

CONFIDENTIAL – PUBLIC CONVENIENCE PROJECT

Background to Project and Legal Documentation for potential transfers to a Town or Parish Council or Community Group

There are two principle documents forming this element of the consultation process and it is advised that these are read in detail prior to issuing any expression of interest which relates to any request to take over the day to day running of a Public Convenience for a peppercorn consideration, with a transfer to a Town or Parish Council or Community Group.

Schedule A below contains the 'Prerequisites' or 'Conditions' which will need to be established to EDDC's satisfaction in order for your application to progress to the next stage. They include for example, being able to provide documentary evidence which demonstrates that you have the resources and appropriate skills to successfully run a Public Convenience.

Schedule B contains the proposed Heads of Terms (HOT's) which will be used to prepare a new lease of the Public Convenience(s) related to your expression of interest, through any resulting discussions about a transfer.

Most of the proposed terms will be applied in each and every case, such as the Tenant taking on full repairing and insuring obligations for the Property and operating the premises to Charter Standards whilst they are used as Public Conveniences but other terms will need flexibility to the public conveniences site in question. We can discuss this with you in more detail following any expressions of interest.

Furthermore, the HOT's have been drafted on the basis each Public Convenience is being offered on concessionary terms, including a peppercorn rent which is a significant discount against market rent. This is to reflect the cost you will incur as a consequence of taking the premises over and maintaining a toilet provision of some kind and reflects the intention of the Cabinet as captured in the Cabinet report of 12th May 2021 which can be found under the following link:

<https://democracy.eastdevon.gov.uk/ieListDocuments.aspx?CId=136&MId=1508&Ve r=4>

Whilst the Cabinet Report confirms that the Council expects the property will ideally Be used as Public Conveniences for the length of the lease, EDDC also recognises that Public needs change over time so the leases will allow every Tenant the opportunity to alter the use of the building at various stages throughout the term of the lease, either in part or whole, which will enable those taking on the facilities to realise capital and revenue receipts from the property.

The ability to change the use of the building and at what stage under the lease will

be dependent upon the Category of Public Convenience under consideration but this will be clear in your specific set of HOT's.

- Category A toilets are sites where we are proposing that we will still invest in and maintain public toilets, and therefore these will need to remain public toilets, any change of use would be at EDDC's discretion.
- Category B toilets must have a public toilet within at least part of the building for 10 years. Any change of use within this time would be at EDDC's discretion. After which the use may change subject to discussions.
- Category C toilets must have a public toilet within at least part of the building for 10 years, but any change of use of the rest of the premises will be permitted subject to discussion. After 10 years the whole or part of the building may be used in different ways.

However, every change of use application made under the lease, will remain subject to the Tenant obtaining the Council's prior written consent to the proposed alternative use and will also be dependent upon the Tenant securing any necessary planning permission and all other consents relating to the proposed change of use.

Alternative uses which will be considered, subject to Planning permission, include but are not limited to, cafes, takeaways, gyms, offices, storage units and other similar retail and /or hospitality uses.

Consideration will also be given to the reduction of the existing toilet facilities and/ or total extinguishment of that use of the premises, subject to the provisions of your particular lease and EDDC's approval.

In conclusion, we would draw your attention to the fact that some clauses will only apply to a specific category of Public Convenience .The categories A, B & C are defined in section 3.5 onwards of the May 2021 public toilet review Cabinet report, which can be found here:

<https://democracy.eastdevon.gov.uk/jelListDocuments.aspx?CId=136&MId=1508&Ver=4>

We would also strongly advise that you obtain independent legal advice on the proposed terms and pre requisites as the Council will be unable to provide any advice to you in this respect.

If you have any questions in relation to these documents please send them to publictoiletreview2021@eastdevon.gov.uk and we will respond within 5 working days.

