

ASSET TRANSFER INFORMATION FOR BRIEFING NOTE - JEDBURGH LEGACY GROUP PROPOSAL

Background

Part 5 (asset transfer requests) of the Community Empowerment (Scotland) Act 2015 sets out the rights that community bodies have to request to use, lease or purchase assets that are owned or leased by public authorities. Since it came into force on 23 January 2017 SBC has received 35 of enquiries through the Communities & Partnerships Team. Of these three have progressed to formal applications and two are in the final stages of preparation.

The Scottish Government has developed guidance for community groups on asset transfer under the Act. This along with SBC's own Community Asset Transfer Policy provides good direction for any group considering the submission of an asset transfer request.

Support available to groups

Council officers from the Communities & Partnerships, Estates and Legal teams work with groups, which express an interest in asset transfer, to navigate the process including:

- Identifying the right asset (if available) for the identified purpose
- Providing information on the running costs and condition of the asset (where applicable and possible)
- Advise on the application and act as a sounding board as an application is developed.

Support in the development of business and financial plans, community consultation and forming a Community Transfer Body (CTB), that is recognised under this part of the Act, is available from The Bridge and BAVS.

Asset transfer process – first contact

Scottish Borders Council encourages groups to contact us for an informal discussion about their project before they even state developing their application. Although there is nothing to stop CTBs from submitting an asset transfer application without any prior notification we have found that working with a group from the start enables us to provide any information that they may need about an identified asset and help them to develop their application. By working closely with a group we are in a position to ask challenging questions, as a critical friend, such as how will they meet unexpected costs associated with buildings e.g. roof damage or boiler breakdown, have they thought about ongoing revenue costs and how they will meet them if projected income isn't realised. These are not intended to act as barriers to an application but to ensure that the group has fully considered all eventualities. It is in the interests of both the CTB and SBC that the project is not just successful in years one and two but continues to flourish in the long term.

We have found that a number of groups choose not to progress their applications. This is due to many different reasons including the capacity of the group, the costs involved in maintaining an asset and the unavailability of buildings to suit their needs.

Both Jedburgh Community Council and Jedburgh and District Community News Group have had discussion with Council officers about the possible asset transfer of the Jedburgh

Library Contact Centre. Although the draft proposals were very different we felt that there was merit in them working together and suggested that they do so in order to identify how they could work together to both the benefit of the community and the sustainability of the project. It is therefore encouraging to see that these and another nine organisations have come together to form the Jedburgh Legacy Group and submit an outline proposal to operate the Town Hall, Library Contact Centre and a number of other amenities in the town.

Although the outline proposal does not mention asset transfer it is suggested that any discussions proceed down this route and the robust process which it entails. In order to be able to submit an asset transfer request Jedburgh Legacy Group will be required to form either a:

- Scottish Charitable Incorporated Organisation (SCIO)
- A company
- A Community Benefit Company (ComBen)
- An unincorporated organisation that incorporates the provisions set out in the Act, or
- A body designated by Scottish Ministers.

Formally becoming a recognised organisation will provide a level of protection to each of the member bodies ensuring that no single group could be left with the legal responsibility for one or all of the assets concerned.

Asset transfer process – application process

As part of the application the CTB (Jedburgh Legacy Group) is required to provide information on:

- The community proposal – explanation of the project objectives, why there is a need for it, any planned development or changes to the land or building, and any activities that will take place there.
- The benefits of the proposal - how the project will benefit the community including whether it is expected to promote or improve:
 - Economic development
 - Regeneration
 - Public health
 - Social wellbeing
 - Environmental wellbeing

Whether it will reduce inequalities of outcome which result from socio-economic disadvantage and/or any other benefits that may arise of the request is agreed.

- How the CTB will comply with any restrictions on the use or development of the land/building. It is expected that any restrictions will have been identified and discussed during early discussions with SBC.
- Potential negative consequences for the local economy, environment, or any group of people that may occur if the request is agreed. Experience to date shows that this part of the application is the one that groups struggle with most and is where the officer role as a critical friend is particularly valuable.
- The CTB is required to evidence its capacity to manage the project and achieve the objectives they have set out. This could include the skills/experience of those involved, track record of delivering projects or whether external advice will be sought.

