

Orkney Islands Council

Community Asset Transfer

Guidance Notes

September 2017

1. Purpose of this document

1.1.

These are guidance notes which have been written to give more background to how the Community Asset Transfer process is being implemented in Orkney Islands Council.

1.2.

These guidance notes are written to support the Community Asset Transfer Policy, which was approved at the General Meeting of the Council on 10 October 2017 and is available here <https://www.orkney.gov.uk/Service-Directory/P/asset-transfer-requests-community-empowerment.htm>.

2. Introduction

2.1.

Orkney Islands Council recognises that Community Asset Transfer (CAT) of Council owned land and buildings can play a positive role in bringing voluntary and community organisations together to improve the quality of people's lives and provide better services. CAT provides communities with a mechanism for self-empowerment, and ways to strengthen their sustainability.

2.2.

In the context of this policy, the term community asset transfer relates to the transfer of responsibility for Council property assets to Voluntary and Community Organisations (VCOs). CAT can be achieved by the transfer of property ownership either at market value, at a discount or, alternatively, by the transfer of management responsibility through leases, Licence to Occupy agreements or other specialised arrangements. In the event of a long lease being entered into, responsibility for all asset management costs, including repairs, maintenance and insurance, could be transferred to the VCO depending on the terms of the agreement.

2.3.

CAT is a way of giving more control to communities and local people, inspiring and empowering others to find local solutions to community needs. This also supports the Council in delivery of its strategic vision, and to achieve the objectives of its six values of:

- Promoting survival.
- Promoting sustainability.
- Promoting equality and fairness.
- Working together.
- Working with communities.
- Working to provide better services.

3. Orkney Islands Council's approach to Community Asset Transfer

3.1.

Orkney Islands Council is committed to CAT where it will bring community benefits and contribute to the achievement of its aims and objectives. The Council will look at ways of supporting new VCOs and Council joint ventures where this is possible.

3.2.

The Council recognises that CAT can play a valuable role in supporting, empowering and sustaining local communities and is keen to make sure that Council assets can be owned and managed by local people where there is a community benefit.

3.3.

The Council will react positively to all enquiries from VCOs concerning the potential for community asset transfers and will offer support when required to develop business plans and provide advice on asset management. The Council will implement a transparent process for community asset transfer and will adopt a consistent method of assessing requests.

3.4.

Whilst fully supporting the principle of asset transfer, the Council recognises that some assets must remain in Council ownership and management to enable the organisation to deliver essential services, generate an income stream or support economic development. In addition, some assets may be subject to title conditions or burdens which make them unsuitable for transfer. As part of the initial application assessment, the Council will consider whether an asset should be retained or could be transferred to the community.

4. The National Context

4.1.

There are many different ways in which community empowerment can be achieved, with transfer of suitable publicly-owned assets being one of them. However, community asset ownership will not be the answer in all cases. Much will depend on individual local circumstances.

4.2.

This Act partially addresses some of the findings highlighted by the Christie Commission on the future delivery of public services in 2011, particularly with regard to community empowerment through participation, the development of community enterprises and community regeneration.

5. What is in the scope of the Policy?

5.1.

For the purposes of the Community Asset Transfer Policy, assets are the land and buildings owned or leased by Orkney Islands Council. This includes operational assets used for service delivery, assets generating income, assets utilised for economic development purposes and assets likely to generate significant capital receipts.

5.2.

The scope of the policy is not restricted to assets that have been formally declared surplus to operational requirements, but includes community amenity assets such as public conveniences and bowling greens. Potential transfers will be considered on a case-by-case basis against the criteria outlined in the policy.

5.3.

There may be restrictions on the Council's ability to transfer certain assets, for example Common Good assets, and additional legal steps may be required before any decision can be made.

6. Disposing of Assets, and the duty of Best Value

6.1.

Assets held by the Council are held on behalf of the people of Orkney. The Council has a duty to obtain best value in the use of its resources, and to look after the public purse in a responsible and prudent way.

