



COMMUNITY ASSET TRANSFER POLICY

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1. Introduction

Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) gives community bodies a right to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for the transfer of any land or buildings they feel they could make better use of.

The background to this legislation is a belief that empowering communities is key to creating a more prosperous and fairer Scotland and that it is the role of central and local government to work in partnership with communities and support them to lead change for themselves. The legislation is designed to support the view that community ownership or control of land and buildings can make a major contribution towards strengthening communities in this way.

The Act gives significant rights to qualifying community groups and puts substantial procedural responsibilities on local authorities and other public bodies.

2. Summary of asset transfer under Part 5 of the Act

Under Part 5 of the Act, an asset transfer request can be made by a “community transfer body” to a local authority or other “relevant authority”. The community transfer body can ask to buy, lease, manage or use any land or buildings which belong to or are leased to the relevant authority. The community transfer body must set out what they plan to do with the property and how much they are prepared to pay. No land or property assets are exempt from the provisions of the Act.

When an asset transfer request is made, the relevant authority must decide whether to agree or refuse the request. The authority must agree to the request unless there are reasonable grounds for refusal.

The Act does not provide a definition of what reasonable grounds are since these will depend upon the individual circumstances of each case. It does however indicate that reasonable grounds are likely to include cases where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal (including existing use or potential disposal in the case of surplus assets), or where agreeing to the request would restrict the relevant authority’s ability to carry out its functions.

Once an asset transfer request has been made, the relevant authority is not allowed to sell, lease or otherwise dispose of the land it relates to, to anyone other than the community transfer body that made the request, until the whole application process is completed (including internal reviews and/or appeals to the Scottish Ministers).

That prohibition does not apply if, before the asset transfer request is made, the land has already been marketed for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another party.

The council’s position is that written communication between the council and another party relating to negotiations or proceedings around a proposed sale, lease or transfer of the land will be considered to be meaningful engagement and demonstrable evidence that such negotiations / proceedings have begun. For clarity, such correspondence will be between delegated officers and the other party only. General property enquires received by the council shall not be considered sufficient to trigger an exemption to the aforementioned prohibition.

The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value or at a discount. The community transfer body has to state in its asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver, and the relevant authority has to decide whether to accept that price.

If the request is agreed, the community transfer body makes an offer and a final contract is negotiated. If the request is refused, or no answer is given, or the community transfer body does not agree with the conditions set by the relevant authority, the community transfer body can ask for the decision to be reviewed internally by the relevant authority. If the outcome of the internal review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal directly to the Scottish Ministers. They can also appeal if the request is agreed and an offer made but no contract is completed within six months of the date of the offer.

Scottish Ministers may allow the appeal (i.e. agree with the community transfer body's case), or reject it. They may reverse or change any part of the original decision by the relevant authority, including changing the terms and conditions under which the asset transfer is to take place. A decision by the Scottish Ministers cannot be appealed, other than by way of a judicial review through the courts.

It should be noted that this asset transfer legislation is not the only route open to community bodies and, in some instances, it may not be the best option for them. Early engagement and collaborative working are encouraged in order to identify key objectives and potential solutions, which in some instances may not involve asset transfer at all.

For example, where a community body wishes to run an existing council service that is tied to a particular property, and they do not want to use that property for any other purpose, then a Participation Request may alternatively offer the best solution. The council has a separate approved procedure in place for the consideration and processing of Participation Requests and information on that procedure is available upon request.

3. The council's Community Asset Transfer Policy

3.1 Policy context

The council's policy for the transfer of property assets to community transfer bodies recognises that handing over the ownership or stewardship of an asset, be that by way of sale or lease, can have a valuable role in supporting and sustaining local communities.

It recognises that community ownership of assets can make an important contribution to the range of innovative, bottom-up solutions that community groups can develop to address local needs. Importantly, these solutions not only meet the needs of the local people, they can also contribute to the delivery of council and national strategic priorities.

