Appendix 3
College Merger – Ministerial Merger Business Case (MMBC)
Estates & assets

In December 2018 the Council resolved to:

> "*DELEGATE authority to the Chief Executive (or her nominee) to realise arrangements for property assets resulting in usage of the Council-owned properties for a minimal value transaction to the new college*";

The proposal

It is proposed that Shetland Islands Council make certain property and assets currently dedicated to Shetland College and NAFC for the provision of tertiary and further education, available to a new college established for the same purposes as set out in the MMBC.
This would be under the terms of a full lessee repair and maintenance lease.
The lease would be for 25 years at a rate of £39k per annum.

Estate portfolio

The colleges utilise an extensive and diverse property estate spread over two geographically distinct areas in Lerwick and Scalloway. Most of the property portfolio involves direct and indirect provision of teaching, learning and research.
The portfolio also contains office, catering and maritime infrastructure.
The estate is less than 40 years old and is in an acceptable condition[1].

Portfolio

	Ownership	Comments
Shetland College Phase 1, 2 & 3 buildings	Shetland Islands Council	-
Car parking and access roads	Shetland Islands Council	-
NAFC main building	Shetland Islands Council	-
Port Arthur House (accommodation)	Building SFTCT, land Shetland Islands Council	-
John Goodlad Centre	Building SFTCT, land Shetland Islands Council	-
Broodstock Building	Building SFTCT, land Shetland Islands Council	Combined with hatchery

Legislation And Guidance

The Local Government (Scotland) Act 1973, section 74, allows a local authority to dispose of land held by them in any manner they wish but shall not dispose of land for a consideration less than the best that can reasonably be obtained. That rule does not apply where the best consideration that can reasonably be obtained is less than the threshold amount or the difference between that consideration and the proposed consideration is less than the marginal amount[2].

[1] SC phase 1&2 built early 1990s, phase 3 in 2013, NAFC mid-1980s to present.
[2] Local Government (Scotland) Act 1973, section 74

In accordance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010 the threshold amount for the purposes of the 1974 Act is £10,000 and the marginal amount is 25% of the best consideration that can reasonably be obtained.

The Proposal is for a transaction over £10,000 and the reduction in consideration is significantly more than 25% of the best consideration that can reasonably be obtained. Therefore the provision of the Regulations will apply.

Regulations 3 and 4 of the 2010 Regulations sets down the procedure for disposal of land for a consideration less than the best that can be reasonably obtained.

The Scottish Government issued guidance on the 2010 Regulations in May 2010.
The Guidance includes that the Best Value duties in terms of the Local Government in Scotland Act 2003 Act remain. Paragraph 12 of the Guidance states, "*The Land Disposal regulations are consistent with this duty to secure Best Value and relevant aspects of this duty include:*

- *Making the best use of public resources, including land and property;*
- *Being open and transparent in transactions;*
- *Sound financial controls are in place to minimise the risk of fraud or error;*
- *Assessing the full financial consequences of decisions at an appropriate level before major financial decisions are taken or commitments entered into;*
- *Demonstrating responsiveness to the needs of communities, citizens, customers and other stakeholders, where relevant*."

In the context of the merger proposal, the Council may transfer land for under value where it is satisfied that, ".. *the disposal is reasonable and is likely to contribute to the promotion or improvement of any of the following (in respect of the whole or any part of its area)*:

- *The local authority is satisfied that the disposal is reasonable; and*
- *The disposal is:*
    - *economic development or regeneration;*
    - *health;*
    - *social well-being; or*
    - *environmental well-being*."

State Aid is any advantage granted by public authorities through state resources on a selective basis to any undertakings that could potentially distort competition and trade in the European Union (EU). General day to day activities of teaching students and providing the infrastructure to teach students and carrying out non-commercial research and development would fall within the category of non-economic activity. Therefore funding/assistance in respect of these areas is unlikely to be considered State Aid.

The issue is more difficult for economic activities i.e. activities which are being provided on the market.

In relation to the estates and assets, which will be included in the Council's transfer arrangements, the following points are noted:

- Moveable/fixed assets (including carpentry workshop machinery, library books, whiteboards, ICT equipment, furniture, etc) are used primarily for educational purposes. On that basis, it is likely that these can be transferred legitimately for nil value as this should not give rise to issues from a State Aid perspective.

- Textile Facilitation Unit (TFU). Due to the commercial nature of elements of the operation within the TFU, it is more difficult to argue that this should be transferred below value as this will have significant commercial use. This should therefore be transferred for value.

