Executive Summary

Cabinet are aware of the recommendations and opportunities highlighted in the Government sponsored review led by Barry Quirk to look at powers, policies and barriers relating to the transfer of public assets to public organisations.

The review recommendations which were accepted by government in 2007, highlighted that a careful increase in the community’s stake in an asset can bring a wide range of additional benefits to the community, the organisation receiving the asset and the local authority facilitating the transfer.

The Council has historically successfully transferred assets to third sector organisations. However, these transfers have been undertaken without a clear policy framework. This lack of transparency and accountability has (rightly and wrongly) fuelled an environment of scepticism, “it’s not what you do it is who you know.” To break this cycle the report seeks to address these short-comings by proposing a transparent policy framework to guide transfers in the future. The proposed Policy Framework and Guide are based on the principles of:

- Sustainability
- Governance
- Inclusion
- Strategic Fit: and
- Value for Money

It also highlights that an inherent requirement of measuring the benefit of asset transfer is in assigning a value to the property to be transferred. As there is competition for property, organisations will need to demonstrate that the services and benefits they are providing match or preferably exceed the quantifiable value of the asset.

Social Return on Investment (SROI) Analysis is becoming the widely accepted method for understanding the (environmental, social and public economic) value being created by third sector organizations in addition to the financial value that may be generated. SROI analysis is now an acceptable tool used by investors, program officers and policy makers to inform their capital injection strategies and decisions, and by
managers to inform their projections, strategic planning and performance assessment.

All applications received for consideration for an asset transfer will be evaluated in accordance with this policy and assessed following a three stage gateway entailing: consideration of expression of interest, detail proposals and final approval.

**Summary of financial implications**

There are no direct costs associated with approving this report as it does not commit the Council to the transfer of any specific assets at this stage. Any decision to enter into an agreement to transfer an asset(s) would be subject to a further report(s) to be considered by Cabinet or Council depending on whether there are any budgetary and policy implications.

**Recommendations**

1. That the Community Asset Transfer Policy Framework and Guide, as set out in Appendix 1 of the report, be approved.

2. That all applications received for asset transfer will be sponsored by the Council department within whose area the applicants’ activities naturally falls and the department will not only act as the applicant’s sponsor but will also undertake the required initial screening in accordance with Gateways 1 & 2 and make recommendations accordingly.

3. That the Community Asset Transfer Policy Framework and Guide be reviewed after 12 months with a report back to Cabinet.

**Consultation**

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Report history

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Report no.: 007/09-10
Report author and contact for queries:
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Background documents

Citizen Engagement and Public Services: Why Neighbourhoods Matter – ODPM 2005
Voluntary and Community Sector Premises Policy – Executive Decision April 2004
The Local Government and Public Involvement Health Act 2007.

Appendices

Appendix 1 – Council Policy and Guide on the Transfer of Assets
Appendix 1a – Asset Transfer as Part of Procurement
Appendix 1b – Asset Transfer of Surplus Assets – Financial Value – Tender
Appendix 1c – Asset Transfer of Surplus Assets – Indirect Values – Expression of Interest
Appendix 1d – Asset Transfer of Surplus Assets – No Financial Value – Business Plan
Appendix 1e – Asset Transfer – LBL – Guidelines for Social Value Analysis
Community Asset Transfer Policy Framework and Guide

1. Context

1.1 The delivery of services by voluntary and community organisations is growing both in terms of scale and importance, and as a result the role the third sector can play in regeneration is increasingly recognised by Government and national policy makers.

Asset transfer relates to local communities’ ability to acquire buildings, either at market value or at a discount, in order to deliver services that meet local needs, and is seen as one way in which Local Authorities can support the development of social economy organisations, and thereby meet their wider strategies for renewal and improved delivery of services at a local level. Closer to home, this needs to be seen against the background of the Corporate Property Strategy and Asset Management Plan 2007-2010 and in particular the high level of backlog of repairs and maintenance, estimated at £653,54m and the borough’s wider regeneration ambitions captured in the Regeneration Delivery Plan 2007/08.

In 2006 the DCLG commissioned Barry Quirk, Chief Executive of L.B Lewisham to investigate barriers to the transfer of land and buildings from local authorities and other public sector agencies to the community sector, and where barriers exist how best to overcome them. The three principal conclusions of the Quirk report were:

- Asset transfer should take place where it can realise social or community benefits, without risking wider public interest concerns;
- The benefits of community ownership of assets can outweigh the risks involved, in appropriate circumstances, and
- Risks can be minimised and managed by drawing on the experience of others.

