

Community Management and Asset Transfer Policy

General principles

1. Fundamental to the success of any asset transfer is the applicant demonstrating to the Council that they have a clear rationale, backed by a robust business-case, and the ability to manage the asset effectively. This needs to include an assessment of the financial and organisational capacity of the organisation.
2. Applicants must be appropriately constituted, operate for community, social or environmental benefit and be non-profit distributing.
3. Community asset transfers will be by means of a full repairing Lease Agreement. Freehold transfer will only be considered in exceptional circumstances and must be the subject of a specific report to Council to gain approval. A Meanwhile Use Lease or License may be issued for short term temporary arrangements.
4. Community asset transfers must comply with legislation and general policies. They will be cost neutral or generate an income for the Council.

Criteria for considering requests

5. Requests for the transfer of Council owned assets would be considered where all of the following criteria are met:
 - a) **The applicant must:**
 - be established for community / social / environmental benefit objectives
 - be non-profit distributing – it must reinvest any surpluses to further its social aims
 - be appropriately constituted, for example, a registered charity, a community interest company or a charitable incorporated organisation, parish council, a not for profit company; a co-operative. Such constitution allows the management / ownership of buildings and or provision of services
 - demonstrate good governance, management experience and a track record of delivering services or property management
 - have the skills and capacity within or available to its managing body to effectively deliver services and manage the asset;
 - be non-discriminatory, fully inclusive and embrace diversity
 - not promote political activities or religious beliefs
 - submit a detailed proposal explaining how the premises will be managed on a day to day basis and policies to ensure compliance with any legislation regarding premises management and / or running a service.
 - provide copies of the accounts of the organisation.
 - have a clear purpose and understanding of the activities it wishes to deliver
 - b) **The Asset**
 - is in the freehold/leasehold ownership of the Council.
 - is not currently needed or identified for future investment value or disposal (in accordance with District Plan Policy DP25) or use for direct service delivery, which could best be provided directly by the authority rather than through the community.
 - is fit for purpose and would not impose an unreasonable liability to the transferee or the Council
 - transfer would not be contrary to any obligation or existing covenant placed on the Council

- before any asset transfer the Council will need to be satisfied that it is within its legal and financial powers

c) Proposed use

- the proposed use will offer a service which contributes toward Mid Sussex District Council's corporate priorities and community development plans
- will maximise opportunities for income generation to ensure sustainability, for example, through the hiring of space and facilities
- there is both a need and demand for the activities being proposed and consideration is given to whether or not this is being satisfactorily addressed by another organisation.
- must make good use of the facilities, accommodate any existing users (if applicable) and be accessible

In the case of vacant premises or new build projects the Council will advertise the development to voluntary sector organisations, sports clubs, not-for-profit leisure providers, town and parish councils and statutory sector partners and invite Expressions of Interest from community groups who are interested in running the facility or want to hire space for activities. In some instances, the Council will invite targeted bids from voluntary sector organisations in order to address specific local needs.

6. This information will help inform the business plan and design of the new facility. New facilities should generally be designed as multi-purpose flexible spaces, suitable for a wide range of activities and services, so they can meet current and future needs. Sustainable and vibrant community hubs can potentially include retail, café, childcare provision, meeting and activity rooms, workshop space and co-working facilities.
7. If more than one organisation is interested in running a facility the Council will work with all stakeholders, including Ward Councillors, Town and Parish Councils, to discuss their needs and encourage them to work in partnership. If there is no clear lead body the Council could support the formation of a new organisation established to manage the facilities on behalf of the community.

Submissions

8. Before the Council can agree to issue a Lease it will need to be satisfied that there is a sustainable business plan in place to ensure the facility will be effectively managed for the benefit of the local community in the long term.
9. At the most basic level this would mean ensuring there are keyholders to enable access to facilities, a phone and email booking system, and policies in place to deal with statutory responsibilities such as equal opportunities, health and safety, safeguarding and licensing.
10. The expectation is that sufficient income will be generated from the facility to cover site revenue and maintenance costs and an operational budget will be required. An outline programme of varied groups / activity providers will be needed to estimate bookings by casual one-off hirers and regular users. A strong marketing plan will also be needed to show how the facility will be promoted to community users.
11. In terms of proposing a business case for consideration by the Council any applicant will need to submit:

