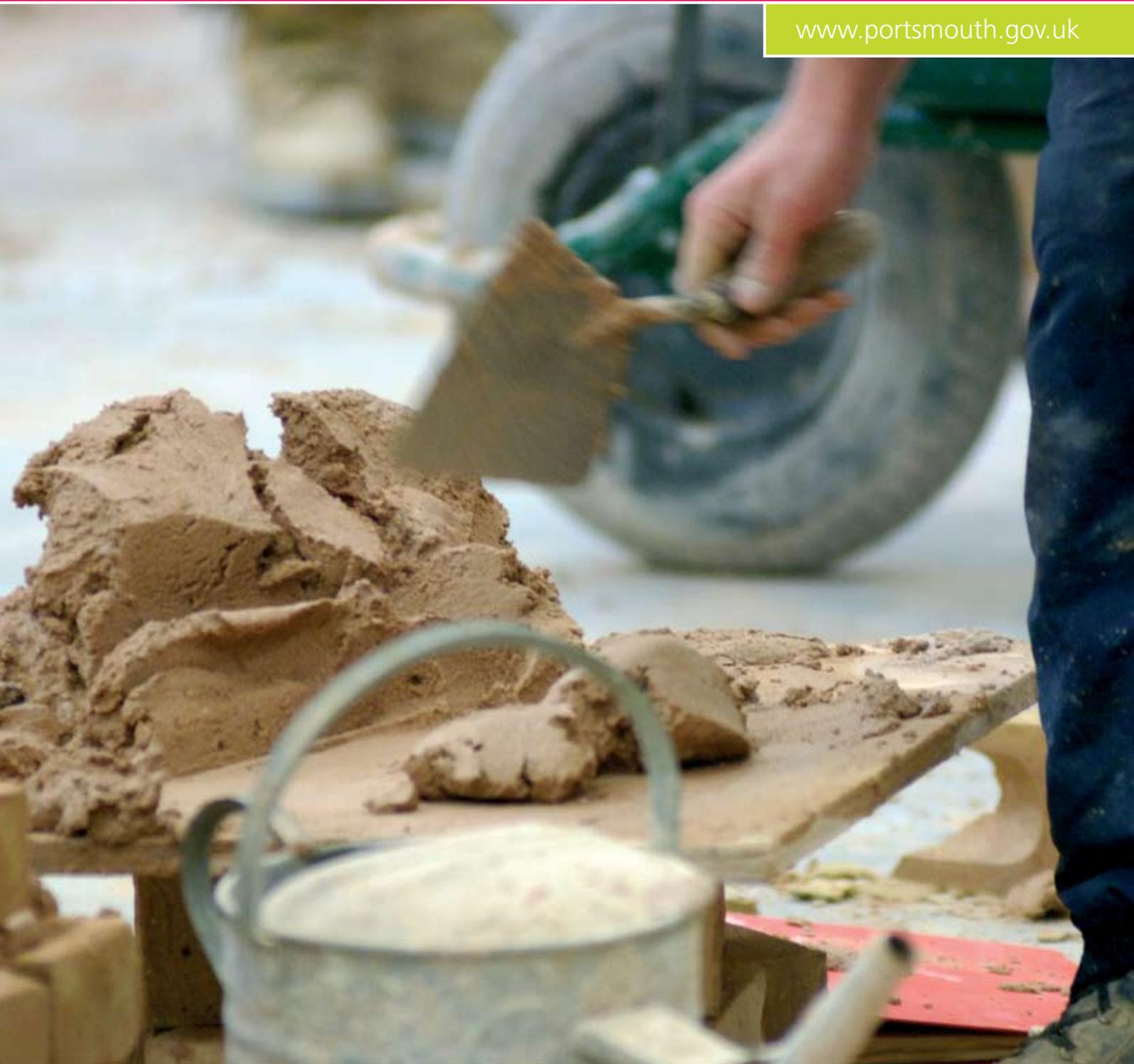


Community Management and the Ownership of Assets

Portsmouth City Council's Asset Transfer Policy

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Acknowledgements

Development Trust Association publications

Asset Transfer documents of the following Councils

- Derby City Council
- Sheffield City Council
- Devon County Council
- Leicester City Council

The Quirk Review - Making Assets Work

Tony Rich – Rich Regeneration

IPF Property Network

Developed in partnership Democratic & Community Engagement Service, Asset Management Service and Third Sector colleagues.