6.2.

As a result of this, the Council can only consider transferring an asset at less than the best price that could reasonably be obtained for it, where community benefit can be clearly demonstrated. In setting the price for any asset consideration will be given to the valuation of the asset, the community need and any associated projected health, social, economic and environmental benefits in accordance with the requirements set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

6.3.

When disposing of land and buildings at less than the best price that can reasonably be obtained, local authorities are viewed as providing a subsidy to the recipient. Where this occurs, authorities must ensure that the nature and amount of subsidy complies with State Aid rules, particularly if there is no element of competition in the disposal process. Failure to comply with the rules means that the aid granted is viewed as unlawful and may result in the benefit being recovered from the aid recipient. In order for there to be State Aid within the meaning of Article 107(1) of the Treaty on the functioning of the European Union, all of the following four elements must be present:

- It is granted by the State or through State resources.
- It favours certain undertakings or production of certain goods.
- It distorts or threatens to distort competition.
- It affects trade between Member States.

6.4.

An assessment will be made by officers of the potential applicability of State Aid rules to each CAT case and comment made in each report remitted to the Asset Management Sub-committee for consideration.

6.5.

There is a duty on the Council to ensure it secures Best Value as defined by the Local Government in Scotland Act 2003 which can be best summarised as a requirement to ensure continuous improvement in the performance of Orkney Islands Council's functions, having regard to:

- Efficiency.
- Effectiveness.
- Economy.
- Equal opportunities.

7. Who can make a Community Asset Transfer request?

7.1.

The Council will consider transfer of assets to long established, stable and secure formal organisations. If an organisation wants to buy a property through asset transfer (rather than lease or other arrangement) it must be incorporated as a company, a Scottish Charitable Incorporated Organisation, a Community Benefit Company or a body designated by the Scottish Ministers (see paragraph 7.4 below). The Council will also consider transfers to newly formed community groups provided they can demonstrate they have the necessary expertise and experience to manage the asset and have a sound business plan in place.

7.2.

Assets will not be transferred to individuals or businesses to be used for commercial purposes or to groups for party political purposes.

7.3.

Applicants will be expected to demonstrate they have or will have the necessary expertise and experience to manage the asset. Applications should be supported by a business plan that has the undernoted characteristics:

- An appropriate legal structure, eg registered charity, community interest company, Scottish Charitable Incorporated Organisation (SCIO), not-for-profit company, or co-operative.

- It has sound long-term management and governance arrangements and the necessary expertise and experience.
- It has its own decision-making system and accountability to independent trustees or its own members or constituents.
- It does not distribute any surplus to owners or members but applies it to serving its basic purpose (excludes commercial concerns but includes organisations which charge users or the public for services or undertakes contracts for the Council).
- It is non-political and is not engaged in supporting candidates for political office.
- It has an element of local connection and voluntary involvement, is involved in the economic, environmental or social regeneration and development of Orkney and provides a service of community benefit in line with Council priorities.

7.4.

Additionally, the Scottish Ministers can designate a body to be a community transfer body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make asset transfer requests. A designated community transfer body is only entitled to make a request for ownership if the designation order states that it is allowed to do so.

8. What can Assets be used for?

8.1.

The proposed use of the asset must have the following characteristics:

- The proposed use must promote health, economic, social or environmental wellbeing and support the Council's corporate objectives.
- The proposed use will ensure extensive reach into the community.
- The proposal may serve a particular geographical community or a particular interest group (for example, youth services) but in all cases applicants will be expected to demonstrate how they will ensure inclusion and that there is strong community support.
- The proposed use will maximise opportunities to ensure sustainability, for example through income generation, social enterprise and the hiring of space and facilities.
- There is an evidenced need and demand for the proposed activities within the local community.
- The applicant must establish how much space it requires to deliver its proposals, and how it will make good use of the asset under consideration for transfer.
- The applicant must demonstrate how the premises will be managed, taking account of legislation affecting occupation and use of the asset.

9. What information would an applicant need to provide?

9.1.

