

Voluntary Community Asset Transfer

Kevin Anderson, Executive Director, Place

Report for Decision

1. Recommendations

Council is recommended to consider the terms of this report to decide whether to adopt a Voluntary Community Asset Transfer process in addition to the existing statutory practice.

2. Purpose of Report

The purpose of the report is to advise members that community asset transfers may be achieved by agreement between the Council and community groups without requiring such groups to submit a formal application in terms of the Community Empowerment (Scotland) Act 2015, subject to compliance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and related Scottish Government Guidance.

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3. Background

3.1 On 2 October 2018 Council agreed the arrangements for determining formal requests for community asset transfers made under the 2015 Act as follows:

- (a) all members be notified when a formal application for an asset transfer had been made and be allowed to make representations should they wish to do so prior to a formal decision being made by the Asset Transfer Committee;
- (b) officers (Community Management Assessment Group) would compile a report on any competent bid and the Director, Resources (now Place) who would make a recommendation to the Asset Transfer Committee for determination;
- (c) an Asset Transfer Committee be established to consider those applications deemed competent by the relevant officers. The committee would then decide whether to accept, reject or modify the officer recommendations;
- (d) an Asset Transfer Review Committee be established to consider any appeal received from an Applicant as a result of a decision by the Asset Transfer Committee;
- (e) the Asset Transfer Review Committee comprise of 6 named Elected Members (1 from each Ward and who would not be a Member of The Asset Transfer Committee);
- (f) the remaining six elected Members act as a potential Substitute for either of the aforementioned Committees; and
- (g) the Community Asset Transfer Framework to be used for assessing competent bids in terms of Best Value themes.

The report to Council noted that Scottish Government Statutory Guidance on community asset transfer did not rule out the possibility of voluntary agreement between community groups and relevant authorities. Thus, despite the introduction of a statutory scheme, much of the previous best practice in relation to community asset transfer continues to apply.

3.2 The assessment framework approved by Council recognises that a community asset transfer will apply to all transfers of land or buildings from the Council to a community group at below market value and involves the transfer of responsibility for an asset from the Council to a community group by way of either a transfer of management responsibility, short or long term lease or outright ownership. The type of transfer will be dependent on the individual circumstances of the community group and their proposals. In many cases a phased approach to transfer will be appropriate and a community group may start out with a management agreement before moving to a longer term lease or alternatively could move from a lease to outright ownership.

- 3.3** Since October 2018 the Council's practice has been to consider all requests for community asset transfers under the 2015 Act thus requiring community groups to make a formal application. This is to ensure transparency in decision making. However, a more flexible approach is feasible in terms of the Council's Scheme of Delegation and the 2010 Regulations. Subject to compliance with the 2010 Regulations, if the Council and community group can agree to an asset transfer then it is unnecessary for the community group to make a formal request under the 2015 Act.
- 3.4** Officers met with counterparts from Dundee City Council on 8th September 2021 who confirmed their practice of undertaking voluntary community asset transfers in accordance with the 2010 Regulations without going through the formal process in the 2015 Act. However, in order to ensure transparency in the decision making process their officers reported on voluntary transfers to the Development Committee rather than their Community Asset Transfer Committee which only considered formal applications under the 2015 Act.

4. Scheme of Delegation

- 4.1** In terms of the Council's Scheme of Delegation, the Executive Director, Place has delegated authority for:
- (a) negotiating, agreeing and signing all offers to let property where the length of lease is up to twenty five years and where the rent is no more than £25,000 per annum;
 - (b) negotiating and concluding terms to renew or extend leases where it is beneficial to the Council;
 - (c) authorising the assignation of leases where the Council is Landlord; and
 - (d) in conjunction with the relevant Cabinet portfolio-holder and Members within whose interest the land or property is held, for property authorised to be sold, market, negotiate and agree terms of sale up to a value of £750,000.

As can be seen, the Executive Director, Place has a wide remit to authorise the disposal of Council property (whether by lease or sale) which includes for less than the best consideration but in doing so must comply with the 2010 Regulations.

5. The Disposal of Land by Local Authorities (Scotland) Regulations 2010

- 5.1** The Regulations make provision for the disposal by local authorities of land and buildings for a consideration less than the best that can reasonably be obtained.
- 5.2** Disposals are permitted at less than best consideration where either:

- (a) the best consideration that can reasonably be obtained is less than £10,000 (the threshold amount); or
- (b) the proposed consideration is less than 25% of the best consideration (the marginal amount) ; or
- (c) the local authority has carried out an appraisal of the proposed disposal and is satisfied that the disposal for that consideration is reasonable and it is likely to contribute in respect of the whole or any part of the area of the local authority or any persons resident or present in its area to the promotion or improvement of;
 - (i) economic development or regeneration;
 - (ii) health;
 - (iii) social well-being; or
 - (iv) environmental well-being.

It is important to note that whilst disposals within the 'threshold' and 'marginal amounts' do not require a detailed appraisal in terms of the 2010 Regulations it is considered this would still be required to meet Best Value and the general fiduciary obligations to council tax payers.