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1. Introduction

- 1.1 The Council has been selected as one of the 14 Local Authorities Pathfinders areas to support the development of the transfer of assets to third sector as part of the Government's agenda to encourage devolution to local people and communities. This entails the Development Trust Association (DTA) providing a limited amount of free consultancy to support the development of our asset transfer policy criteria and a feasibility study for a Third Sector Centre of Excellence in the City. This proposed policy takes into account framework documents produced by DTA and other organisations.
- 1.2 The Democratic and Community Engagement Service are leading on the demonstrator project in partnership with the Asset Management Service (AMS) and the Third Sector.
- 1.3 Use and occupation of Council owned premises by the Voluntary sector is not new. Currently some 80 properties are used / occupied by a variety of organisations ranging from voluntary support groups to sporting and youth organisations. The purpose of this policy framework is to build upon current experience and best practice and provide a clear policy framework for responding to any requests for asset transfer.
- 1.4 The Council needs to fully consider the risks and benefits of asset transfer as part of its overall corporate asset management planning process. The Quirk review concluded the driver for asset transfer is not the disposal of assets but the empowerment of communities. The Quirk report however does make clear that it expects the transfer of assets, not liabilities.
- 1.5 Due to the diverse nature of the Council's property holdings which includes land, buildings, structures, and monuments it is clear that one policy will not fit all circumstances. However a number of common themes will apply eg; nature and capacity of the applicant, adoption of robust option appraisals including financial implications to the authority, contribution to

corporate objectives, assessment of risks and sustainable business cases are essential exercises before contemplating the transfer of any asset. The Council therefore needs a clear policy framework against which to judge any request for asset transfer.

- 1.6 The intention of this Policy Proposal is that it will be shared with the Third Sector.

2. Purpose of the strategy

- 2.1 The purpose of the strategy is to set a transparent and positive framework to enable where appropriate asset transfer from Portsmouth City Council to the third sector to happen. To achieve this it is necessary to demonstrate how community asset transfer supports Council and wider community objectives.

3. National policy context

- 3.1 The Local Government Public Involvement Act 2007 signalled the next stage of public sector reform. It aimed to create strong, prosperous communities and deliver better public services through a re-balancing of the relationship between Central Government, Local Government and local people by giving residents a greater say over local services.
- 3.2 One element was the transfer of property assets to the community, based upon the view that there are realisable benefits to be obtained from giving the community a greater say in their area. Asset Transfer being defined by Department of Communities and Local Government as "passing ownership or management of a building or piece of land from a public sector body to a third sector organisation".
- 3.3 Barry Quirk, Chief Executive of Lewisham Council, was invited to lead a team to review the issues around asset transfer and his report, together with the Government's response, was published in 2007. The team examined ways to maximise the community benefits of publicly owned assets by considering options for greater transfer of asset ownership and management to community groups. The report highlighted that what is required is not legislation but

guidance to assist in the understanding and use of existing powers, being clear as to the risks associated with the process and learning to manage them effectively. The clear lead from Government is that local management and ownership of assets makes for strong communities.

4. Council's Disposals Policy

- 4.1 Officers are currently preparing a revised Acquisition and Disposal Strategy, which will reflect current guidance and legislation. It is proposed it will also address any implications arising from this policy proposal including;
- An initial option appraisal will be carried out to inform decisions on future disposals. e.g. capital investment for continued operational use by another service, income from rental, disposal to support the capital investment programme, transfer of asset to the third sector, opportunity for collaborative working. Appraisals will also need to address economic, regeneration, and sustainability issues.
 - The priority will always be to obtain the best outcome to help deliver Council objectives and this will require balancing the best price reasonably obtainable to support the Capital Programme against the benefits being offered through alternative use including asset transfer.
- 4.2 The Council does have the opportunity under the General Disposals Consent 2003 to sell or lease general fund assets at less than best consideration in cases where it can demonstrate and attribute value to wellbeing benefits that would arise. Any disposal for less than best consideration would need to be transparent justifiable and have the appropriate Cabinet approval. A risk register of the legal issues which will need to be addressed as part of this agenda is being prepared.