The Council has historically successfully transferred assets to third sector organisations. However, a persistent weakness identified has been the lack of clarity on Council policies and processes when dealing with premises in general. A lack of transparency and accountability on this issue has (rightly and wrongly) fuelled an environment of scepticism, “…it’s not what you do it’s who you know.” To break this cycle the Council will need to be bold, open and honest with this issue. The report seeks to establish such a framework to guide transfers in the future.

2. Proposals and reasons

2.1 The Quirk Report highlights the following main points:

- Any sale or transfer of an asset needs to realise social and/or community benefits and used in the public interest.
- Organisations must have capacity to take over and manage the asset in a sustainable way
- Organisations must be properly constituted and governed,
• Public interest concerns regarding any transfer need to be addressed.
• Community groups should not be over-burdened with property asset management.
• Risks should be minimised and managed and benefits must outweigh the risks.
• The report recommends that guidelines are issued to groups on the transfer of assets and community management and ownership.
• Ideally these should be access for local authorities and community groups to expert advice, to assist in the preparation of applications and appraisal of proposals.

2.2 The report further goes on to highlight some of the challenges that need addressing as follows:

• **Added Value** – a vision and political will from both the sector and the Council is required, i.e. a willingness on the part of the Council to transfer assets and the organisations seeking asset transfer’s ability to demonstrate that the proposed transfer will contribute significantly to the delivery of the Community Strategy and Corporate Plan;

• **Process** - that the process for asset transfer is complex but given the competition for resources to deliver services including the Council’s fiduciary duty and probity requirements, there needs to be a clear criteria and a transparent process to ensure confidence in the Council and a level playing field in considering requests for asset transfers;

• **Capacity** - funding is required to pay for feasibility studies and a source of management support is needed, including a Guide and a Checklist for asset transfer for organisations seeking asset transfers; and

• **Reality Check** - organisations seeking an asset transfer need to take cognisance of the fact that where the asset has been declared surplus, then the finance that could be raised from the sale of that asset could be used to support existing services.

2.3 The need for the proposed policy follows from the above

2.4. **Current Position**

2.4.1 **Defining Asset Transfer in the London Borough of Lambeth**

Although asset transfer is often perceived as a choice between transfer to a social economy organisation or the sale of the asset by the Council to raise capital, the choice is in fact between the capital receipt for re-investment in other services made possible as a result of the sale and the services that would be provided by the community. Asset transfer is considered in four main ways:

a) **Surplus Properties**
• **Concessions** - transfers at less than market value of surplus property where the financial sustainability of the organisation taking on the asset is limited and additional security is required although there may be more risk; and

• **Disposal** - transfers of surplus property at market value but where the purchaser may provide opportunities for gaining greater social value

b) **Non Surplus Properties**

• **Procurement through commissioning or disposal with concessions** - Transfers at less than market value of non surplus property as part of a partnering arrangement and where there is a benefit that is considered justification for the concession, e.g. RSL’s and agencies commissioned to deliver services on behalf of the Council.

• **Procurement** - transfers of non-surplus properties at market value as part of delivery of council services by a third party e.g. Waste Contract.

All of these are more effective and desirable where the organisation taking on the asset can attract sources of finance that are not available to the Council.

2.5 **Previous achievements**

Policies regarding the transfer of assets and use by community groups have changed over the years but the Council has responded with innovative initiatives and has successfully encouraged many asset transfers. With the change in policies asset transfers have been dealt with on a case-by-case basis. Reasons for granting a concession have varied. Recent examples of asset transfer undertaken include:

• **The Young Vic** – The grant of a 99 year Lease to the Theatre as the Council's contribution to the redevelopment of the site;

• **Raleigh Hall** – The grant of a 99 years Lease to the Black Cultural Archive as the Council’s contribution to the establishment of a museum and associated users;

• **95 Acre Lane** – Sale of freehold;(LVAC).

• **Brockwell Lido** – Grant of a Long Lease (Fusion Live Style)

• **105 Landor Road** – A contribution towards the acquisition of the property by a faith group

• **Former Norwood Library** – Grant of Leases to various local organisations

• **Henry Thornton** – Grant of a 99 years Lease (City Academy)

• **Vauxhall City Farm.** – Grant of a Lease

• **Coin Street** – Community Housing

• **St Martin’s Library;**Freehold Transfer

• **Roots 'n Shoot** – Transfer of freehold; and

• **Woodlawn, Leigham Court Road** – Long Lease to the Darby & Joan Club.
The Quirk Report refers to both Coin Street and St Martins Library as successful examples of local authority asset transfers.