SCHEDULE A

PRE REQUISITES

In considering this proposal, the Tenant will have to satisfy the Council acting as your Landlord, that it can meet the following minimum criteria:

- X will evidence and ensure they have the appropriate skills, knowledge and expertise to sustain the service provision in the long term
- X will be required under any agreement to have in place clearly defined structures, roles and responsibilities to deliver the Services
- X will be required under any agreement to have in place clear decision making processes with an approved constitution, governance and management controls
- X will be required to meet with all insurance, equality standards, child protection, health and safety and licensing requirements
- X can demonstrate the proposal has the support of the local community
- X can evidence that implementation of the devolving of service provision and the assets associated with them promote or improve the economic, social or environmental well-being of the area or residents in order to satisfy best consideration requirements under the Local Government Act 1972
- X is satisfied that there is no Subsidy Control given the transfer of public functions between one public body and another
- X has considered any potentially positive or adverse implications for staff
- X has an Environment Policy covering sustainable energy sources and energy saving measures which will be applied to the running of the PC's including utilities
- X can demonstrate that it has at least 5 years revenue or capital funding plans and projections of managing and operating the asset.
- X can illustrate how it will invest in and maintain the asset including a specific plan as to how all health and safety responsibilities will be met.
- X can confirm the planned outcomes and benefits to result from the asset transfer
- X can demonstrate a community governance structure with capability to sustain asset transfer and has identified necessary capacity building requirements within the organisation
- Where transfer is requested at less than the market value of the leasehold interest the applicant has justified and quantified the benefits to the community and X to justify the (if any) subsidy. X will separately need to satisfy that any transfer is within its legal and financial powers (Only applicable to CAT A & B)
- X has a demonstrable Track record of delivering services and/or managing property
- X can evidence Financial sustainability and forward planning

SCHEDULE B

Draft HOT's for Lease hold interest of x Public Convenience (address)

Landlord East Devon District Council

Tenant X

Lease Term 99 years from completion of the lease

Lease To be granted inside the Landlord & Tenant Act 1954

Property Land & Buildings owned by the Landlord and defined under Title No...(tbc)

Demised Outlined in red on the attached plan... (tbc)

Estate Land retained by the Landlord but shared in common with the Tenant (if applicable)

Rent £1 pa payable annually on the anniversary of the lease start date

Other Outgoings Quarter Days 01.01, 01.04, 01.07, 01.11

VAT TBC

User

Cat A

The whole building is to be used as a Public Convenience at all times. Any change of use of part or whole will require the Landlord's prior written consent which the Landlord can withhold in its absolute discretion for the length of the lease.

Cat B

At least part of the premises must be used as a Public Convenience for the first ten years. Any change of use of part during the first ten years will be subject to the Landlord's prior written consent which the Landlord can withhold in its absolute discretion. Thereafter, any proposed change of use of whole or part will be subject to the Landlords prior written consent, such consent not to be unreasonably withheld.

Cat C

At least part of the premises to be used as a Public Convenience for the first ten years of the lease but with a change of use of the remainder of the premises being permitted subject to the Landlord's prior written consent which shall not be unreasonably withheld .

After ten years, the use of the whole or any part of the property is permitted, subject to the Landlords prior written consent which shall not be unreasonably withheld.

Ancillary authorised uses Installation of cash points, water fountains, vending, advertising boards, solar panels & electric car points are expressly permitted at any time.

User Restrictions Absolute bar on use of any part of the property at any time for any gambling purposes whatsoever or use for any illegal or immoral uses at the landlord's sole discretion. (The lease may also be subject to a prohibitions against specific alternative uses depending upon location and adjacencies which will be site specific.)

Alienation

The Tenant may only assign the whole of its interest in the property with the Landlord's prior written consent which the Landlord can withhold in its absolute discretion and which shall apply for the length of the lease. This applies to all categories of Public Conveniences.

There is an absolute Bar on the assignment of part only of the property at all times (Applies to all categories of Public Conveniences.)

Cat A

The Tenant may sublet the whole or part of the property subject to the Landlord's prior written consent which the Landlord can withhold in its absolute discretion at all times.

Cat B

The Tenant can sublet the whole or part of the property for the first ten years of the term subject to Landlord's prior written consent which the Landlord can withhold in its absolute discretion.

After ten years, the Tenant can sublet part or whole of the property subject to the Landlord's prior written consent which shall not be unreasonably withheld.