- organisational contact details, constitution and 3 years financial accounts
 - track record of delivering services and or managing property
 - the planned programme, hiring arrangements, user groups and information about community consultation, partners and stakeholder engagement
 - details of governance structure with capability to sustain asset transfer and has identified necessary capacity building requirements within their organisation.
 - how the asset will be managed on a day to day basis and maintained in the longer term, including details of any policy requirements i.e. safeguarding, health and safety
 - where transfer is requested at less than market value the applicant has justified and quantified the outcomes and community benefits to result from the asset transfer
 - at least 5 years revenue or capital funding plans and projections of managing and operating the asset.
12. Submissions will be assessed against the criteria outlined above (see Appendix B). This information will be reviewed by Community Services, Performance and Partnerships and when satisfied that the submission meets the Council's criteria, Estates & Facilities will be directed to prepare Heads of Terms.
 13. If more than one proposal were submitted for the same facility the Council would need to consider both and assess which option best meets the criteria. Any disputes will be referred to the Cabinet Member for Community Services who will have the final decision.
 14. Proposals for developments on recreation land must be approved by the BUL for Waste, Landscapes and Leisure. The final decision to grant a lease will be taken by the Cabinet Member responsible for Corporate Estates and Facilities.

Lease Terms

15. The Local Government Act 1972: General Disposal Consent 2003 gives the Council the power to grant a Lease subject to certain constraints.
16. If the Lease relates to an area of open space, the Council must advertise disposal for two consecutive weeks in a local newspaper and invite members of the public who may oppose or object to such a disposal to make their views known. The Council must consider any objections before deciding whether or not to grant the proposed lease.
17. Corporate Estates will produce a statement by a RICS qualified surveyor when adopting a rent for the community building which will have regard to the marketing that has been undertaken, open market rents, reference relevant comparable community buildings rents and justification of any discounts being applied.
18. If the business plan submitted indicates that the market rent is unachievable, the Council could agree to a rental subsidy if it can be demonstrated that the asset transfer will result in economic, social or environmental benefits. The difference between the unrestricted value of the asset and the consideration accepted must be £2m or less.
19. The amount of any rent subsidy will be considered on a case by case basis. Factors influencing such a decision will include; proposed uses, extent of revenue producing opportunities, financial accounts and forecasts, benefits to the community.

20. In order to ensure the Council can step-in if the Lessee fails to keep the building in good repair, does not comply with the agreed use or breaches any of the Lease covenants the standard Lease term should be limited to 35 years with a mutual break clause at 15 years. This period is generally sufficient to enable community organisations to apply to external funders for grants toward capital investment in the facilities. Any alterations to the building will require Landlords Consent.
21. To ensure the facility continues to be used by the Lessee for the agreed purpose the Lease should specify the Permitted Use, the number of hours of operation that the facility will be made available for community use and include an alienation clause to prohibit assignation and restrict sub-letting, except to designated organisations as agreed with the Council.
22. In all cases, leases will include a Management Agreement (Appendix A) and terms that ensure the asset is returned if these agreements are not met or the organisation is dissolved, becomes insolvent or due to any other circumstances.
23. The Management Agreement will set out the approved use of the asset and Lessees will periodically be required to demonstrate how they have complied with the conditions of the agreement. If they fail to comply with the Management Agreement, there will be a six-month review period which could result in a rent increase, based on the market value.
24. The Council will reserve the right to appoint a Councillor as a nominated non-executive representative on the Board of the Lessee.
25. Any proposal to enter into a Lease Agreement or Agreement for Lease must be formally approved by Cabinet.
26. When the Lease comes into effect the Council will provide the Lessee with a Tenant Handbook providing instructions for the operation and maintenance of the premises i.e. insurances, utility suppliers, servicing requirements, guarantees and warranties.

Appendix A: Management Agreement Template

MANAGEMENT AGREEMENT

BETWEEN

MID SUSSEX DISTRICT COUNCIL

AND

[INSERT ORGANISATION NAME]

The Management Agreement is a legally binding document which forms an Appendix to the Lease and failure to comply will mean a breach of the Heads of Terms.

1.0 INTRODUCTION

- 1.1 Mid Sussex District Council, "The Council" has agreed to subsidise the rent due on [insert name and address of community asset] "The Facility", leased to [insert organisation name], "The Service Provider", and this Agreement sets out the respective obligations of each organisation.

