
COMMUNITY ASSET TRANSFER POLICY

**Joint Report by Service Director Assets & Infrastructure and
Service Director Customer & Communities**

SCOTTISH BORDERS COUNCIL

29 NOVEMBER 2018

1 PURPOSE AND SUMMARY

- 1.1 This report seeks approval for a Community Asset Transfer Policy along with necessary changes to the Schemes of Administration and Delegation to enable compliance with the Community Empowerment (Scotland) Act 2015.**
- 1.2 Part 5 of the Community Empowerment (Scotland) Act 2015 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 better utilise. The Council's current Community Asset Transfer Guidance was produced in 2011 in partnership with the Development Trusts Association (Scotland) and took account on the Disposal of Land by Local Authorities (Scotland) Regulations 2010. This existing process has now been reviewed in context of Part 5 of the Act and a new Asset Transfer Policy is proposed.
- 1.3 The Council's proposed new Policy for the transfer of property assets to Community Transfer Bodies recognises that handing over the ownership or stewardship of an asset can have a valuable role in supporting and sustaining local communities. The proposed Policy is detailed in Appendix 1 to this report. Community Groups will be encouraged to discuss their proposals informally with Officers prior to any formal application. The start of the statutory timeline for processing an application is triggered by the receipt of a valid community asset transfer application. The Council has an obligation to determine an asset transfer request and issue a formal decision notice within no more than six months of an application's validation date.
- 1.4 The legislation requires that a 2-stage process is established. It is proposed that an Asset Transfer Group, comprising officers of the Council, will make the initial decision about an asset transfer request. Details of the Asset Transfer Group are given in Appendix 2 to this report and will require amendments to the Council's Scheme of Delegation. Any appeal about a decision of the Asset Transfer Group will be heard by an Asset Transfer Appeals Committee, comprising Elected Members. Details of the Committee are given in Appendix 3 to this report and will require to be added to the

Council's Scheme of Administration. A further appeal is then available for applicants to Scottish Ministers.

2 RECOMMENDATIONS

2.1 Council is asked to:-

- (a) approve the Asset Transfer Policy detailed in Appendix 1;**
- (b) agree to delegate authority to the Clerk to the Council to amend the Scheme of Delegation to include details of the Asset Transfer Officer Group, as detailed in Appendix 2, to relevant Service Directors; and**
- (c) agree to add the Asset Transfer Appeals Committee, as detailed in Appendix 3, to the Council's Scheme of Administration.**

3 BACKGROUND

- 3.1 Legislation has been introduced through Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) that 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 better utilise.
- 3.2 The background to this new legislation is the belief that empowering communities is essential 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 to support them to lead change for themselves. The new 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.
- 3.3 The Council's current Community Asset Transfer Guidance was produced in 2011 in partnership with the Development Trusts Association (Scotland) and took account of the Disposal of Land by Local Authorities (Scotland) Regulations 2010. The Guidance gave the Council's commitment to community management of assets as part of a Community Asset Transfer programme, which aimed to safeguard buildings and facilities in local communities.

4 EXISTING ASSET TRANSFER PROCESS

- 4.1 The existing Asset Transfer process is in 2 stages, with Stage 1 requiring the community organisation to produce a business case which includes:
- the reason for the transfer (based on an assessment of community needs)
 - an options appraisal to show the transfer as the best option
 - how the transfer will achieve the organisation's aims and objectives
 - an initial assessment of financial viability
 - community need and demand
- 4.2 Once the business case is produced and approved by officers, Stage 2 in the process involves officers then working with the community organisation to produce a full business plan for the transfer. That business plan includes an operational plan to show how the building/land will be managed and a financial plan showing running costs and how they will be met. Once officers have agreed all the necessary documentation is in place, approval is sought where appropriate from the Council's Executive Committee, or Common Good Fund Sub-Committee. Certain types of assets are excluded from the process e.g. those key to the efficient and effective delivery of essential services, and will not normally be considered. There is currently no right of appeal.
- 4.3 This existing process has now been reviewed in context of Part 5 of the Act and a new Asset Transfer Policy is proposed.

5 PROPOSED NEW ASSET TRANSFER POLICY

- 5.1 The Council's proposed new policy for the transfer of property assets to Community Transfer Bodies recognises that handing over the ownership or stewardship of an asset 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. The proposed Policy is detailed in Appendix 1 to this report.
- 5.2 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 the new 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.
- 5.3 Community Groups will be encouraged to discuss their proposals informally with Officers before any formal application is made. This will give both the Council and the Community Transfer Body an opportunity to fully explore the desired outcomes of the proposed project and to discuss how these can be best achieved. It is recognised that early engagement and collaborative working are likely to produce the most positive outcomes and therefore early consultation is to be encouraged. However, Community groups are under no obligation to undertake pre-application discussions and may choose to submit an asset transfer request without any prior consultation with the Council.
- 5.4 The start of the statutory timeline for processing an application is triggered by the receipt of a valid community asset transfer application. 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 however be extended by the mutual agreement of the Council and the Community Transfer Body.
- 5.5 A 2-stage process is required for decisions and appeals. It is proposed that an Asset Transfer Group, comprising officers of the Council, will make the initial decision about an asset transfer request, having first consulted with local Members and any relevant Executive Members or Common Good Fund Sub-Committee. Details of the Asset Transfer Group are given in Appendix 2 to this report and will require amendments to the Council's Scheme of Delegation. Any appeal about a decision of the Asset Transfer Group will be heard by an Asset Transfer Appeals Committee, comprising Elected Members. Details of the Committee are given in Appendix 3 to this report and will require to be added to the Council's Scheme of Administration. There is also a further right of appeal to Scottish Ministers for a Community Transfer Body should the Asset Transfer Appeals Committee refuse an appeal.