Against this must be recognised that there have also been failures and risks which must be carefully assessed and recognised.

2.6 Demand and Supply of Assets

The Council receives a wide range of requests from voluntary and community organisations for the use of Council owned land and property. Following recent publicity regarding the Quirk Report groups have enquired about the Council’s policy towards transferring property assets.

In terms of demand for asset transfer, there are just over 170+ properties owned by the Council and either occupied by voluntary or community organisations or are subject to concessionary leases. Capital value of this segment of the portfolio is estimated at £12.5m and a total rental value of over £1.400,000 per annum. The rent received is £600,000 so the existing concession is approx. just under £800,000.

Furthermore, the following assets are at various stages of transfer:

- **Former Annie McCall Hospital** – Sale of freehold entailing the re-provisioning of Studio facilities for a group of local artist, community open space, etc as part of the re-development of the site:
- **The Springs, 100 Vauxhall Walk** – The proposed grant of a long lease to the VGCC of 5 Glasshouse Walk to facilitate the delivery of services to the local community;
- **2A Norwood High Street** – The proposed grant of an long lease to the South London Theatre.
- **Old Clapham Library** – Proposed Lease to a local community group
- **Former Lilian Baylis School** – Proposed long Lease to a local community trust.

In terms of supply, asset transfer can occur with either surplus or non-surplus operational indirect properties. The decision to declare an asset as surplus allows the Council to budget for a one-off source of capital receipt from the sale. Once an asset has been identified as surplus it will be sold.

Non-surplus operational properties provide for either concession entailing a sale/long lease at a discount(for example where the asset is void pending use), or service procurement (for example through service commissioning). As a result, the best time to consider asset transfer is before the asset has been declared surplus. In addition, procurement through service commissioning provides an opportunity for social economy organisations to work more closely with the Council. Where they deliver services on behalf of the Council this may include the use of non-surplus assets.

2.7 Measuring Benefit
An inherent requirement of measuring the benefit of asset transfer is in assigning a value to the property to be transferred. As there is competition for property, social economy organisations will need to show that the services and benefits they are providing match or preferably exceed the quantifiable value.

Up until now and in most cases the reasons for asset transfers were not translated into quantifiable benefits to help inform the decision. The assumption is that the concession is equal to the value of the provision rather than calculating the value of the provision and the Council recognising this and allowing the transfer of the asset or the ‘concession’.

The notion that transfers are concessions should be dispelled and value should be assigned to the benefits to be provided. In this way the transfer can be viewed as the Council achieving its priorities in relation to the Local Government Act 2000 Duty of well being. If this is the case asset transfer will be placed on a formalised footing and will be regarded as part of mainstream commissioning/procurement.

A cost benefit analysis should be carried out for any proposed asset transfer that will identify direct financial costs and benefits to both the Council and wider community. It is also possible to include financial values of social benefits and these might have a direct impact on the provision of Council Services.

2.8 Proposed Way Forward

It follows from the above that the Corporate Property Strategy and Asset Management Plan 2007 – 2010 sets out the Council’s approach to asset transfer and in the past the Council has responded with innovative initiatives and has encouraged many asset transfers.

Building upon the experiences of previous and existing asset transfer schemes coupled with the need to respond positively to the recommendations of the Quirk Report, the Policy Framework and Guide set out in Appendix 1 is proposed.

An important aspect of the proposed way forward is the need to build capacity both within the Council and externally with partner organisations. A review of social enterprise support is about to commence. Pending the outcome of the review, a programme of workshops in partnership with the Development Trust Association (DTA) will be undertaken.

All applications received for consideration for an asset transfer will be evaluated in accordance with this policy and assessed following a three stage gateway entailing: consideration of expression of interest, detail proposals and final approval. Applications received for asset transfer will be sponsored by the Council department whose service area the applicants activities naturally falls. That department will therefore not only act as a sponsor but will also undertake the initial screening required in accordance with Gateways 1 and 2; and make recommendations to the Strategic Asset Management Group (SAMG) as appropriate.
Two third sector organisations, Black Cultural Archives and the Darby & Joan Club were consulted on the proposed policy. The consultation was undertaken on the premise that both organisations had only recently been through a successful asset transfer process and the feedback from the exercise has been incorporated within this policy.

In recognition of the likelihood of further government and professional guidance regarding best practice and the lessons learnt in the course of implementation it is proposed that the policy is reviewed after its first year.

3. **Comments from Executive Director of Finance and Resources**

3.1 There will be costs to the Council associated with the asset transfer process. However, there are no direct costs associated with approving this report as it does not commit the Council to the transfer of any specific assets at this stage. Any decision to enter into an agreement to transfer an asset(s) would be subject to a further report(s) to be considered by Cabinet or Council depending on whether there are any budgetary and policy implications.