5. Local policy context and links to other strategies

- 5.1 The operation of this policy will need to have regard to the desired outcomes in other Council strategies including;
- Sustainable Community Plan
 - Council Plan
 - Local Development Framework
 - Empowerment and Engagement Framework
 - Corporate Asset Management Plan
 - Vision for Portsmouth
 - The Portsmouth Compact
 - Capital Strategy

6. Aims of Community Asset Transfer

- 6.1 The Council's Property Portfolio includes land, buildings and other structures held to support direct service delivery, support delivery by partners including the voluntary sector, stimulate economic activity and regeneration, support the Councils budgets and also acting as custodian of community assets. Through the ownership of assets it achieves a variety of different economic, regeneration, social, community and public functions.. For some of these assets community management and ownership could deliver:
- benefits to the local community¹
 - benefits to the Council and other public sector service providers²
 - benefits for the organisation taking management/operation³

¹ Benefits to the community can arise from: building confidence and capacity; attracting new investment and reinvigorating the local economy; and securing stronger, more cohesive and sustainable communities (See Quirk Review Section 4)

² Benefits to public sector providers can arise from: the creation of a new partner able to tap into additional resources; the ability to engage with a more cohesive local community; new service provision complementing and augmenting statutory services (See Quirk Review section 4)

³ Benefits to the organisation include: financial security; increased recognition; power; management capacity and organisational development, and through having a secure base opportunities to expand and diversify. (See Quirk Review Section 4).

- 6.2.1 The Quirk Review considered that the transfer of assets would aide community empowerment agendas, open up new sources of finance and extend the use of existing facilities to a wider community.
- 6.2.2 Therefore the Council should inter alia be seeking the following benefits from asset transfers;
- Community empowerment
 - Area wide benefits for the citizens of Portsmouth
 - A sustainable third sector
 - Economic development and social enterprise
 - Improvements to local services
 - Value for money
 - Delivery of Corporate Objectives

7. Principles of our asset transfer policy (better outcomes for customers and citizens)

- 7.1 Our policy on community asset transfer is underpinned by the following principles:
- Any proposed asset transfer must support the aims and priorities of the Council as set out in adopted policy e.g. Local Strategic – Partnership, Community Plan and Local Area Agreements
 - Recognise the Council's dual but independent roles as a supporter of the third sector but also as a steward of publicly owned assets.
 - All Council departments will endorse and help to deliver this agenda
 - The Council will take a Strategic approach to Corporate Asset Management Planning by reviewing its portfolio and undertaking option appraisals which will include examining the transfer potential of its assets.
 - The Council will adopt a transparent corporate process for asset transfer which will include a clear point of first contact and clear stages and timescales for each

party. Guidance is currently awaited from the Department of Communities and Local Government.

- The Council will adopt an agreed method of assessing the benefits of the transfer (linked to corporate priorities) which allows a comparison with market disposal. In this regard further advice is awaited from the Development Trust Association (DTA) and Government.
- If any disposal at less than best consideration is pursued it will be accompanied by a legally binding service level agreement (SLA) or other appropriate agreements identifying the benefits and how these will be monitored and measured, together with the remedies available to both parties if the legally binding SLA or other mechanism is not met.