Cat C

The whole or part of the property may be sublet subject to the Landlord's prior written consent which shall not be unreasonably withheld.

Other Alienation provisions

Tenant to be responsible for all reasonable legal and professional fees incurred by the Landlord as a consequence of a Licence to Sublet or Assign application, whether or not the matter proceeds.

Existing Tenancies The Lease will be subject to any existing tenancies (If any – details will be provided).

Handover criteria

- The Asset to be let in a serviceable condition with no serious outstanding defects. All outstanding works will be agreed between the parties prior to occupation

- If a building component is broken, it will be repaired, but anything that is dated or in poor condition but functioning adequately, will not be replaced, renewed or improved by the Lessor
- The H&S file including any existing Asbestos Register for the property will be supplied by the Landlord upon completion of the new lease

Repairs Tenant will have full repairing responsibilities for all of the demised areas including all structures, boundaries, fencing and gates, access roads and landscaping, trees and shrubs within the demise

Estate Charge Tenant to pay a fair proportion of the cost of maintaining, repairing and renewing all the access roads serving the property, common signage, landscaping, gates, boundaries and fences, lighting of common areas, tree surveys and general maintenance, refuse and waste removal, and all other costs reasonably incurred in the management of the Estate and where such services are provided in common with the property (if any).

Proportion of Estate Charge payable by the Tenant Tenant's share of the Estate Charge is to be based on the area of land demised to the Tenant as a proportion of area of the Estate as a whole or a fair and reasonable proportion, depending upon the charge in question.

Outgoings Tenant to be responsible for the provision and payment of all Outgoings in relation to the demised property or a fair share, as appropriate.

Utility costs Tenant to be responsible for all utility charges including but not limited to water, sewage, electricity and any renewable energy supplies (if any) and to reimburse the Landlord for any sub-metered utility supply serving the premises where it has not been possible to transfer the supply into the sole name of the Tenant.

Business & Water Rates All Business & Water Rates, charged against the property at any time during the period of the lease, are the sole responsibility of the Tenant.

Empty Rates If the Tenant claims empty rates relief at any stage of the lease he is to indemnify the Landlord against any loss of rating relief he would otherwise have been entitled to claim.

EPC Tenant will be responsible for compliance with MEES regulations (and any related or similar Statute or Regulation subsequently imposed replacing the current Regulations) at all times and will be required to hand the property back at the end of the lease (however so determined) in full compliance with any MEES regulations at that time.

Charter Standard Tenant will be obliged at all times to comply with the Charter Standard for Public Conveniences and to upgrade/maintain the property to fully Covered Compliant standards with disabled access/open access for all and not limited by Radar keys.

British Toilet Association Best Practice Guide Tenant to comply at all times with the BTABPG whilst the premises are used in part or whole as Public Conveniences.

Asbestos Register Tenant to comply at all times with the control of asbestos regulations 2012 (and any amendments thereof) regarding the management of Asbestos including

ongoing requirement to update the Asbestos Register (where applicable) For the avoidance of doubt, the Landlord will not remove any asbestos in the property prior to completion of the Lease.

COSHH Tenant to carry out all COSHH assessments as and when required by the Control of Substances Hazardous to Health Regulations 2002 (and any amendments thereof) and to provide the Landlord with a copy of every Assessment upon demand.

Compliance Tenant to be responsible for all Compliance matters including but not limited to, all the carrying out of Statutory testing including Fixed Wiring tests, Legionella testing and compliance with relevant Environmental laws and regulations.

Waste disposal Suitable means of disposing of sharps and other drugs paraphernalia must be provided and also separate sanitary waste bins both of which must be emptied regularly into a suitable external containers which are separate from general waste or taken away each day and totally removed from the property.

Tenant to comply at all times with the Waste Duty of Care: Code of Practice (as updated or amended) in respect of Waste Management and issued in accordance with Environmental Protection Act 1990.

Fire Risk Assessments Tenant to be obliged to carry out a fire risk assessment on the whole of the premises (or to ensure that any sub tenant is obliged to do in relation to any sublet premises,) as and when required by law or regulations, and to carry out any work recommended in the report within 6 months from the date of the report.