Any applicant seeking to take on a Council asset must be able to:

- Provide a well-prepared and sustainable business proposal.
- Include a review of potential options for meeting the identified need in different ways.
- Demonstrate that there is a clear community/social demand for the proposed activity to be delivered from the asset.
- Show that there is community backing for the transfer and that consultation has taken place within the community.
- Demonstrate that they have the capacity to manage the asset and have directors or management committee members who have the required skills and experience.
- Show they have good governance and robust financial systems in place, along with all necessary policies expected of an organisation such as training plans, health and safety policies and comply with relevant equalities legislation, etc.
- Show how their proposal contributes to the achievement of the Council's objectives.
- Demonstrate that the proposed project will not duplicate activities, services or facilities already provided in the local community.
- Show that the applicant has thought about the risks involved in taking on the asset and ways of mitigating these.
- Demonstrate that there are realistic opportunities for securing the finance required to develop the asset.
- Show that ongoing delivery of the services and running of the asset are viable and sustainable in the long term.

10. What is the process for an application?

10.1.

The process is explained in more detail in the Community Asset Transfer Policy <https://www.orkney.gov.uk/Service-Directory/P/asset-transfer-requests-community-empowerment.htm>.

10.2.

In addition, there is good guidance from the Scottish Government for both Community Transfer Bodies (the organisation making the asset transfer request (ATR)) and for the Relevant Authority (in this case, Orkney Islands Council).

This guidance is available on the internet at the following links:

- <https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-community-9781786527509/> - for the Community Transfer Body.
- <https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/> - for the Relevant Authority.

10.3.

Anyone who is interested in submitting an Asset Transfer Request should be encouraged to read both sets of documents, as well as the Orkney Islands Council Policy.

10.4.

Anyone who requires any additional help or advice in making an application should be directed to the Estates Manager, who can be contacted at property@orkney.gov.uk.

11. How is a decision made on Asset Transfer Requests?

11.1.

Decisions on an Asset Transfer Request will be made by the Councillors who sit on the Asset Management Sub-committee. When an Asset Transfer Request is received and validated by officers, a meeting of the Asset Management Sub-committee will take place within the six-month deadline. Council officers will assess the request and prepare a written report for Councillors.

11.2.

This report will be considered at the meeting, which will be open to the public, unless there is a reason why the public need to be excluded. Reasons for the exclusion of the public include information relating to the financial or business affairs of a particular person and terms proposed by the Council in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

11.3.

If the asset applied for is vacant, consideration may be given to entering into a short term, full repairing and insuring lease with the VCO to allow them to develop their detailed business case. The options around this will be discussed with the VCO and, if this is suitable, can be recommended in the report.

11.4.

The Scottish Government's Asset Transfer Guidance for Community Transfer Bodies has a very straightforward flowchart which summarises the Asset Transfer process. A copy of this flowchart is attached at Annex A. The process should take a maximum of six months from the point when an Asset Transfer Request is accepted and verified by the Council, unless the Community Transfer Body agrees to an extension.

11.5.

Unless agreed with the applicant, the Council must make a decision within six months of the date the formal application is received. In the event that a decision is not made within the permitted time, or if the decision is to refuse or to agree the request but on different terms to those set out in the ATR, the applicant has 20

working days, beginning with the date of issue of the Decision Notice. If no decision has been made then the applicant has 20 working days from the date that the decision should have been made to request in writing that a review be carried out by the Council. The review process is outlined in section 15 of this document.

12. How is the decision implemented?

12.1.

Once a decision to support a Community Asset Transfer has been made, officers will work with the VCO to finalise the legal aspects of the transfer and support the organisation in preparing to take over the asset by whatever route has been agreed. At this stage, time is allowed for clarifying any conditions attached to the approval, such as the granting of planning permission and/or the receipt of funding.

12.2.

It is recognised that each transfer will have its own unique set of considerations so timescales will vary. For example:

12.2.1.