- 5.6 The starting point for discussion on both any purchase price and any rental costs to be paid will be the current market value of the property. If necessary these figures can be agreed in conjunction with the District Valuer. There does appear, unfortunately, to be a widely held misconception that the Council can always lease, or dispose of any asset for £1 and Groups often approach the Council on this basis. It needs to be clear therefore that current market value is the Council's starting position in any negotiation, particularly when Capital receipts underpin the council's own capital programme financing arrangements.
- 5.7 As required within the Act, an annual report on the status of Community Asset Transfer requests will be prepared and published.
- 5.8 Guidance notes and application forms have been developed for Community Groups and will be published on the Council's website. Officers are available to assist Community Groups with how to proceed, along with details of the criteria to be met in any request for asset transfer.

6 IMPLICATIONS

6.1 Financial

- (a) Costs and Officer time in supporting individual Asset Transfer requests are likely to be indeterminate and vary significantly on a case by case basis. At this time, no additional resources are requested to support these activities, but this may need to be reviewed in the future, including the provision of a dedicated staff resource.
- (b) The transfer of property assets to community organisations at less than market value could reduce revenue income and capital receipts, and adversely affect performance indicators.
- (c) In the event of an unsuccessful transfer request, which is subsequently subject to appeal, to either the Asset Transfer Appeals Committee or potentially Scottish Ministers, then additional staff resources will be required to manage these processes.

6.2 Risk and Mitigations

Staff resources across a range of council services will be required in order to facilitate community group proposals, consider and process asset transfer requests in accordance with statutory procedures and ultimately to convey properties in the case of successful asset transfer requests.

6.3 Equalities

No adverse equality implications are anticipated.

6.4 Acting Sustainably

We make the most efficient and effective use of resources by minimising our impact on the built and natural environment; we live in resilient, cohesive and safe communities; our economy is diverse and dynamic, and Scottish Borders is an attractive place for doing business.

6.5 Carbon Management

Successful Community Asset Transfers will reduce the Council's carbon footprint.

6.6 Rural Proofing

Asset transfer requests are open to any community group and there will be no separate impact on rural areas.

6.7 Changes to Scheme of Administration or Scheme of Delegation

Changes are required to the Schemes of Administration and Delegation and these are attached at Appendices 2 and 3.

7 CONSULTATION

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, Corporate Communications, the Service Director HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

Approved by

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Background Papers: Nil

Previous Minute Reference: Scottish Borders Council, 29 June 2016

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email eitranslationrequest@scotborders.gov.uk.

**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 being 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, 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).

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, the terms of agreed offer for transfer are given to the Community Transfer Body;
 - (v) 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.

9. The Community Transfer Body has a right to be represented at and address the Asset Transfer Officer Group, and, if appropriate, the Asset Transfer Appeal Committee.
10. Additional steps below will be required should the land or property be held by any Common Good Fund as an asset:
 - (a) consult with the community;
 - (b) consult with the relevant Common Good Fund Sub-Committee.
11. 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.
12. 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.
13. 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.

ASSET TRANSFER OFFICER GROUP

The Asset Transfer Officer Group will comprise:

- Service Director Assets & Infrastructure (Chair)
- Service Director Customer & Communities (Vice-Chair)
- Chief Financial Officer or his representative
- Chief Legal Officer or her representative
- Relevant Service Director or his/her representative

The quorum will be three. In the absence of the Chair or Vice-Chair the Chief Financial Officer or Chief Legal Officer will chair the meeting.

Remit:

1. Consider the proposal for any asset transfer request made under the Community Empowerment (Scotland) Act 2015 by a Community Transfer Body to buy, lease, manage or use any land or buildings which belong to or are leased to Scottish Borders Council.
2. Consult the local Elected Members and any relevant Executive Members on the asset transfer request. If the asset is a Common Good asset, consultation will be required with the relevant burgh community and the relevant Common Good Fund Sub-Committee.
3. Where appropriate, seek further information from relevant Council officers or other partners or third party organisations in relation to the asset transfer request.
4. Agree to the asset transfer request, on appropriate terms and conditions, or refuse the asset transfer request, providing the reasons for refusal. (Note: The Act requires the request to be approved unless there are reasonable grounds for refusal. 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 Council's ability to carry out its functions.)
5. Advise the Community Transfer Body of the outcome of the asset transfer request, giving details where appropriate of their right of appeal to the Asset Transfer Appeals Committee.

Note: Representatives of the Community Transfer Body will have the right to attend and present their request to the Group.

**SCHEME OF ADMINISTRATION
SECTION IX**

AD-HOC COMMITTEES

ASSET TRANSFER APPEALS COMMITTEE

Constitution

All Members of the Council shall be Members of the Appeals Panel, from which five members for an Asset Transfer Appeals Committee shall be drawn. No Member may be a member of a Committee set up to hear an Appeal for an Asset Transfer request for land/buildings within their Ward.

Chairman

The Executive Member for Neighbourhoods & Locality Services shall be the Chairman of the Asset Transfer Appeals Panel or in his absence the Executive Member for Roads & Infrastructure.

Selection of Appeal Committees

The membership of the Appeals Panel shall be selected by the Clerk to the Council or her authorised representative in consultation with the Chairman of the Appeals Panel.

Quorum

Three members of the Committee shall constitute a quorum.

Functions Referred

The following functions shall stand referred to the Committee:-

1. The consideration and determination of appeals by any Community Transfer Body made under Section 86 of the Community Empowerment (Scotland) Act 2015, where the Asset Transfer Officers Group has:
 - (i) refused the request; or
 - (ii) agreed to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request; or
 - (iii) failed to issue a decision within the statutory period.

Note: The Community Transfer Body has the right to attend and present their appeal to the Committee.

Functions Delegated

All of the functions referred to the Committee.