Tenant to provide a copy of the FRA report within 14 days of issue or upon request by the Lessor.

Right to re-enter Should the Tenant fail to maintain the asset and /or fails to ensure continuous public access at any time, save for natural disasters and specific Force Majeure circumstances , then for 1st 10 years only , the Landlord may, at its sole discretion (but with no obligation) having given not less than 2 months prior written notice of its intention ,enter the property and carry out the whatever works are required in order to bring the Asset back into full public use . X would be responsible for all costs incurred by the Landlord on a full indemnity basis.

Structural Internal or external alterations Permitted subject to the Landlord's prior written consent which shall not be unreasonably withheld.

Non Structural internal and external alterations Permitted subject to the Landlord's prior written consent which shall not be unreasonably withheld.

Other Alteration provisions

Detailed plans and specification of any proposed structural or non-structural alterations requiring Landlord's consent are to be provided with any Licence to Alter application.

Tenant to be responsible for all reasonable legal and professional fees incurred by the Landlord as a consequence of a Licence to Alter application whether or not the matter proceeds.

Permitted Alterations Express consent is hereby given for the installation of waste bins, signage, external lighting, security equipment, Wi-Fi dishes and/or aerials and information notices subject to planning and other relevant consents.

Insurance Tenant to insure all of the demised area for all risks including Public Liability, Employers Liability and Buildings. (Note: There will be an option to have cover under the Landlord's block Policy in respect of the Building insurance, subject to payment of an annual Insurance Premium)

Retention of income from WC's All income generated by the PC's will be wholly owned by X but it is only to be applied to the repair, maintenance and running of the PC from which the money originated and no other property.

Permitted Hours of Use The public toilet element of the building should provide access which closely matches EDDC's own provision, being: open 7 days per week from 8am until at least 10pm in the summer and 8am until 7pm in the winter. It is understood that not all Community or Town and Parish groups may be able to operate this and so alterations may be agreed upon discussion.

Service Standards Toilets and all external areas of the property to be kept clean, safe, fully stocked and operational throughout the agreed opening times, with cleaning schedules and warnings of any hazards and an emergency contact number to be prominently displayed at all times.

Measures to safeguard users must be in place at all times and they must be regularly reviewed and updated to reflect national health issues.

Rights of Way The Lease is granted with a right of way over path 'z' and access road 'y' for pedestrians only and in order to gain access to the Public Convenience facilities. (As appropriate)

Pre-emption rights The Landlord to have the right of first refusal in respect of any proposed disposal of whole or part of the Tenant's long leasehold interest in the Property (Mechanism timeframe and valuation approach to be drafted by the Landlord's lawyer)

Permissive rights All known or permissive footpaths and/or any acquired public pedestrian access rights to be reserved

Overage provisions The Tenant will become liable to pay Overage should it secure a planning consent which enhances the value of part or whole of the property, at any time during the lease, and on each on every occasion planning consent is secured. Actual Payment of the Overage will be triggered when the associated increase in the value of the Tenants long leasehold interest is realised by way of an assignment or underletting of the whole of the head lease interest whether or not the planning permission has been implemented.

The Tenant will also be liable to pay Overage should they take advantage of any Permitted Developments Rights which enhance the value of part or whole of the property, at any time during the lease, and on each on every occasion permitted development rights are implemented. Actual payment of any Overage will be triggered when the associated increase

in the value of the Tenants long leasehold interest is realised as a consequence of securing Permitted Development Rights is realised as a result of an assignment or underletting of the whole of the head lease interest .

The Overage period shall start on the commencement date of the lease and shall be payable for a period of 80 yrs. Overage payments shall equate to 50% of increase in capital value over and above an agreed initial valuation figure of £1 and the market value of the property as at the date of realisation of the increase in capital value.

Subletting of Part or Whole – Landlord's share of rent

The Tenant shall also pay the Landlord a share of rent payable when part or whole of the property is sublet .The relevant share of the rent is to be agreed by the parties at the time of the transaction however, the Landlord's decision is final if the parties cannot agree the appropriate share of the rent but at no time shall the Landlord's share of the rent exceed 35%.

