

Report of the Director of City Development

Report to: Executive Board

Date: 5th September 2012

Subject: Community Asset Transfer

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Council has experience of Community Asset Transfer projects partly due to the interest and the development of social enterprise in the city; sometimes linked into partnership with third sector organisations in the city to deliver local services differently; and partly because the Council has chosen to divest itself of some of its non-operational assets following service changes that have led to buildings becoming vacant and surplus to requirements.
2. This report follows on from the draft Community Asset Transfer Policy submitted to Executive Board on 7th March 2012. It outlines the outcomes of the consultation exercise that has taken place.
3. Consultation has been positive and has led to a number of proposed amendments to the policy.
4. The revised policy reflects the Council's proactive approach to Community Asset Transfer and how it can contribute to the City Priority Plan. It also reflects the risks to both the Council and community organisations when undertaking Community Asset Transfer; the need for flexibility; and the possibility of financial support when Community Asset Transfer can result in efficiency savings to the Council.
5. The Council currently assesses Community Asset Transfer proposals individually based on the strength of business plans, taking into account a mix of service, Area Committee and Ward Member support along with corporate considerations including the potential alternative used for the site within the Council or for sale.

This policy will provide consistency and guidance to communities, Members and officers about the process and will allow more consistent assessment.

6. Community Asset Transfer is a valuable part of supporting and sustaining the third sector and the emerging Leeds enterprise culture. It can bring regeneration and service benefits to Leeds communities. It supports the Leeds Vision aspiration that Leeds will 'be fair, open and welcoming and that all Leeds communities will be successful'. The Government's Big Society concept and Localism agenda encourage communities to seek empowerment including owning assets that are important to them.

Recommendations

7. Executive Board is recommended to consider and agree the Community Asset Transfer Policy and Framework documents attached as Appendix 1 and Appendix 2 for use in developing and considering Community Asset Transfers.

1.0 Purpose of this report

- 1.1 This report follows on from the report submitted to Executive Board on 7th March 2012 which set out a draft Community Asset Transfer policy. It summarises the results of the consultation exercise and presents a revised Community Asset Transfer Policy for Executive Board consideration.

2.0 Background information

- 2.1 Community Asset Transfer is a valuable part of supporting and sustaining the third sector and can bring regeneration and service benefits to Leeds communities. It supports the Leeds Vision aspiration that Leeds will 'be fair, open and welcoming and that all Leeds communities will be successful'. The Government's Big Society concept and Localism agenda encourage communities to seek empowerment including owning assets that are important to them.
- 2.2 In recent years a number of Community Asset Transfer projects have come about, partly a reflection of changes in the way the Council delivers its services more in partnership with third sector organisations and partly because the Council has chosen to divest itself of some of its non-operational assets following service changes that have led to buildings becoming vacant and surplus to requirements.
- 2.3 Community Asset Transfer involves leasing or selling property to third sector organisations, sometimes on a subsidised basis, to enable local people to play a stronger role in meeting the needs of their communities. In Leeds it helps us meet the City Priority Plan aim "All Leeds communities will be successful" and the principles of the Compact for Leeds.
- 2.4 An agreed approach is needed so that Elected Members, Council officers and organisations interested in Community Asset Transfer all understand what we are trying to achieve. The policy gives us a framework within which to deal with Community Asset Transfer requests and enables us to consider Community Asset Transfer proactively to meet service or community needs. It aims to assist officers and Elected Members of the Council to consider the benefits and risks of each proposal in a consistent manner. It will also assist communities and organisations pursuing Community Asset Transfer to understand the requirements and the need for robust proposals.
- 2.5 The 7th March report set out the background to Community Asset Transfer, its benefits and risks and the need for a consistent approach to inform decision making. A draft policy was attached and it was agreed that a consultation period would begin on the draft policy.
- 2.6 Consultation began on 24th April 2012 and ran until 6th July. Consultees were sent copies of the policy and asked to provide comments. Consultees included local community organisations, third sector partnerships, organisations that have previously been involved in Community Asset Transfer and internal Council services. Consultation with local community organisations was managed on the

Council's behalf by Third Sector Leeds who held a consultation workshop and have provided a collated response.