- Heritable Estate: Relating to NAFC Main Building, Shetland College building (Phases 1,2 & 3), The Broodstock Building (combined with the Hatchery) in Scalloway. Providing the Council can justify transfer for minimum value in accordance with the legislation and guidance and the building is used or will be used for teaching etc – this should not give rise to issues from a State Aid perspective

Minimum Value Transaction (MVT)

The Deloitte Financial Assurance Report (December 2018) notes that:

> "*Savings of £0.78m with regards to premises costs have been assumed. It is important to note that £0.49m of this assumes that there will be no ongoing lease costs associated with the properties used by the colleges. This is subject to a decision by the Council. Any movement from a £nil lease charge will reduce the level of savings which will be achieved by the college. The remainder of the savings - £0.29m – do not have this uncertainty*".
>
> And :
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> "*Following adjustments to the financial modelling and additional work carried out arising from this review, which identified amendments of £0.22m, we are satisfied that the financial projections and associated financial model is robust*".

The financial modelling in the December 2018 Full Business Case has been superseded by the work done in recent months by a Joint Finance Working Group under the direction of the Principal Designate.

The work on the financial modelling leading to agreement by the Shadow Board to the financial model included in the MMBC at Appendix 1 includes a figure of £100k per year for the lease costs of the Shetland College and NAFC Marine Centre buildings to the new merged college. This figure was an early estimate for a lease payment.

The current value of properties owned by Shetland Islands Council, and utilised by the tertiary sector is £10.7m, of which £9.8m relates to buildings, as shown in the table below:

			Asset Register			
Tertiary Estate	**Land (L)**	**Buildings (B)**	**L - NBV**	**B - NBV**	**B - Life**	**Valuation Method**
Shetland College Phase 1	SIC	SIC	290,000	1,870,000	40	DRC
Shetland College Phase 2	SIC	SIC	80,000	935,000	40	DRC
Shetland College Phase 3	SIC	SIC	176,000	3,240,000	45	DRC
Car Park & Access Road	SIC	SIC	inc in PH3	-	50	
NAFC Main Building	SIC	SIC	275,000	3,795,000	40	DRC
NAFC Water Front	Crown Estate leased to SIC		-	-	-	
Total			**821,000**	**9,840,000**		

The net present value (NPV) equivalent to the current net book value of the buildings over a 25 year lease period has been used in the table below.

The NPV has been calculated using the HM Treasury's Green Book rate of 3.5%.

Minimum Value Lease (25yrs)						
Year	Discount Factor	MVT Lease	Revenue Savings	Total Cash Flow	Discounted Cash Flow	Cumulative Discounted Cash Flow
		£000	£000	£000	£000	£000
-	1.000					
1	1.000	-39	-357	-395	-395	-395
2	0.999	-39	-357	-395	-395	-790
3	0.999	-39	-357	-395	-395	-1,185
4	0.999	-39	-357	-395	-395	-1,580
5	0.998	-39	-357	-395	-395	-1,975
6	0.998	-39	-357	-395	-395	-2,369
7	0.998	-39	-357	-395	-394	-2,764
8	0.997	-39	-357	-395	-394	-3,158
9	0.997	-39	-357	-395	-394	-3,552
10	0.997	-39	-357	-395	-394	-3,946
11	0.996	-39	-357	-395	-394	-4,340
12	0.996	-39	-357	-395	-394	-4,734
13	0.995	-39	-357	-395	-394	-5,128
14	0.995	-39	-357	-395	-393	-5,521
15	0.995	-39	-357	-395	-393	-5,914
16	0.994	-39	-357	-395	-393	-6,308
17	0.994	-39	-357	-395	-393	-6,701
18	0.994	-39	-357	-395	-393	-7,093
19	0.993	-39	-357	-395	-393	-7,486
20	0.993	-39	-357	-395	-393	-7,879
21	0.993	-39	-357	-395	-392	-8,271
22	0.992	-39	-357	-395	-392	-8,664
23	0.992	-39	-357	-395	-392	-9,056
24	0.992	-39	-357	-395	-392	-9,448
25	0.991	-39	-357	-395	-392	-9,840
		-964	-8,921	-9,885	-9,840	
	Value of Buildings				9,840	

This shows that a minimum value lease of £39k per annum over 25 years would demonstrate recognition of the value to the public purse of these properties.

The income to the Council and savings per annum from the reduction in payments with regard to rates, maintenance and energy costs would contribute to the estimated savings set out in the Council's Service Redesign Programme.

This proposal would demonstrate Best Value by making sure a significant contribution to the financial model in the MMBC, ensuring that the merger proposal is viable and meets the Council and Shetland Partnership Strategic objectives as set out in the MMBC.

Conclusions

The recommendation to the Council is that in order to demonstrate Best Value, the Council should approve the transfer of assets as described above for the following considerations:

1. An estimated one-off capital payment of £100k for the TFU equipment.

   This will be the value of the TFU assets on the Council's asset registers at the point of transfer, plus an allowance for smaller assets such as finishing machines, etc.

2. A £39k/year full lessee repair and maintenance lease for the heritable estate as set out above.

ENDS.