It is anticipated that most interests in asset transfer will come from community transfer bodies that identify a specific opportunity. However, opportunities may also be identified by the council and the ongoing review of council service delivery is expected to identify properties that have potential for a more intensive use, or a greater variety of social, community and public purposes, to the benefit of the local community.

The aim of this policy is to make it as simple as possible for community groups to make an enquiry about asset transfer and start the application process to purchase or lease land or property from the council.

The policy, its associated procedures and supporting governance arrangements have been specifically developed to ensure the council can competently comply with the statutory requirements of the Act.

3.2 Which assets may be subject to asset transfer requests?

The Act provides that a community transfer body may apply for the transfer of any land or buildings that belong to or are leased to the council.

The council will fully consider all asset transfer requests on their own merits in accordance with Scottish Government guidelines. As suggested in those guidelines, an application is likely to be recommended for refusal when the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal (including existing use or potential disposal in the case of surplus assets), or where agreeing to the request would restrict the council's ability to carry out its functions.

Asset transfer requests that would result in the council losing existing or projected revenue or capital income may be recommended for refusal on the grounds that any loss of income will restrict the council's ability to carry out its functions.

3.3 Who is eligible to apply for asset transfer?

The Act provides that a community can be any group of people who feel they have something in common. It may be that they live in the same area or that they share an interest or characteristic. Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations, etc. They may be very specialised or local, ranging up to national or international groups with thousands of members.

To make a valid asset transfer request, an organisation must qualify as a "community transfer body", defined in the Act as being either:

- a community-controlled body, or
- a body that is designated as a community transfer body by an order made by the Scottish Ministers.

Further information on the criteria for eligibility is provided in the "Community Asset Transfer Policy Guidance Notes for Applicants" that accompany this policy.

3.4 What information will applicants be asked to provide?

The Act requires that community transfer bodies must provide certain mandatory information as part of any asset transfer request. Failure to provide that mandatory information renders an application invalid. The required mandatory information is set out in the council's "Asset Transfer Request Form". In the interests of consistency and completeness, community transfer bodies are asked to submit asset transfer requests using that application form. Information on how to access that form is provided in the "Community Asset Transfer Policy Guidance Notes for Applicants" that accompany this policy.

In addition to the mandatory information and to enable the council to fully consider asset transfer requests and reach a competent decision within the statutory timescale, community transfer bodies are recommended to provide the following supporting documentation as part of their application:

- A copy of the community transfer body's constitution;
- A business plan (that is proportionate to the nature of the asset transfer request);
- Audited accounts (or a financial projection where the applicant has been operating for less than one year).
- Annual reports (where these are available).
- Evidence of community engagement that demonstrates need and support for the proposed project.
- A skills audit that evidences the community transfer body's ability to successfully deliver and sustain the proposed project.
- A valuation report prepared by the Valuation Office Agency or an alternative appointed RICS Registered Valuer that confirms the market value of the property. The valuation date stated in that report will be no more than three months from the date of the asset transfer application. That valuation report will be instructed jointly by the applicant and the council and the associated costs will be shared equally between those two parties.

Further details on the level of information that community transfer bodies will be asked to provide, along with a copy of the council's Community Asset Transfer Request Form, are provided in the "Community Asset Transfer Policy Guidance Notes for Applicants" that accompany this policy.

4. The application process

4.1 Pre-application discussions

Community groups are encouraged to discuss their options, their suitability and the scope of community asset transfer with the council at the earliest possible opportunity. These informal pre-application discussions will help to prepare for the process of making a formal application for transfer.

The pre-application stage is a voluntary but important component of the asset transfer process, as it gives both the council and the community transfer body an opportunity to fully explore the desired outcomes of the proposed project and discuss how these can be best achieved.

At the pre-application stage, the council will appoint its Community Empowerment and Property Modernisation Officer to act as the applicant's single point of contact in the council. The community transfer body and the Community Empowerment and Property Modernisation Officer will then work in partnership to discuss the asset transfer proposal.