For the purpose of this Agreement the lead representative for each organisation will be the person occupying the position of:

- (a) For the Council: [The Community Facilities Project Officer]
and
- (b) For the Service Provider: [insert main contact]

- 1.2 This Agreement is for the delivery of a service designed to achieve community and social benefits through the approved use of The Facility, in return for a rental subsidy. The Service Provider is more than a Caretaker for the building which is a community asset at the centre of the local community.
- 1.3 The parties to this agreement will endeavour to work within the shared principles and approach to joint working, as set out in the West Sussex Compact.
- 1.4 This Agreement will commence on [insert start date] and will run for a period of [insert lease term], subject to satisfactory performance and review and in accordance with the provisions set out in this Agreement.
- 1.5 In consideration of the subsidy specified in clause 4, the Council and Service Provider hereby agree the terms and conditions set out in this Agreement.

2.0 SERVICE TO BE PROVIDED

- 2.1 The Service to be provided in accordance with this Agreement is as follows:

The Service Provider shall make The Facility available between [9am and 11pm seven days per week] unless otherwise agreed with the Council. The Service Provider shall allow the general public, local residents, community groups and other organisations use of the Facility for a minimum of [insert % of community use] of the Available Time every year during the Term.

3.0 SERVICE PROVIDER RESPONSIBILITIES

The Service provider must:

- 3.1 maintain the building so it is kept in good repair, accessible and fit for purpose. Any proposal to vary the facilities provided or make changes to community use of The Facility must be agreed with the Council.
- 3.2 have adequate employers, public liability, buildings and contents insurance as necessary
- 3.3 demonstrate good governance and operate in accordance with the organisation's Constitution. Any proposal to vary the Constitution is to be agreed with the Council and it is not to be changed without prior consultation.
- 3.4 comply with all relevant current and future legislation and regulatory requirements, required in the provision of this Service and ensure up to date policies, procedures and training are in place to address key issues such as Equal Opportunities, General Data Protection Regulation, Safeguarding, Health and Safety, Employment and Volunteering.
- 3.5 ensure all staff, volunteers and Trustees have a Disclosure and Barring Service (DBS) check if deemed necessary for their task or role.
- 3.6 ensure business continuity is in place to cover emergencies, sickness and annual leave.
- 3.7 keep risk assessments, fire checks and evacuation procedures. There must also be an accident procedure and log.
- 3.8 maintain proper and accurate financial records
- 3.9 provide good customer service. Staff volunteers and Trustees should always be inclusive, welcoming and friendly. They should treat each other and users with respect and courtesy and respond to enquiries and questions promptly.
- 3.10 advertise the times at which the Facility may be used by members of the public and organisations; details of the booking officer who must be contacted; and charges made for hiring the Facility.
- 3.11 keep records of bookings, user details and activities. Bookings from charitable, local and not for profit community organisations will take priority.
- 3.12 ensure hire charges do not exceed the Council's standard charges for similar facilities owned by the Council for any period during the Term.
- 3.13 set up a complaints procedure and log; accurately record any complaints and follow agreed procedures. There should be a clear route for complaints, compliments and comments about The Facility.
- 3.14 ensure meaningful stakeholder engagement and participation; listen to feedback and adjust services accordingly. This should be delivered through regular and ongoing consultation and / or the establishment of an Advisory Group consisting of the following representatives (as a minimum):

- x 1 District Council
- x 1 Town / Parish Council
- x 2 user group
- x 1 local resident / neighbour
- x 1 Trustee

- 3.15 allow the Council to appoint a representative to attend and observe all Board / Management Committee meetings.
- 3.16 allow reasonable inspection of financial records, management committee and advisory group minutes, consultation findings, booking records, logs, risk assessments, policies and procedures which must be produced to the Council, if requested.

4.0 RENT SUBSIDY

- 4.1 The Council will subsidise the market rent to the value of [??] per annum, for the full term of the Lease.
- 4.2 If the Service Provider fails to deliver the service or comply with their responsibilities as outlined above, the Council reserves the right to reduce the rent subsidy or reinstate the market rent. In this instance, the Council would take steps to terminate the lease.
- 4.3 The Service Provider will be served written notice and there will be a six month review period prior to any action.