8. Criteria to be adopted for considering requests for Community Asset Transfer

- 8.1 The asset transfer decision involves the assessment of a number of criteria including considering the options arising from:
- Raising of capital receipts for future investment in direct service provision.
 - Benefits to respective parties eg Council, Community, Third Sector generated by the transfer of the asset to the community
 - Loss of any existing income
 - Potential loss of opportunity costs arising from transfer
 - Retention of assets for direct service delivery
- Requests for the transfer of Council owned assets would be considered where all of the following criteria are met.
- a) The Applicant must be:**
- Community-led, i.e. its governance arrangements must ensure that it has strong links with the local community and that members of the community are able to influence its operation and decision-making processes;

- A Voluntary and Community Sector organisation - i.e. it must be a legal entity which is:-
 - Non-governmental - not part of the statutory sector
 - It must exist for community / social / environmental benefit
 - Non-profit distributing - it must reinvest any surpluses to further its social aims / community benefits;
 - Has community benefit objectives
- Appropriately constituted, for example, a registered charity, a community interest company or a charitable incorporated organisation, a not for profit company; a co-operative. Such constitution allows the management /ownership of buildings and or provision of services
- Demonstrate good governance by operating through open and accountable co-operative processes, with adequate monitoring, evaluation and financial management systems;
- Can demonstrate it has the skills and capacity within or available to its managing body to effectively deliver services and manage the asset;
- Embrace diversity and work to improve community cohesion and reduce inequalities
- Abide by the principles and undertakings in the Third Sector Compact
- Engaged in economic, environmental or social regeneration in Portsmouth or is providing a service of community benefit in line with the Council's core priorities
- Demonstrate management experience and or expertise
- Management proposal includes a specific plan on health and safety issues and compliance with legislation and any statutory requirements arising from ownership or management of the building and or running a service.
- Applicant has demonstrated how they will address any capacity buildings requirements within their organisation.

- Provide copies of the accounts of the organisation .
- Number of years established and or track record of delivering services or property management
- The organisation has a clear purpose and understanding of the activities it wishes to deliver.

b) The Asset

- A legal interest owned by the Council from which the transferee can demonstrate community benefit.
- The asset is in the freehold/leasehold ownership of the Council.
- An options appraisal has been carried out and approved by Corporate Asset Management Group to identify that the asset is suitable for community transfer as the sole or one of the viable options. This process will be adopted in response to requests or properties identified through internal reviews.
- The asset is not currently needed or identified for future investment value or use for direct service delivery, which could best be provided directly by the authority rather than through the community.
- The transfer will deliver the strategic priorities of the Council.
- The asset is fit for purpose and would not impose an unreasonable liability to the Third Sector organisation or the Council
- Transfer or management of an asset would not be contrary to any obligation placed on the Council

c) Proposed use

- The proposed use will demonstrably help in the delivery of the Council's community strategy, corporate needs and facilities for the use by the people of Portsmouth.
- The proposed use will ensure extensive and inclusive reach into the community and will be open to all.
- The proposed use will maximise opportunities for income generation to ensure sustainability, for example,

through social enterprise and the hiring of space and facilities

- There is both a need and demand for the activities being proposed and consideration is given whether or not this is being satisfactorily addressed by another organisation.
- The applicant has established how much space it requires to deliver its proposals, and how they will make good use of such facilities.
- Clear management structure demonstrating how premises will be managed on a day to day basis, and legislation affecting occupation of premises

d) Business Plan and Finance

Fundamental to the success of any transfer is the applicant (s) demonstrating to the Council that they have a clear rationale backed by a robust business-case of their ability to manage the asset effectively. This needs to include an assessment of the financial and organisational capacity of the organisation. Best Practice is encouraging Councils to develop their own social benefit assessment framework. This is still a developing area and further guidance is expected shortly. At this point in time the DTA indicated the questions which the Council should be addressing include:

- How the need for proposed transfer and use of asset has been identified – what needs will the transfer meet?
- Assessing the Benefits case as a result of transfer– what will be different and how it will be measured
- Capacity of the Third Sector Organisation to acquire and manage the asset – reference to any accreditation's achieved e.g. Community Matters 'visible' standards or Development Trust Association 'healthcheck'
- Business case for future uses for the asset e.g. cashflow forecasts
- Type of transfer sought and why
- Statement from current owning department supporting the proposal