The VCO could be looking to enter into an initial short-term lease during which time they will spend a period operating from the premises. This will provide them with experience and will assist in the preparation of a business plan or bring them to the realisation that their proposition is not viable.

12.2.2.

Alternatively, the VCO will request a long-term lease of the asset or outright purchase.

12.2.3.

The VCO could be entering into a Service Level Agreement with the Council to provide services within the local community. In such circumstances, it will be necessary to ensure the needs of service users are protected.

12.2.4.

Alternatively, the VCO could be entering into a Joint Venture with the Council. In either of the latter circumstances, contracts and/or agreements between the parties will be necessary.

12.3.

If the asset is to be leased to the VCO, the lease will set out the terms and conditions for use of the property and will define the responsibilities of each party so far as management and maintenance of the asset are concerned. If the asset is to be sold outright to the VCO, the conveyance may set out what the VCO can do with the property and what, if any, restrictions may apply if the group wishes to dispose of the asset.

13. What if the organisation changes their mind?

13.1.

At any stage in the process until the final contract is signed, the VCO can withdraw from the transaction should circumstances change and they no longer wish to pursue the matter.

13.2.

The Council also reserves the right to cancel the transfer, where suitable justification exists.

14. The Review Process

14.1.

The presumption within the legislation is that unless there is a very good reason for the application to be rejected, it will be agreed. However, as outlined above, the decision will be made by a panel of elected Members and the outcome cannot be guaranteed to be the one that the VCO wants. It may be that the application is agreed in full, it may be agreed in part, it may be agreed but with conditions, or it may be rejected.

14.2.

In the event that a decision is not made within the permitted six-month timescale, or if the decision is to refuse or to agree the request but on different terms to those set out in the ATR, the applicant has 20 working days, beginning with the date of issue of the Decision Notice to ask for a review.

14.3.

If no decision has been made and the six-month deadline has passed, the applicant has 20 working days from the deadline for the decision, to request in writing that a review be carried out by the Council.

14.4.

A review of an ATR decision must be carried out by elected members, it cannot be delegated to officers. This impacts on how initial decisions must be taken to make sure that any Councillors involved in the original decision are not involved in the review.

14.5.

In the event of a review being requested, a decision-making body, comprising seven members of the Policy and Resources Committee not on the Asset Management Sub-committee, will make the decision on the review. This therefore retains independence from the original decision-making process.

14.6.

There are currently seven members on the Asset Management Sub-committee. The review body also comprises seven members, to be on a par with the Asset Management Sub-committee, rather than the remaining 14 members of the Policy and Resources Committee. This sub-committee is called the Community Asset Transfer Review Sub-committee.

14.7.

Applicants can appeal to Scottish Ministers if they are not satisfied with the outcome of a Council review. A Notice of Appeal must be sent to Scottish Ministers, in writing, within 20 working days from the date of the Council's decision on the review.

14.8.

Scottish Ministers may allow or dismiss the appeal, and may reverse or vary any part of the original decision, even if that part was not mentioned as a cause for concern in the appeal. Scottish Ministers can vary the terms and conditions set out in the Decision Notice and their decision is final.

15. Roles and responsibilities within the Council**15.1.**

Strategic responsibility for Asset Transfer Requests made to Orkney Islands Council sits with the Executive Director for Corporate Services. The operational management of the application and process is the responsibility of the Head of IT and Facilities, with the daily management of the process delegated to the Estates Manager.

15.2.

When an application is received a small team will be formed from officers within the Council to make sure that the application is assessed from a number of different perspectives.

15.3.

This team will be chaired by the Head of IT and Facilities, and will include the Estates Manager, the Democratic Services Manager, the Strategy Manager, the Development and Regeneration Manager, a Finance Manager, a Solicitor and a representative from the appropriate Service for the asset that is to be discussed. Other staff will be co-opted as necessary. In addition, representatives from Voluntary Action Orkney will be invited to attend in an advisory capacity.

Annex A

Summary of the Asset Transfer Process from the Scottish Government guidance.