Other clauses

Income & Capital receipt redistribution All capital receipts / rents /income received by X from any disposal of this Asset are to be wholly re-invested in this specific Asset leased to X and as detailed in these HOT's or other PC facilities within the locality. Such receipts are to be wholly reinvested in the asset for the duration of the first ten years of the lease commencing from the date of grant of the long lease.

Permitted Extinguishment/Relocation of existing uses to alternative locations

The stated public use as defined as at date of grant of a long leasehold interest shall be continued as set out in the user clause in the long lease for a period of 10 years from the date of grant of lease, with the exception of where the asset requires partial enhancement in order to enable commercial activities in support of general asset maintenance of the property in question. However, it is expressly acknowledged that the public use of a particular asset might change over time and in response to a change in public needs. Therefore, if the use of an asset changes from its original purpose during this period, any permanent and /or temporary loss will need to be replaced either within the existing premises and/or relocated onto alternative premises /land. However , it is further acknowledged that replacement of a facility or an existing use might be different in scale or design from what it is replacing, in order to accommodate the change in public demand .For example, a new facility WC which is replacing an existing WC facility does not need to be recreated on a like for like basis , as if the is demand is for only one unisex cubicle , then only one replacement cubicle would suffice.

Lessor to be the ultimate arbiter of whether there has been a change in demand which requires such steps to be taken but with Lessor's approval to a proposed change of use and relocation of an asset in these circumstances being subject to such consent NTBUW.

The Lessor requires at least 3 month's prior written notice the Lessee's intention to relocate/extinguishment of any originally defined public use during the first 10 year period but after the initial 10 year period, the above obligations will fall away.

Encroachments and unauthorised uses The Lessor cannot warranty full vacant possession of this Asset will be afforded as at the date of granting of a long leasehold interest .The parties hereby agree that no action legal or otherwise, will be taken by the

Lessor prior to any leasing in respect of any potential or known encroachment or trespass issues, nor will the Lessor take any action to remove unauthorised signage or equipment, nor take any action in respect of any other unauthorised incursion onto the Lessor's land.

Any existing encroachments will become the responsibility of X and include but are not limited to (site specific) .e.g. Local business signage where no agreement is in place with the Lessor for it to be there. (May not get away with this for a long leasehold disposal)

However the Lessor hereby agrees to cooperate fully with X in order to assist with the regularisation of any unauthorised uses or incursions once the Lease has been granted.

Reciprocal Access rights Reciprocal access rights will be granted to both parties in order to carry out repairs, maintenance and /or to lay or repair or connect to Services on the other party's property, subject to reasonable prior written notice.

Green Leases The Lessee hereby undertake to grant 'Light Green' agreements to all future sub Leasehold occupiers of this Asset (including any subsequently created café or retail unit) which formally encourages genuine cooperation between the parties , including the sharing of data and agreeing a joint strategy for the reduction of environmental impacts as a result of the occupiers use and enjoyment of the property.

These Agreements will further oblige regular communication between the parties in terms of reviewing environmental performance and in relation to discussing and agreeing options for delivering improved environmental performance.

Transfer of street furniture An Inventory will be attached to each agreement confirming any street furniture and other related items which will form part of each disposal. (If any)

Access rights Should any street lamps , waste or salt bins, public signs , car parking or electricity meters, or other such similar equipment and /or storage units be located within the area to be demised to X , X will allow full access to such equipment by the relevant Authorities at all times and will not interfere ,damage or move such equipment without the prior written consent of the relevant Authority.

Trees A tree survey (if applicable) will be undertaken by Transferor before transfer and if necessary, any dangerous or fatally diseased trees will be removed prior to Transfer.

Equipment Any Lessor owned equipment contained in the attached schedule is to be transferred to the ownership Lessee upon completion (If any)

No Contract These Heads of Terms are not intended to create any legally binding obligations and are being issued Subject to Contract and subject to Full Council's approval.

The HOT's are confidential to the intended parties to the proposed Lease and to their professional advisors.

The document for the proposed sale may contain further terms as the Lessor requires, including additional terms on matters that are covered in this document