- Terms of any legally binding Service Level Agreement or any other legal agreement
- Capacity building plan and how this will be delivered
- Details of how the proposed use of the asset will be monitored and details of 'fall back' arrangements should the transfer prove to be not sustainable

In terms of proposing a business case for consideration by the Council any applicant will need to clearly identify

- At least 5 years revenue or capital funding plans and projections of managing and operating the asset.
- How it will invest in and maintain the asset including a specific plan as to how all health and safety responsibilities will be met.
- The planned outcomes and benefits to result from the asset transfer.
- Demonstrated a community governance structure with capability to sustain asset transfer and has identified necessary capacity building requirements within their organisation.
- Whether they would wish to start on the phased transfer of the asset and agreed milestones to justify progression to the next phase.
- Where transfer is requested at less than market value either freehold or leasehold the applicant has justified and quantified the benefits to the community and Council to justify the subsidy. The Council will separately need to satisfy that any transfer is within its legal and financial powers
- Any sources of finance asset transfer will release or attract
- Track record of delivering services and or managing property
- Financial sustainability and forward planning.
- Have established how much space is required and its potential usage

9. Consideration by the Council

- 9.1 In view of the diverse nature of assets within the Council's ownership, there is no one disposal methodology that suits all circumstances. However the Council's asset transfer policy will be that asset transfers will be by means of leases or licenses. Freehold transfer will only be considered in exceptional circumstances, and must be the subject of a specific report to Council to gain approval. Nature of Tenure offered will be determined on case by case basis having regard to the particular circumstances of the project, strength of the applicant and sustainability of the business case etc.
- 9.2 As the management of assets and the support to communities falls across a range of Council departments and services it is considered that the asset transfer process be initially managed by cross service internal officer group Asset Transfer Steering Group (ATSG) .
- 9.3 In cases where there are 2 or more groups are interested in a property a staged selection procedure will need to be adopted. It is proposed that all transfers are subject to open and public invitation to make an informal expression of interest. That the initial consideration of the case would be by the Asset Transfer Steering Group who would report the options to the Asset Management Group for consultation. The final decision will be taken by Cabinet.
- 9.4 A critical aspect of this policy will be the mechanism to measure the capacity of the organisation in managing any asset transfer and separately the community impact and benefits of asset transfer in terms of economic, social, or environmental well being of the community. This is a developing area and further guidance is expected from the DTA and or Government early in 2009. Once available this will be considered and where appropriate added to this policy proposal.

9.6 Rental / Capital Payments for use of the Assets

- 9.6.1 The decision whether to charge an open market consideration for the benefit of an interest in an asset will be determined on a case by case basis. Factors influencing such a decision will include ;proposed uses, extent of revenue producing opportunities, benefits to the community. In all cases involving transfer of ownership /occupation appropriate legal mechanisms will be put in place to protect the Councils financial position. Any proposed asset transfer at less than best consideration will be subject to formal valuation in accordance with the Royal Institution of Chartered Surveyors Valuation Standards.

9.7 Legal Issues

- 9.7.1 Issues arise or may arise with regard to
- Domestic law applicable to disposals at an undervalue
 - EC law applicable to procurement issues, treaty obligations and state aid
 - Domestic law relating to judicial review
 - Domestic law applicable to employment contracts

All the above will need to be considered on a case by case basis and a guidance note is to be prepared by legal services.

10. Risks to be addressed

- 10.1 The Quirk report recognised that there was a clear consensus between the public sector and third sector that risks exists. It is therefore important that both the Council and the receiving organisation are sufficiently equipped to understand, assess and manage the risks that are inherent in the process of asset transfer. Therefore this policy should be mindful of the work undertaken by the Quirk Review and DTA in addressing such issues. The DTA are in the process of developing a risk transfer toolkit as set out in the below that highlights areas of risks and proposes a number of mechanisms to manage them.