3.0 Main issues

Summary of Main Responses

- 3.1 The principle of a policy and its ability to provide consistent decision making was universally well received. However, a number of respondents highlighted that the policy read as though it was a response to a drive from Central Government or driven by efficiency savings. The policy has been amended to clarify that Community Asset Transfer is driven by the City Priority Plan aim "All Leeds communities will be successful" and the principles of the Compact for Leeds.
- 3.2 Some respondents felt that the Council was prepared to transfer assets, but that there needs to be an acknowledgement of the financial risk faced by groups taking over buildings, particularly those that are investing in refurbishments and taking out loan finance to fund such works. The policy now reflects this risk and acknowledges that in cases where efficiency savings are made as a direct result of a Community Asset Transfer, the Council will consider what support it might give the new venture.
- 3.3 The requirement for a business plan and five year cashflow forecast was mentioned as an issue. It was felt the policy should acknowledge the difficulty an otherwise experienced community organisation may have in putting a proposal together in a business plan format when they would ordinarily plan in a way more suitable for the not-for-profit sector. On balance it is felt that a business plan is required to prove viability and that support is available for groups from third sector support providers to help them produce business plans. However, the cashflow time period has been reduced from five years to three. The policy makes clear that the business plan must show a convincing case that the proposal is viable and, while highlighting organisations that can provide support, makes clear that ultimately if the Council is not convinced of the viability of a proposal for Community Asset Transfer, the proposal will be declined.
- 3.4 There has been other feedback on the detail of the policy and where appropriate amendments have been made to reflect this. The revised policy is attached at Appendix 1 and the Community Asset Transfer Framework is Appendix 2.
- 3.5 A Community Assets Group will be established and include senior officer representatives from across the Council. The group will coordinate Community Asset Transfer, identify opportunities for proactive proposals and consider the geographical locations of Community Asset Transfer projects to identify and support areas that might not have the social capital to put a proposal together. The group will also look at other community asset issues including Community Right to Bid, links to other areas of the Localism Act, consider and provide advice on community asset issues in relation to service transformation and feed into specific projects, such as Community Centre Review.

4.0 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Consultation began on 24th April 2012 and ended on 6th July. The main community consultation was carried out on the Council's behalf by Third Sector Leeds. Other consultees included organisations that had previous experience of Community Asset Transfer, third sector support organisations and Council Directorates.

4.2 Equality and Diversity / Cohesion and Integration

4.2 By its nature as a corporate policy aimed at communities throughout Leeds, the policy will apply across all communities. Individual proposals for Community Asset Transfer will be screened for equality, diversity, cohesion and integration to assess if they have any implications for the equality characteristics. An EIA Screening Form has been completed in relation to the proposed decisions being taken.

4.3 Council policies and City Priorities

4.3.1 This policy contributes directly to the Vision for Leeds and the City Priority Plan priorities that Leeds will be fair, open and welcoming and that all Leeds communities will be successful. The strategic outcomes for these priorities include:

- increase a sense of belonging that builds cohesive and harmonious communities;
- Leeds will be a city where there is a strong community spirit and a shared sense of belonging, where people feel confident about doing things for themselves and others;
- local people have the power to make decisions that affect them;
- people are active and involved in their local communities;
- improved levels of enterprise through creativity and innovation;
- there are more community-led businesses that meet local needs.

4.4 Resources and value for money

4.4.1 The policy itself has no direct implications for resources and value for money. However, the majority of Community Asset Transfer proposals are for leases at less than best consideration and in such circumstances the value of the property needs to be considered alongside the service and community benefits the proposal will produce. It is likely that any subject property would otherwise be disposed of on the open market and the opportunity costs from not taking this course of action will be included in Community Asset Transfer assessments.

4.4.2 There are implications from service transformation, Community Right to Challenge and closure of services that have the potential to attract community interest in assets which could impact the capital receipts programme and revenue budgets. The policy sets out when Community Asset Transfer may or may not be applicable in such circumstances and what the alternative approaches may be.

4.4.3 Community Asset Transfer projects require varying amounts of officer support, both from dedicated community assets officers in Asset Management and from officers in

sponsoring services. This is very often dependent on the experience and capacity of the community organisation. Community Asset Transfer projects will be managed by community assets officers. It is part of the sponsoring service's role to provide any specialist support in terms of the service being provided.

