

SCOTTISH BORDERS COUNCIL COMMUNITY ASSET TRANSFER POLICY

1. 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, in compliance with the Community Empowerment (Scotland) Act 2015 ("the Act"). To make a valid asset transfer request, an organisation must qualify as a "Community Transfer Body", defined in the Act as either:
 - (a) a community-controlled body; or
 - (b) a body that is designated as a Community Transfer Body by an order made by the Scottish Ministers.

Section 19 of the Act identifies the requirements necessary to qualify a community group as a community controlled body. Section 80 identifies further requirements necessary to qualify a Community Transfer Body which can take ownership of property (rather than just lease or acquire other rights in property).

2. The Council recognises that handing over the ownership or stewardship of an asset to a Community Transfer Body can have a valuable role in supporting and sustaining local communities.
3. It further 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, but they can also contribute to the delivery of Council and national strategic priorities.
4. A Community Transfer Body may apply for the transfer of any land or buildings that belong to or are leased by the Council, including those leased to Live Borders or other users for example. Once a valid transfer request has been submitted, the Council will not transfer the land or property to any other person, other than the applicant body, until the request process has been finalised, unless that land or property has already been made available for sale or lease, or the Council is already in negotiation with another person for transfer of the land or property.
5. The Act provides that a community can be any group of people who feel they have something in common but who also meet the criteria specified within the Act. 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.
6. The Council will fully consider all asset transfer requests on their own merits in accordance with Scottish Government guidelines. In making a decision, the Council will have regard to all relevant issues including the

benefits of the asset transfer and the benefits of any alternative proposal (including existing use or potential disposal in the case of surplus assets) and the Council's ability to carry out its functions.

7. The Act requires that Community Transfer Bodies must provide certain mandatory information as part of any asset transfer request. Failure to provide that information renders an application invalid. In the interests of consistency and completeness, Community Transfer Bodies will be asked to submit asset transfer requests using the standard application form. To enable the Council to fully consider asset transfer requests and reach a competent decision within the statutory timescale, Community Transfer Bodies will also be asked to provide the following supporting documentation as part of their application:
 - (a) a copy of the organisation's constitution;
 - (b) a business plan (that is proportionate to the nature of the asset transfer request) that typically covers a minimum 5-year operating period;
 - (c) audited accounts (or a financial projection where the applicant has been operating for less than one year);
 - (d) annual reports (where these are available);
 - (e) the Community Asset Transfer Body will be asked to meet informally with the relevant Common Good Fund Sub-Committee to hold a preliminary informal discussion on their proposal.
8. Following informal pre-application discussions between the Community Transfer Body and relevant Council officers, the formal process for consideration of any asset transfer request is:
 - (a) Stage 1 – a valid community asset transfer application is considered by the Asset Transfer Officer Group:
 - (i) prior to the meeting of the Group to consider the request, local Members are consulted and the additional steps at paragraph 10 will be taken if an asset is held by a Common Good Fund;
 - (ii) regard is made to all relevant issues including the benefits of the asset transfer and the benefits of any alternative proposal (including existing use or potential disposal in the case of surplus assets) and the Council's ability to carry out its functions;
 - (iii) the application is accepted or refused (including reason(s) for refusal);
 - (iv) if accepted and the Asset Transfer Officer Group are minded to transfer land at a value less than market value, the matter will be referred to the Asset Transfer Appeal Committee for ratification. The only part of the decision which is subject to ratification is the value at which the transfer is being offered;
 - (v) if accepted, the terms of agreed offer for transfer are given to the Community Transfer Body;
 - (vi) if the terms of an agreed offer for transfer are unacceptable to the Community Transfer Body or if the application is refused,

the Community Transfer Body will be given details of the appeal process.

- (b) Stage 2 – a Community Transfer Body has a right of appeal which will be heard by the Asset Transfer Appeal Committee, comprising Elected Members, as detailed in the Council's Scheme of Administration. The right of appeal applies:
 - (i) if their request is refused;
 - (ii) the request is agreed but the terms and conditions in the decision notice are significantly different from those in the request;
 - (iii) no decision notice is issued within the required period; or
 - (iv) once an asset transfer request has been agreed, no contract has been concluded within the period allowed.
- (c) If the Asset Transfer Appeal Committee has taken part in Stage 1 of any Community Asset Transfer request, the Stage 2 review will be heard by Full Council.