To assist community transfer bodies in considering and developing their asset transfer proposals, the council has a statutory obligation to make available information that it holds relating to the property in question. Examples of this might include title deed information, building condition reports or information relating to running costs. Further information in this regard is provided in the "Community Asset Transfer Policy Guidance Notes for Applicants" that accompany this policy.

Community groups are under no obligation to undertake pre-application discussions and may submit an asset transfer request without prior consultation with the council should they wish to do so. It is recognised however that early engagement and collaborative working are likely to produce the most positive outcomes.

4.2 Upon receipt of an asset transfer request

The start of the timeline for processing an application is triggered by the receipt of a valid community asset transfer application. When a valid application is received, the council's Community Empowerment and Property Modernisation Officer will issue an acknowledgment letter confirming the application's validation date.

The council has an obligation to determine an asset transfer request and issue a formal decision notice within six months of an application's validation date. That deadline for issuing a decision can be extended, as long as it is mutually agreed by both the council and the community transfer body.

To create a robust decision making process and in accordance with Scottish Government guidance, the council has brought together officers with key responsibilities within the authority (including property, legal, finance, economic development, and those with a focus on community development, community engagement, and community wealth building) to review and assess asset transfer requests. This group is called the Community Asset Transfer Board (CATB) and is chaired by the Head of Finance and Property Services.

The CATB comprehensively assesses and scores applications against specified criteria, then submits a report with recommendations to the Asset Transfer Committee (ATC), a committee of elected members. That report will either recommend the application be accepted, and if so on what terms, or it will recommend rejection of the application and it will set out the reason(s) for refusal.

Where an asset transfer request relates to a property within a specific ward, the elected members for that ward will be provided with a copy of the ACT committee report for information.

The ATC will consider the report and make a formal decision on whether the asset transfer request should be accepted (and if so, on what terms) or refused. A decision notice will be issued to the applicant by the council's Community Empowerment and Property Modernisation Officer thereafter, confirming that decision and the reason(s) behind it.

The council's Scheme of Delegations to Officers provides that the Head of Finance and Property Services is responsible for the development and implementation of the council's Community Asset Transfer Policy and procedures, with responsibility for determining all asset transfer requests resting with the ATC (or the Asset Transfer Review Body in the case of applications for internal review). The Scheme of Delegation also reflects the appointment of the Head of Finance and Property Services as Chair of the CATB.

4.3 Rights of internal review and appeals to the Scottish Ministers

The Act requires that community transfer bodies must have a right of internal review, with that review being undertaken by elected members who were not involved in the initial decision making process.

A community transfer body can seek a review or appeal if:

- their request is refused,
- the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request,
- no decision notice is issued within the required period or
- once an asset transfer request has been agreed, no contract has been concluded within the period allowed (via appeal directly to the Scottish Ministers).

Accordingly, under this policy, the community transfer body have the right to seek an internal review by way of referral to the council's Asset Transfer Review Body (ATRB).

The ATRB acts independently of the ATC and comprises a different group of elected members from those who made the ATC's original decision.

In terms of the Act, an application for internal review must be made in writing to the council within 20 working days of the date of the council's decision notice (or the latest date the council should have issued a decision notice) and the ATRB must undertake its review and issue a further decision notice within 6 months of the date of the review application.

The ATRB will either uphold the ATC's original decision, or amend it. A decision by the ATRB represents the council's final position.

If the outcome of the internal review does not resolve the issue, or if no decision is made within the required period, the community transfer body can appeal directly to the Scottish Ministers within 20 working days of the council's decision notice or the latest date the council should have issued a decision notice).