5.0 MONITORING AND REVIEW

- 5.1 The Service Provider shall co-operate and comply with the Council's reasonable processes for the monitoring and evaluation of the service and the Service Providers responsibilities as set out in Section 3 of this Agreement.
- 5.2 This Agreement will be subject to a review meeting and written report, to be produced by the Service Provider which will cover all aspects of the Agreement. Any variations in the Agreement will be considered as part of this review. Review meetings will be scheduled to run concurrently with the rent review dates, as set out in the Lease.
- 5.3 If either party requires a review of any aspect of this Agreement then such review shall take place at the earliest practicable opportunity upon written notice being given to the other party specifying the terms of the review. Determination of any matter under this clause shall be without prejudice to the operation of clauses 6 and 7 when applicable.
- 5.4 Membership of the Review meetings will include such representatives of the Service Provider, its Board and of the Council, as can take decisions required for the proper operation of this Agreement and to take decisions as required by the terms of the Agreement.
- 5.5 The review will include:
 - (a) Details of the service provided and compliance with the specification.
 - (b) Examination of the operational policies and evidence of implementation.
 - (c) Information on finances, staffing and volunteers.

- (d) Premises inspection
- (e) Any breaches of this Agreement or the specification.

6.0 RESOLUTION OF DISPUTES

- 6.1 The parties shall use their best endeavours to resolve by agreement any dispute between them. In the first instance the dispute will be discussed by the lead representatives and may then be referred to more senior officers of both the Service Provider and the Council so as to seek amicable resolution.
- 6.2 In the event that the dispute cannot be resolved through the mechanism set out in 6.1 above the parties may refer the matter to an agreed independent arbitrator whose decision shall be binding.

7.0 TERMINATION

- 7.1 If the Service Provider is dissolved, becomes insolvent or ceases to operate for any reason, the Agreement will terminate immediately and The Facility will be returned to the Council.
- 7.2 This Agreement may be terminated by one party [giving x months written notice to the other party – same as lease agreement].
- 7.3 The Council may terminate this Agreement if the Service Provider, their employees or anyone acting on the Service Provider's behalf:
 - (a) corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Service Provider does not know this has been done), or
 - (b) commits an offence under the Prevention of Corruption Acts 1889-1916 or Section 117(2) of the Local Government Act 1972.

Signed by:

Name:

Position:

**For and on behalf of
Mid Sussex District Council**

Date:

Signed by:

Name:

Position:

**For and on behalf of
Service Provider**

Date

Appendix B: Assessment of Submissions

	The asset	Yes / No	Comments
1.	Is the asset in the freehold/leasehold ownership of the Council?		
2.	Is it suitable / available i.e. not required for Council business, fit for purpose and not subject to any covenants?		
	Eligibility	Yes / No	Comments
3.	Have the following information been submitted? - Constitution - 3 years financial accounts - Business plan and five year income and expenditure forecasts		
4.	Is the organisation non-profit distributing?		
5.	Is organisation established for community / social / environmental benefit objectives?		
6.	Does the constitution allow the management / ownership of buildings and or provision of services		
	The organisation Has the applicant demonstrated:	Yes / No	Comments
7.	A strong track record of delivering services or property management?		
8.	That they have the skills and capacity to effectively deliver services and manage the asset?		

	If no, have they identified any capacity building requirements within their organisation?		
	Proposed use Has the applicant supplied information regarding:	Yes / No	Comments
10.	Their overall vision for the future use of the facility?		
11.	Details of the proposed activity programme and user groups?		
12.	Hiring arrangements and community use of the facility - opening hours and accommodating any existing users (if applicable)?		
	Need and benefits Does the proposal:	Yes / No	Comments
13.	Provide evidence of need and demand for the activities being proposed i.e. details of community consultation, support from partners, stakeholder engagement		
14.	Provide information about the community, social or environmental benefits to result from the asset transfer		
15.	Provide information addressing diversity, community cohesion and social inequalities		
16.	Explain how the proposed use will benefit Mid Sussex residents and contribute toward the Council's corporate priorities (Financial Independence, Effective and Responsive Services, Sustainable Economic Growth, Strong and Resilient Communities)		
	Management	Yes / No	Comments

	Has the applicant provided:		
17.	Details of the day to day management arrangements		
18.	Information regarding ongoing maintenance		
19.	Policy documents i.e. safeguarding, health and safety, equal opportunities		
20.	A marketing plan		
21.	Details of booking system and pricing plan – is it affordable, accessible?		
22.	5 years financial projections which demonstrate long term income generation and sustainability		