Risk	Potential Solution
Organisation does not have the capacity /skills to take over and manage the asset	Agree expectations document at the outset incorporating skills audit and management plan, organisational development plan, detailed business plan, ongoing management plan, marketing plan, level of support offered and agreed at the outset
Community organisation cannot raise the cash needed to purchase or refurbish the asset offered	Identify extent of repair cost by detailed survey, prepare detailed business plan, identify and secure funding sources, phased transfer in line with finances available
The ability of the Council to support a particular project is limited by state aid rules or other restrictions or legal constraints which will impact on organisation's operation of the asset impact	Identify up front any issues that need to be addressed and allow time in programme for resolution
Inability of the community organisation to manage the asset effectively	Robust business plan identifying secured revenue streams, agreed organisational development plan, skills audit and training development plan
Asset not used in public interest, taken over by an unrepresentative or unaccountable minority, access to the asset is not inclusive	Adoption of ongoing expectation document, legally binding service level agreement or other legal agreement, council board members. Local Authority to ensure management group reflects diversity of local community interest
Community organisation is not able to invest in the asset to meet its longer term liabilities for upgrading and cyclical maintenance	Robust long term business plan. Agreed organisational development plan. Organisation has demonstrated appropriate financial skills or access thereto. Minimise liabilities through appropriate legal structures.
Reliance of smaller receiving organisations on volunteers through lack of resources or professional/ support staff	Adequate support/advice on organisational structure /management. Use of role descriptors for trustees.
Fragmented ownership of assets across an area could impair strategic objectives of local authority and/or its LSP partners	Council adopting strategic approach to use of its asset base. Use of LSP to engage /encourage joint working
Confusion and lack of awareness over roles, responsibilities and liabilities between landlord and community organisations	Use of expectations document at the outset setting out roles and responsibilities of each party.
Community empowerment objectives of the receiving organisation are vague, weak, or not aligned to those of the Council	Organisation needs to undertake community needs survey to assess the needs /interests of the community; working in partnership with other groups
The Council does have sufficient capacity either financially or through personnel to support the initiative	Support for the third sector should be part of a broader partnership with the third sector. Role of local authority to be set out in expectations document



- 10.2 It is proposed at the outset of each request from the Third Sector that the Council agree an Expectation Document with the proposed transferee. Such a document would clearly set out the respective roles and responsibilities of each party together with appropriate milestones to address the risks identified above and outcomes to be delivered by the project. It is important an exit strategy should also form part of this document. The nature of tenure offered would be linked to milestone events.
- 10.3 The Council will manage these risks by using one or more of the following;
- Legally binding Service level Agreement or other legal agreement
 - Form and length of tenure to be offered
 - Clawback arrangements
 - Adoption of good practice learnt from others and the previous transfer of Council's assets.
 - Lease restrictions.

11. The Asset Transfer Process

11.1 The DTA have produced guidance setting out the stages which in their view could be considered by Local Authorities in handling any application for Asset Transfer from community groups. This has been adapted to reflect our policy proposal.

Asset transfer process – key stages		
Stage	Who is responsible	Timescale for completion (to be added following further discussion)
1. Asset identified for potential transfer.	local partners and community.	
2. Assets for potential transfer identified by Corporate Asset Management Plan and needs assessment arising from the above.	Council following asset review.	
3. Once an asset has been identified as potentially suitable for management / transfer an initial scoping meeting with Asset transfer team is held to identify whether proposal would be in accordance with adopted Council Policy If so discuss expectation document and complete initial business case.	Asset transfer group /Community Groups.	
4. Complete initial assessment using assessment framework – establish level of discount (if any applicable,) note framework still under discussion.	Asset transfer group refers recommendation to Corporate Asset Management Group.	
5. Recommendation on transfer – yes refers to Members; no, provide full feedback.	Corporate Asset Management makes recommendation.	
6. Decision on transfer	Member Cabinet Group	
7. If yes, negotiate terms and legal documentation.	Council legal and property departments and community organisation.	
8. Agree legally binding SLA and or other legal agreement and monitoring arrangements - successfully transfer asset.	Council legal and property departments and community organisation.	
Source: Development Trust Agency		

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