*

Once any community group has progressed through ‘agreement in principle’ to the ‘detailed development stage’, the full business plan as described at 6.5 above will need to be submitted, first, to the Head of Finance Performance and Asset Management.

The business plan will then be reviewed by a team of officers from relevant services – legal, property services, estates, community facilities, and, where applicable, any ‘sponsoring’ service – in order to ascertain that the business plan provided outlining the operation of the asset is sufficiently sound to ensure the future sustainability of the asset and assure members by report to Cabinet that transfer to the group can be progressed. Part of that review will also be to ensure that criteria previously met to progress any transfer thus far, or plans for operation of the asset, have not changed significantly through the development of the business plan.

It is possible that during this review process officers may need to contact the group applying to seek clarification on individual elements of the business plan; it is in the interest of both the Council and any applicant seeking to transfer an asset that this

progresses without delay, but it may also be necessary once officers are in receipt of additional information, to conduct other checks, including through third parties such as grant funding bodies, to assess sustainability as best possible.

Discussion with the relevant Portfolio Holders will continue during this development process.

This detailed development/business planning stage of the process is estimated to take approximately four months, with the community organisation needing to take the lead

Provided the business plan is sufficiently developed for officers to recommend transfer to Cabinet, any transfer which requires public notification of decision by way of statute, for instance via a public notice in a local newspaper will be advertised accordingly. Any views received in response to this process will be integrated into the report to Cabinet seeking final approval of transfer.

6.6 Report back to Cabinet

A final report, co-ordinated by the sponsoring service, to Cabinet will be presented detailing the steps taken to progress towards transfer and outlining terms and conditions as then agreed. This report will seek Cabinet final approval to proceed to transfer.

6.7 Preparation of legal documentation

If Cabinet decide that the transfer should proceed, then the Council's legal department will prepare draft documentation and send it to the community organisation's legal representative for approval. The nature and scope of the documentation will depend on the community organisation's proposal, and the identity of the property but as a minimum will cover the matters detailed below under 'Basis of Transfer'.

The Council and other party or parties to a transfer agreement need to work in a confidential and commercially sensitive manner regarding the detail of the transaction until such time as the contract is completed. To this end, a confidentiality agreement may be required although any such agreement will take into account the Council's obligations under the Freedom of Information Act 2000.

6.8 Transfer

It may be possible for the property to be handed over to the community group immediately, but there will more often than not be advantage to be gained by a phased handover, allowing the new group time to pick up the various areas of asset management.

6.9 Post transfer – ongoing partnership and support

It is a prerequisite of any transfer that an ongoing and effective partnership must exist between the Council and the community organisation. This partnership work will need to consider any problems which arise in the early stages post-transfer. This will ensure that any capital works required (as funded by third parties, e.g. via grants) can be completed on time and that the terms of lease are being observed. This dialogue could be facilitated by the Council's community services officers, with onward referral of technical issues to other relevant officers.

It will be important post transfer to ensure that, for any building where its former community use is 'protected' following transfer, it remains available to, and to the standard required to provide that service to, the local community. The Council will therefore need to put in place an appropriate level of monitoring to ensure this takes place and to the agreed terms. This monitoring will be completed on an annual basis by Property Services, or appointed agents, to

a prescribed template ensuring that all the terms of the lease are being fulfilled, including routine and periodic maintenance, and accessibility. This will be arranged in consultation with the transferees.

Any concern expressed by council officers, users of the asset, or community groups, that the property is not being maintained or retained for community use as per the lease terms agreed must be submitted to the Head of FP&AM in writing, who will then instigate an interim review to ensure compliance.

The outcomes of both the cyclical and ad hoc transfer reviews will form a short report to the Portfolio Holder for Finance & IT and to the Asset Management Group on an annual basis.

In the event of any continuing failure to comply with the terms of the lease, and in particular concern that the original criteria of transfer are not being complied with, the AMG will provide such advice to the relevant Portfolio Holder in order that the issue can, with their approval, be reported back to the Council's Cabinet for consideration.

Such report back to Cabinet via the Portfolio Holder will also apply where the community organisation experiences financial difficulties or, at worst, insolvency. It will be implicit in any lease agreement that economic viability of those taking on the lease will be required, but at the same time that any failure in financial operations cannot be underwritten by NHDC.