4. **Comments from Director of Legal and Democratic Services**

4.1 The relevant legislative provisions are set out in some detail in Part 1, Section G of the Corporate Property Strategy and Asset Management Plan, including the following:-

4.2 By virtue of Section 123, Local Government Act 1972, the Council has the power to dispose of land held by it in any manner it wishes but, except with the consent of the Secretary of State, it may not do for a consideration less than the best that can reasonably be obtained (unless the disposal consists of a grant of a term not exceeding seven years)

4.3 By virtue of Section 21, Housing Act 1985, the general management, regulation and control of its housing is vested in and shall be exercised by the Council. Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions

4.4 The Council is empowered by virtue of section 32, Housing Act 1985 to dispose of land held for housing purposes on such conditions as it thinks fit, but subject to the consent of the Secretary of State.

4.5 In the Local Government Act 1972 General Disposal Consent (England) 2003 the Secretary of State, has pursuant to s123(2),127(2) and 128(1) of the Local Government Act 1972, given consent to local authorities to dispose of land at less than best consideration that can be reasonably be obtained in the following circumstances:

4.6 where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the
following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;

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; and

the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000.

4.7 All Disposals also need to comply with the European Commission’s State Aid Rules. When disposing of land at less than best consideration, the Council is providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs the Council must ensure that the nature and amount of subsidy complies with the State Aid Rules particularly if there is no element of competition in the sales process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

4.8 Properties held within the HRA are administered in accordance with the requirement of the 1985 Act. All properties within the HRA can only be “disposed” (including leased) with the consent of the Secretary of State (Section 32 of the Housing Act 1985). This includes shops, community premises, garden land etc. The Secretary of State has issued a series of general consents which allow disposals on set terms.

4.9 The Secretary of State has also given to local authorities the certain general consents under Section 25 of the Local Government Act 1988 to dispose of dwelling houses to registered social landlords for refurbishment and for financial assistance to registered social landlords or to private landlords to relieve or prevent homelessness.

4.10 The Department of the Environment Circular 8/95 gives further guidance to Councils that where an HRA property is let to a group, any grant aid may be charged to the HRA only if:

- The services provided by the group are housing welfare services which are connected to the Council’s landlord function; and
- It is more cost effective to give grant aid to a group to provide those services than employing Housing staff to do so.

Otherwise, grant aid may only be charged to a General Fund budget, where necessary, and would have to reimburse the rent element to the HRA.

4.11 When disposing of land at an under-value, the Council they will be exercising a discretion within the constraints of the duties referred to above and should therefore have in mind the following principles of administrative law:

- a decision must be within the Council’s powers
- all relevant information and consideration, including the Council’s fiduciary duty to the Council Tax payer, must be taken into account
- all irrelevant considerations, including unauthorised purposes, must be ignored
4.12 Pursuant to the Race Relations Act 1976 (Statutory Duties) Order 2001, the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 and the Equality Act 2006, public bodies have a statutory duty to publish Race, Disability and Gender Equality Schemes setting out how it intends to comply with its statutory duties under section 71(1) Race Relations Act, section 49A (1) of the Disability Discrimination Act 1995 and Section 21 A(1) of the Sex Discrimination Act 1975. The Equality Schemes shall state what arrangements have been made for assessing and consulting on the likely impact of the Council's policies on the promotion of race, disability and gender equality and the arrangements that have been made for publishing the results of such consultation.

4.13 Section 17 of the Crime and Disorder Act 1998 imposes a duty on the Council to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

5. Results of consultation

5.1 Comments of the two external partner organisations consulted have been incorporated in the body of the report.

6. Organisational implications

6.1 Risk management:
As set out in Appendix 1, the assessment of any formal application to consider an asset transfer will include an appropriate risk management assessment..

6.2 Equalities impact assessment:
The impact on equality and diversity of any proposed transfer will be considered as part of the assessment process that would be undertaken in considering the merits, or otherwise, of taking forward any transfer of asset.

6.3 Community safety implications:
There are no specific crime and disorder implications arising directly from this report..

6.4 Environmental implications:
There are no specific environmental and sustainability implications arising directly from this report. However, the assessment process as set out in Appendix 1 will take into consideration any environmental impact and sustainability issues associated with any proposed asset transfer.

6.5 Staffing and accommodation implications:
None

6.6 Any other implications:
The report is particularly relevant to the Corporate Plan Priority of “A Safer Lambeth with Active Communities”..