Scottish Ministers may allow the appeal (i.e. agree with the community transfer body's case), or reject it. They may reverse or change any part of the original decision by the council, including changing the terms and conditions under which the asset transfer is to take place. In all cases, the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

4.4 Timescales for determination of an application

Upon receipt of a valid application, the following timescales will apply:

<u>Action</u>	<u>Timescale</u>
Acknowledgement letter issued confirming validation date:	Within 10 working days of receipt of the valid application.
Assessment of application by CATB:	Within 3 months of validation date.
Determination of application by ATC & decision notice issued:	Within 6 months of validation date, in accordance with statutory requirements.
Determination of any reviews referred to the ATRB:	Within 6 months of a review application date, in accordance with statutory requirements.

5. Terms of asset transfer

5.1 Transfer of asset and responsibility

The tenure under which an asset transfer may include:

- the transfer of management responsibility for an asset through a service level or management agreement;
- a short or long term lease arrangement, or
- transfer of outright ownership.

The means of asset transfer will reflect the requirements of both the applicant and the council, so each proposal will be different. In all cases involving transfer of ownership/occupation, appropriate legal mechanisms will be put in place to protect the council's responsibilities as stewards of public assets. This may include clawback and standard security provisions to safeguard any discounts applied to market values, or restrictions on changing the use of the asset from the purpose for which transfer was originally intended.

In cases where a project is reliant upon the community transfer body securing external funding (e.g. the Lottery or SportsScotland), the council may be required to accept a standard security that is less than first ranking.

From the date of any transfer, by whatever means that transfer takes place, the community transfer body will become immediately and entirely responsible for the property and payment of all costs associated with their occupation and use. The council will cease to have any financial and operational commitments relative to the property from the date of transfer. This will include generally, but will not be limited to, costs and responsibilities relating to the following:

- the upkeep, repair and maintenance of the asset;
- alterations or improvements to the asset;
- all other running costs (including utilities, rates liabilities and insurances);
- statutory compliance and health and safety requirements.

5.2 Funding support from the council

Beyond any discounted market value that may be agreed for the sale or lease of the property, the council will not provide any additional revenue or capital funding in support of the proposed asset transfer project, other than by virtue of the community transfer body making a successful bid into any general funds that are administered by the council and that are accessible to all community groups (for example the Placed Based Investment Fund).

5.3 Price, valuation and non-financial benefits

The council recommends that, as part of its application, the applicant provides a valuation report that establishes the market value of the property in question. The report, which is also likely to be required by any potential external funders, should be prepared by the Valuation Office Agency or an alternative qualified RICS Registered Valuer and the stated valuation date in the report should be not more than 3 months from the date of the asset transfer application.

That valuation report will be instructed jointly by the applicant and the council and the associated costs will be shared equally between those two parties. This will enable all parties to understand the value of the property from the outset and provide context for any discount from market value that the community transfer body may seek from the council.

The community transfer body must state in its application how much they are prepared to pay to purchase or lease the property, alongside the benefits the project will deliver, to allow the council to decide whether to accept that price and other terms.

The council has a duty to secure the best terms obtainable in their operations, including when disposing of or letting property. The best terms obtainable does not always mean the highest possible price, and the council has the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

When the price offered in an asset transfer request is less than the market value of the property, the council will need to consider whether the proposed benefits to be delivered by the community transfer body justify the proposed discount. This will be based solely on the analysis of the information included in the asset transfer request. The benefits of the request should be proportionate to the value of the asset and the level of discount, with an appropriate level of information to support the application. Any decision to transfer an asset must always represent the best use of public resources.

Whilst every asset transfer request will be considered individually on its merits and in accordance with statutory requirements, the council will typically expect the community transfer body to pay either the established full market value of the property, or that value less an appropriate discount that reflects the non-financial community benefits that the proposed project would deliver.

6. Criteria for assessing requests

Section 82 of the Act defines the criteria against which asset transfer requests must be evaluated and determined. The CATB evaluates and scores asset transfer requests in accordance with those stated criteria using a standardised scorecard approach.

During this process the council engages with applicants to ensure a clear understanding of the exact nature of the proposals. An assessment of the benefits of the proposal is prepared by the CATB, which in turn forms the basis of their subsequent report to the ATC.