It will be a requirement that any failure to meet the terms of the transfer agreement/lease *may* result in a decision to forfeit the lease arrangement, make alternative arrangements with another potential group, or review whether the council should take the asset back into its own property portfolio. That latter decision will only be taken where there is clear evidence of community need determined under review by the Asset Management Group and evidence contained in strategic documents such as the Council's adopted Community Halls and Facilities Strategy, the Council's Leisure Strategy etc,. Any decision will also be dependent upon the ability of the Council to resource any ongoing revenue cost and future maintenance.

6.10 Appeals process

Applicants will have a right of appeal to any officer decision and will need to submit in writing their reason for appeal, not later than 30 days of notification. Any appeal must be made to the Strategic Director of the relevant council service responsible for that asset.

All appeals will be passed to the Asset Management Group for consideration in the first place, and passed to the Finance & IT Portfolio Holder (as this portfolio includes Asset management) to notify of final decision based on any additional comments or evidence received. This does not however, preclude any unsuccessful proposal being returned to Cabinet in due course for its further consideration at a later date.

7. DISPOSAL OF AN ASSET OF COMMUNITY VALUE

As is noted above, NHDC will consider an application from the community to acquire any asset owned by the authority, not just those listed as an Asset of Community Value. Therefore this policy and framework is designed to operate in isolation from the Asset of Community Value legislation. However where a Community Asset Transfer is being considered under this policy, and the Property is also an Asset of Community Value, it is helpful to consider how the statutory framework for disposing of Assets of Community Value interacts with the timings set out in this policy and framework.

7.1 Notification of an intention to dispose

Before disposing of an Asset of Community Value the owner of the asset is required to notify the relevant listing authority of their intention to dispose. In practice for NHDC, this means that the authority will need to serve formal notification on itself (as listing authority) in order to trigger the statutory process. There is no statutory definition as to the precise moment when an owner ‘decides to dispose’ as the legislation relies on owners to notify the listing authority as early as possible in any sale process in order to prevent delay during the disposal process.

Where NHDC is asset owner formal notification will be given at the earliest practicable date after the authority makes an in principle decision to dispose of the property. This decision may be made in the following ways:

- Land or property has been declared surplus to requirements and officers take a decision to commence marketing.
- Cabinet agrees to market the land or property with a view to ascertaining potential disposal options

Once NHDC has formally notified itself of an intention to dispose of an asset, the Register of Assets of Community Value will be updated to reflect the notification.

7.2 Notification of a wish to be considered as a potential bidder

Any community group considering a Community Asset Transfer will have 6 weeks from the formal notification of an intention to dispose within which to notify NHDC that it wishes to be considered as a potential bidder for the asset. There is no requirement for the community group to provide any further information at this stage and alternative bids could be made by different groups.

The community group’s notification will trigger the ‘full moratorium period’ which prevents the local authority from disposing of the asset until at least 6 months from the date of the initial formal notification. The precise date on which the full moratorium ends will be noted on the Register of Assets of Community Value which is published on NHDC’s website. **Community groups will have until the end of the full moratorium within which to commence stage 1 of the Community Asset Transfer Key Stages as set out in paragraph 6.1 of this policy and framework.**

8. BASIS OF TRANSFER

Whilst every application will be considered individually, the following terms will generally need to be covered by the legal documentation:

Term	Comment
Contractual term	The Council will generally transfer property by granting a leasehold interest for a maximum of 99 years. Shorter leases will be considered depending on local circumstances and a longer lease may be considered in very exceptional circumstances. The Council will not transfer freehold property to a community organisation as a lease provides a mechanism whereby the Council can ensure the provision of community services from the property.
Rent and rent review	In order to ensure that it is receiving best consideration for the property, the Council will need to consider whether any rent should be charged to the community organisation. In all circumstances, including where no rent, or a peppercorn rent, is

	charged at the outset, the legal documentation will need to set out a review cycle by which such charges may be varied and under what conditions. It should be noted that any transfer under this policy and framework is at less than market value.
Permitted use	It will be necessary for the Council and community organisation to agree a list of permitted and excluded uses.
Service requirement	The documentation will need to regulate the services to be provided from the property and the level of service that the community organisation must provide. It is expected that at least the same standards of service delivery will apply pre and post transfer.
Disposing of the property	The Council expects the property to be retained by the community organisation for the original stated purpose. Terms will be included in the legal documentation to prevent, for example, a community building later being used for housing redevelopment or commercial gain.
Repair and decoration	The community organisation will be expected to take on full responsibility for internal and external maintenance and upkeep of the property. This includes funding of maintenance and upkeep.
Initial works to the property	The council will need to consider the community organisations proposals for works to the property. If the Council consents to works being undertaken then this will form part of the legal documentation and conditions may be applied. This could include a requirement to return the building to its original condition at the end of the lease term.
Termination arrangements	<p>The Council will seek to include provisions allowing termination where:</p> <ul style="list-style-type: none"> ➤ the community organisation is in breach of the terms of the agreement. ➤ the organisation cease to exist or fail financially i.e. be liquidated. <p>In both cases the agreement will provide for possession of the property to revert to the Council in order that it can be returned to and used by NHDC or transferred to another partner agency. In addition the community organisation would be required to bear all related costs.</p>