The experience of Jedburgh Community Trust in acquiring the Port House in 2010 and the challenges faced restoring the building which, ten years on, still isn't complete would be addressed when considering their capacity to be part of a much larger project.

- Level and nature of support - This could include information on the proportion of the community (geographical and thematic) who are involved with the request, how the community has been engaged with and what their response has been. It should also be shown how other communities that may be affected by the proposals have been engaged. Part of the purpose following the submission, and validation, of a request is the publication of a public notice, for 28 days, at which point those that do/don't support the project can share their views with the SBC. It is therefore important that the CTB has listened to the views of all those that would be affected.
- Funding – although many groups assume that any asset transfer will be at a peppercorn rent/purchase price the council has a duty to achieve Best Value. All potential applicants are advised of the market value during early conversations. During the decision making process the following benefits are considered:
 - Economic development
 - Regeneration
 - Public health
 - Social wellbeing
 - Environmental wellbeing
 - Whether the project will reduce inequalities of outcome which result from socio-economic disadvantage
 - Any other benefits that may arise if the request is agreed.

The expected level of benefit may be taken into account when proposing a rental/purchase price but it cannot be assumed. The CTB should show the calculations of the costs associated with the transfer of the asset and their future use of it, including any redevelopment, ongoing maintenance costs of the project. All proposed income and investment should be identified, including volunteering and donations. If it is the CTBs intention to apply for grants or loans they should identify the funders/grant schemes that they will be approaching.

In addition to the information included in the application form the following documentation is also required:

Asset transfer process – next steps

Once an asset transfer request has been submitted SBC can request further information from the group until we are satisfied that enough information has been received on which to base a decision whether to agree or refuse the request. Once enough information has been received the request is validated and SBC has six months to reach a decision.

Asset transfer process – public notice of request

Once the request has been validated a public notice of request is published for 28 days, during which time anyone can make representation to SBC. It is therefore in the CTB's interest to ensure that the public engagement undertaken listens to any concerns that may be raised; it is possible that such concerns may be raised during the public notice period if they haven't been addressed by the CTB.

Asset transfer process – decision making

Decision making under the asset transfer process is delegated to the Asset Transfer Officer Group:

- Service Director Assets & Infrastructure (Chair)
- Service director Customer & Communities (Vice Chair)
- Chief Financial Officer or their representative
- Chief Legal Officer or their representative
- Relevant Service Director or their representative

When making the decision the Asset Transfer Officer Group should consider the benefits of the proposal as detailed above. *Change the bullets to numbers and reference the benefits that should be considered when making the decision.*

It must be stressed that if officers are aware of reasons that they know will result in the request being refused e.g. conditions of use stipulated within the title deeds, these should be made known to the CTB and alternative land/buildings explored.

The decision is shared with the CTB who have 20 working days to request a review of the decision or the conditions attached to it. The review is heard by Elected Members. If the asset transfer request decision is upheld by Elected Members the CTB can appeal to Scottish Ministers.

If the request is agreed the CTB has a minimum of 6 months to submit an offer. During this time the terms of the offer can be negotiated.

Once the offer has been submitted by the CTB the contract must be concluded within 6 months – during this time further negotiations can take place.

Asset transfer – summing up

Progressing the proposal from the Jedburgh Legacy Group through the asset transfer request process, set out in the Community Empowerment (Scotland) Act 2015, not only affords the group a level of protection through the requirement to form a specified recognised body but includes a right to request a review and subsequent appeal if they do not agree with the decision that has been made by the Asset Transfer Officer Group.

The asset transfer request process is not quick and even in the most straightforward of situations can take over a year to complete. However, the robust and rigorous nature of the process means that a decision is only made once officers are satisfied that any weaknesses in the request have been addressed and that, if successful, it is likely to achieve the identified objectives.