Through that process, the council has put in place a consistent and transparent corporate process for assessing the benefits, costs and risks of the transfer of responsibility associated with asset transfer.

Further details of the criteria for assessing requests, including access to a copy of the CATB scorecard, are provided in the “Community Asset Transfer Policy Guidance Notes for Applicants” that accompany this policy.

7. Surplus Property Procedure

The council's updated Surplus Property Procedure was approved by Council Executive on 12 December 2023. The purpose of the Surplus Property Procedure is to:

a) Provide a consistent, transparent and compliant process that ensures surplus property assets can be disposed of efficiently and effectively, minimising vacant property holding costs and securing the best terms reasonably obtainable for the council.

b) Establish that the disposal of surplus property assets is agreed as being a commercial exercise, the primary aim of which is to secure the best consideration reasonably obtainable for the council, either by way of a capital receipt or commercial rental income, or disposal in accordance with the 2010 Regulations, securing Best Value.

c) Establish a link to the council's approved Community Asset Transfer Policy through which any community or third sector organisation seeking to acquire or occupy council property on concessionary terms, or who wish "community benefit" to be taken into consideration, should pursue their interest by way of a community Asset Transfer Request under the provisions of Part 5 of The Community Empowerment (Scotland) Act 2015.

Accordingly, any community transfer body interested in acquiring council land or property and who wish to do so on concessionary terms or who wish community benefit to be taken into consideration shall be required to pursue their interest via the council's approved Community Asset Transfer Policy and its supporting governance arrangements.

Where the council is disposing of a property that has been formally declared surplus by the Council Executive in accordance with the approved Surplus Property Procedure, community benefit will only be taken into consideration where it forms part of a validated community asset transfer application.

Notwithstanding the provisions of the Act, the council will not delay or postpone the disposal or marketing of a surplus property to afford a community transfer body additional time to prepare and submit a community transfer application.

In order to raise awareness amongst any community groups with aspirations to explore community ownership and/or asset transfer, details of surplus properties are provided on the council's community asset transfer webpage.

8. Common good property

Common good is property owned by a local authority which has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, and moveable items such as furniture and art. It may include cash where property has been sold, and income received from the leasing of common good property.

Part 8 of the Act imposes duties on local authorities in relation to common good property and seeks to increase transparency about the existence of common good assets and to ensure there is community involvement in decisions taken about their identification, use and disposal.

The Act places a duty on local authorities to “establish and maintain a register of property which is held by the authority as part of the common good.” The first version of the council’s Common Good Register was approved for publication by Council Executive on 22 March 2022 and supporting governance arrangements for the management of common good property were subsequently approved by Council Executive on 25 October 2022. The register is, by definition, a live and continually evolving document as properties are added to or removed from the register.

Community asset transfer requests that involve common good property must take cognisance of the statutory requirements of the Act and the council’s approved procedures for the management of common good property and their supporting governance arrangements. Any decision notice issued by the council will require to take account of those statutory requirements.

9. Annual reporting

The Act requires the council to publish an annual report setting out the numbers of asset transfer request received and their outcomes. The report must state:

- how many asset transfer requests were received
- how many requests were agreed to or refused
- for requests agreed to, whether they resulted in transfer of ownership, lease or conferral of other rights
- for appeals relating to requests made to the relevant authority, how many have been allowed, dismissed, or have resulted in any part of the authority’s decision being reversed or changed
- where decisions made by the authority have been reviewed, how many have been confirmed, modified or substituted by a different decision.

The report must also describe anything the relevant authority has done to promote the use of asset transfer requests and support community transfer bodies to make requests.

Annual reports cover each year from 1 April to 31 March and must be published by 30 June. The report will show the number of requests received in that year and the numbers agreed to or refused in that year.

The council’s Community Asset Transfer Annual Report will be prepared by the Community Empowerment and Property Modernisation Officer and reported annually to the Council Executive by the Head of Finance and Property Services prior to publication.

(END)