9. FUTURE REVIEW OF THIS POLICY/Framework

As this policy emerges in response to a growing wish for community, voluntary and parish groups to take on the running of local facilities, there may arise in future other potential implications with regard to the transfer of Council assets, such as those most recently contained in the Localism Act. Whilst this policy is intended only to apply to NHDC property transfers, it will be revised every three years to ensure it remains fit for purpose, and remains aligned to the authority's Asset Management Strategy and Assets of Community Value process and guidance.

Background Information

LAND & PROPERTY DISPOSALS: FREEHOLD OR LEASEHOLD

This information is provided to clarify the difference between disposals under:

- a) the Community Asset Transfer Policy, and
- b) other land transactions

LAND

Under the terms of this document (i.e. community transfers at less than market value), **any** land disposals would be by lease.

Outside the terms of this document (and for the purposes of clarity) land sales will normally proceed on the basis of freehold sale. This may be at full market value, or below if the sale is solely for social/affordable housing. Dependent on the values in question, this decision rests either with the Strategic Director for Finance, Policy & Governance, Cabinet or Full Council.

Where land sales are undertaken to facilitate provision of social/affordable housing and planning permission does not specifically limit this land to such development for affordable housing, it will be usually necessary to ensure that the terms of the transfer place such a restriction on the land. There are various mechanisms that may be used to restrict undesirable development on land; the most commonly recognised being a restrictive covenant. However, in recent years there have been many cases where such covenants have not been observed, and land owners with the benefit of those covenants have only received nominal compensation.

In this instance, if a restriction is deemed necessary, the recommended mechanism is to impose a requirement on the buyer to make an additional payment to the Council in the event that the land is used for anything other than affordable housing. Such payment is known as an 'overage payment'. In this instance the proposed overage payment would be the remainder of the market value (that being full market value at the time of purchase) of the land. This would act as a significant deterrent to the buyer and so should prevent undesirable development. However in the event that for any reason the land were not used as affordable housing, then the Council would be protected to the extent that it would receive and retain proper consideration for the land, protecting the best interests of the council taxpayer.

PROPERTY

Dependent on the values in question, this decision rests either with the Strategic Director for Finance, Policy & Governance, Cabinet or Full Council.

Property sales at full market value will be freehold disposals, and are not covered by this document.

Property sales at less than market value will normally proceed on the basis of leasehold disposals. The length of lease and annual rental payable will be dependent on the agreement reached between the Council and the proposed lessee, but can be sufficiently flexible to fulfil the needs of potential grant funders and reflect the status of the Group proposing to take on

the property and their aspirations as captured in their Business Plan. Interested parties should initially work on the assumption of a lease of up to 99 years.

In the event of a leasehold disposal, the tenant will be expected to take on responsibility for all external and internal upkeep, maintenance and operating costs.

For disposals below full market value, NHDC would wish to retain ultimate ownership of the property asset for the following reasons:

- As landlord, the Council retains registered title and therefore retains ultimate ownership of the asset
- The Council retains a role in agreeing future changes of use or structural alterations to the building
- A leasehold agreement allows the council to include certain conditions (e.g. use as a Polling Station at no charge to the Council) or restrictions on its use, and retain sufficient access to the premises to ensure compliance
- Periodic rent reviews will reflect changing needs and/or uses. The intention being to charge a proportionate rent, which may be at a peppercorn or higher to reflect the status of the Group proposing to take on the property and their aspirations as captured in their Business Plan.
- No assignment of the lease or under-letting would be allowable without the consent of NHDC as landlord.
- Until the end of the lease period the leaseholder has the right to remain in occupation as an assured tenant paying an agreed rent to the owner.
- The asset would revert to the Council should the lessee default on the lease, again protecting both the interests of the taxpayer and the building from falling into total disrepair from abandonment