- 4.4.4 It is expected that more Community Asset Transfer proposals will involve existing community assets, such as operating community centres. At such centres under Council management, the charging policy does not necessarily link to cost recovery of running the facilities. This very often results in groups paying below market rate, or even no rent. There are also some Council departments that may not be charged for historic reasons. However, when a community centre is in community ownership, cost recovery will be essential for the business plan. Community organisations can't be expected to subsidise Council services.
- 4.4.5 To ensure consistency of approach, all Community Asset Transfer requests and proposals are managed corporately in Asset Management.
- 4.4.6 The main issue raised as part of the consultation with Council services was Human Resources implications where a Community Asset Transfer had implications for Council employees. Although past experience is that it is rare for the transfer of a building to lead to Council staff transferring to the employ of a community organisation, the implications from such a transfer are significant. Therefore, as soon as the possibility of a Community Asset Transfer is identified, the relevant Head of HR should be contacted by the project/service lead to discuss the context/background, timescales and scope of the proposed transfer, and to identify the potential scope of any HR/people related issues (for example, whether the transfer would also involve any possible transfer of service and/or LCC employees). The HR Service will work with the project lead to identify the impact on:
- Any staff who may be affected by the transfer (e.g. under TUPE arrangements);
 - any other people who may be affected (e.g. casual staff, staff working under temporary arrangements; members of the public etc);
 - All aspects of health and safety linked with the asset that is proposed to be transferred;
- 4.4.7 The HR service will work with colleagues in the sponsoring service, Legal Services, and other services as appropriate, to advise on the risks and to establish robust risk management processes to manage and minimise the risks to the Council. The HR service will also work with the transferring service to ensure appropriate Trade Union engagement is undertaken where it is anticipated that the proposed Community Asset Transfer may affect any Leeds City Council employees. Sponsoring services will work with all relevant parties to develop and implement appropriate contractual documentation, including any indemnities that may be needed, to protect the Council's interest following the transfer of the asset to the transferee. This approach was been agreed by Resources Management Team as part of their consultation response.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Under section 123 of the Local Government Act 1972, local authorities have a duty to dispose of land and buildings (including the sale of freeholds, granting and assigning of leases and the granting of easements) for the best consideration reasonably obtainable. However, discounts of up to £2m may be agreed by local authorities under the General Disposal Consent (England) Act 2003, subject to them being satisfied that the disposal will secure the promotion or improvement of the economic, social or environmental wellbeing of the area. Use of other discretionary General Consent powers are also available to local authorities for specified housing purposes. Where use of these powers is to be used, the Council must be satisfied that the lease or disposal terms commit the organisation to delivery of the social, economic or environmental benefits within a defined time period to ensure that the subsidy is justifiable.
- 4.5.2 In some circumstances Community Asset Transfer may have EU State Aid implications. Generally the De Minimis exemption could be used to enable transfer. This exemption allows that aid provided that has a value less than €200,000 to be exempt from State Aid regulations, as long as the total value of De Minimis aid received in any three year period is less than €200,000. If De Minimis doesn't apply, then it is likely for purely local community projects that the State Aid criteria that the transfer has the potential to affect trade between EU member states would not be met, so the aid would be permissible. A very wide interpretation is used for aid having the potential to affect trade between members states so if there is any doubt then legal advice must be sought at the earliest opportunity.
- 4.5.3 The provisions of the Competition Act will have to be taken into account when considering any transfer at less than best consideration.
- 4.5.4 By the nature of the long term agreements required for Community Asset Transfer projects, legal agreements are required to protect all parties. This can lead to considerable legal costs, especially for community organisations who by their very nature generally have limited resources to invest in such costs. To try and minimise such fees for community groups, a template for Community Asset Transfer will be produced that protects the Council's position while also providing the usual requirements of community groups and their funders, particularly around assignment and use.

4.6 Risk Management

- 4.6.1 Community Asset Transfer requests are likely to increase with the Big Society and Localism agenda. A Community Asset Transfer policy will reduce the risk that proposal are assessed inconsistently.
- 4.6.2 Each Community Asset Transfer project will present its own unique risks, but some will be common to most. There will be risks in terms of project failure and the future of assets. These risks will be addressed throughout proposal development with organisations developing Community Asset Transfer proposals and secured in any resulting lease agreements including restrictions on use and assignment.

5.0 Conclusions

- 5.1 Community ownership of assets is a growing area of interest and is promoted as part of the Big Society concept and Localism agenda. It can be a major regeneration catalyst and provide valuable facilities in isolated communities or communities in need. The proposed policy will provide a framework for assessment to be undertaken in a consistent manner to enable Members to consider the merits of each proposal set against other options, such as sale on the open market and reinvestment of receipts against capital funding priorities. It will also provide services with a policy to consider in terms of forward planning and considering how Community Asset Transfer can help them achieve their needs as well as empowering communities.
- 5.2 The response to the consultation has been positive and the responses have provided important insight, especially from the local community sector. Responses have been collated and used to help shape the final policy.

6.0 Recommendations

- 6.1 Executive Board is asked to consider and agree the Community Asset Transfer Policy and Framework documents attached at Appendix 1 and Appendix 2 for use in developing and considering Community Asset Transfers.

7.0 Background documents¹

- 7.1 Equality Impact Screening Form

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.