8A. Where the asset transfer request relates to Common Good property, the following procedure will apply, following the informal pre-application discussions:

- (a) Stage 1 – a valid community asset transfer application is considered by the relevant Common Good Fund Sub-Committee:
 - (i) regard is made to all relevant issues including the benefits of the asset transfer and the benefits of any alternative proposal (including existing use or potential disposal in the case of surplus assets) and the Council's ability to carry out its functions;
 - (ii) regard will be had to the benefit of the residents of the former Burgh;
 - (iii) if the Sub-Committee form a preliminary view that they are minded to agree the asset transfer request in some form then a further consultation will be held where the proposal would result in any change of use of the land;
 - (iv) the application is accepted or refused (including reason(s) for refusal);
 - (v) if accepted and the Sub-Committee are minded to transfer land at a value less than market value, the matter will be referred to the Asset Transfer Appeal Committee for ratification. The only part of the decision which is subject to ratification is the value at which the transfer is being offered.
 - (vi) if otherwise accepted, the terms of agreed offer for transfer are given to the Community Transfer Body;
 - (vii) if the Asset Transfer Appeal Committee ratify the decision of the Common Good Sub-Committee, the terms of agreed offer for transfer are given to the Community Transfer Body;
 - (viii) if the Asset Transfer Appeal Committee does not ratify the decision, the matter will be referred back to the Common Good

Sub-Committee to reconsider the value at which the transfer is to be offered;

- (ix) for the avoidance of doubt the ratification process will be required again if the Common Good Sub-Committee again determine to transfer the Asset at a value less than market value;
- (x) if the terms of an agreed offer for transfer are unacceptable to the Community Transfer Body or if the application is refused, the Community Transfer Body will be given details of the appeal process.

(b) Stage 2 – a Community Transfer Body has a right of review which will be heard by the Asset Transfer Appeal Committee acting in its capacity as Common Good Trustee. The right of appeal applies:

- (i) if their request is refused;
- (ii) the request is agreed but the terms and conditions in the decision notice are significantly different from those in the request;
- (iii) no decision notice is issued within the required period; or
- (iv) once an asset transfer request has been agreed, no contract has been concluded within the period allowed.

(c) If the Asset Transfer Appeal Committee has taken part in Stage 1 of any Community Asset Transfer request, the Stage 2 review will be heard by Full Council, acting as Common Good Trustee.

9. The Community Transfer Body has a right to be represented at, and address, the Asset Transfer Officer Group, or Common Good Fund Sub-Committee, and the Asset Transfer Appeal Committee or Council, all as appropriate
10. 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/or standard security provisions to safeguard any discounts applied to market values, or restrictions on changing the use of an asset from the purpose for which transfer was originally intended. A minimum time period will apply for such restrictions, generally five years from date of transfer.
11. From the date of any transfer, by whatever means the transfer takes place, the Community Transfer Body is likely to 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, unless otherwise agreed in advance. This will include generally, but will not be limited to, costs and responsibilities relating to the following:
 - (a) the upkeep, repair and maintenance of the asset;
 - (b) alterations or improvements to the asset;

- (c) all other running costs (including utilities, rates liabilities and insurances); and
 - (d) statutory compliance with Health & Safety or other legislative requirements.
12. Any funding support that may be sought by the applicant from the Council in relation to the proposed asset transfer will be considered against the following criteria:
- (a) the Council can only be considered as the funder of last resort and applicants will be required to demonstrate that they have exhausted all other avenues of potential funding support;
 - (b) the applicant must demonstrate the reasons behind any funding gap, and that costs have been thoroughly reviewed and cannot be reduced;
 - (c) the Council's contribution to capital costs will only be up to a maximum of 5% of the total initial project capital costs, or a higher figure by specific agreement which can be assessed relative to asset condition at the point of transfer;
 - (d) any proposals for borrowing or annual revenue support must be demonstrated to the Council as affordable i.e. contained within any annual savings that can be achieved that are in excess of those that have already been programmed. Annual revenue support should relate only to operational property costs but as a general rule it should be noted that the Council will not provide revenue support in relation to the actual Community Transfer Body; and
 - (e) projects will not usually be eligible for any additional financial support from the Council within a period of 5 years from the date of transfer and this will generally include other sources of Council funding including Community Grants, Small Schemes, Quality of Life etc. to avoid multiple Council sources being exploited and to ensure funds are available for other groups.

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