6. Best Value

- 6.1** It is well known that Best Value does not always mean the highest price and Councils can sell or lease land at less than market value where it can be shown that public benefits can be obtained.
- 6.2** The Scottish Government has provided guidance on the 2010 Regulations. This emphasises that local authorities are required to fulfil their statutory duties under Best Value as set out in the Local Government in Scotland Act 2003. The 2010 Regulations are consistent with the duty to secure Best Value, and relevant aspects include:
 - (a) making the best use of public resources, including land and property;
 - (b) being open and transparent in transactions;
 - (c) ensuring sound financial controls are in place to minimise the risk of fraud or error;
 - (d) assessing the full financial consequences of decisions at an appropriate level before major financial decisions are taken or commitments entered into; and
 - (e) demonstrating responsiveness to the needs of communities, citizens, customers and other stakeholders, where relevant.
- 6.3** The guidance advises that all local authorities should have arrangements in place, including schemes of delegation where appropriate, to deal with disposals of land at less than best consideration and that local authorities are expected to be open,

transparent and fair in all of their transactions and have regard to subsidy control rules (formely known as 'State Aid' pre-Brexit). Whilst a discounted price or rent can be regarded as a subsidy it is unlikely any rules would be breached given that such a form of subsidy to a community group would not affect international trade.

- 6.4** The guidance includes an example appraisal which can be used to assist in determining whether the Council should agree to a proposal in accordance with the Scheme of Delegation and 2010 Regulations. This is set out in Appendix C and can be aligned with the Council's Assessment Tool for community asset transfers which was approved in October 2018 and is in Appendix D for ease of reference.
- 6.5** As with formal requests for community asset transfers there needs to be transparency in decision making. It is considered that this can be achieved by detailed reporting on proposals to the Executive Director, Place for approval in terms of the Scheme of Delegation. This would be on the basis that reports and decisions will be disclosable under freedom of information rules given the public interest.

7. Process

- 7.1** Members will be aware that the 2010 Regulations and Best Value need to be considered as part of the consideration of formal applications for asset transfer under the 2015 Act. The same considerations will apply for voluntary community asset transfers.
- 7.2** Initial expressions of interest by a community group in an asset together with appropriate supporting information would be considered in the first instance by officers on the Community Management Assessment Group. If the Group considered that a voluntary transfer should be pursued then relevant officers would prepare a delegated authority report for the Executive Director, Place to consider under the Scheme of Delegation. The report would be based on the appraisal and assessment tool referred to in section 6.4 above and set out the terms and conditions of the asset transfer.
- 7.2** The Executive Director, Place would consult with the members in the ward in which the property is located in deciding whether or not to approve a proposed voluntary transfer. Once the proposal is approved Legal Services would be instructed to proceed with the asset transfer to the community group.
- 7.3** In order to aid transparency the reports and decisions in relation to voluntary asset transfers would be posted on the Council's website in the Community Asset Transfer section.
- 7.4** The existing resources and processes that are in place for consideration of applications made under the 2015 Act can adapted for the voluntary asset transfer approach.

8. Report Implications (Resource, Digital and Risk)

8.1 Resource

It is anticipated that consideration of potential voluntary asset transfers can be done within the existing resources and processes which are in place for formal applications under the 2015 Act.

8.2 Digital

None

8.3 Risk

None

8.4 Ensuring Equalities (if required a separate IIA must be completed)

This report falls within the scope of an existing IIA contained within Appendix 4 of the report to Council in October 2018 and supports the equalities outcomes of the Single Midlothian Plan.

8.5 Additional Report Implications (See Appendix A)

See Appendix A

Appendices

Appendix A – Additional Report Implications

Appendix B – Background information/Links

APPENDIX A – Report Implications

A.1 Key Priorities within the Single Midlothian Plan

Council decisions on asset transfers will be made in relation to the extent that the transfer supports the strategic priorities of the Single Midlothian Plan.

A.2 Key Drivers for Change

Key drivers addressed in this report:

- Holistic Working
- Hub and Spoke
- Modern
- Sustainable
- Transformational
- Preventative
- Asset-based
- Continuous Improvement
- One size fits one
- None of the above

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- One Council Working with you, for you
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

A.4 Delivering Best Value

Using the Scheme of Delegation and the 2010 Regulations to support community asset transfer is consistent with the duty to secure Best Value.

A.5 Involving Communities and Other Stakeholders

Using the Scheme of Delegation and the 2010 Regulations to facilitate community asset transfer can empower communities to be involved in utilising council assets.

A.6 Impact on Performance and Outcomes

The existing Scheme of Delegation and 2010 Regulations can be used to support community asset transfers which can have a positive impact on the performance and outcomes of the authority.

A.7 Adopting a Preventative Approach

The Scheme of Delegation and 2010 Regulations can be used to enable community groups to utilise the council's assets to deliver preventative programmes of activity.

A.8 Supporting Sustainable Development

A key part in assessing whether the Council can agree to a community asset transfer will be based on the extent to which the transfer contributes to sustainable development.

APPENDIX B

Background Papers/Resource Links

General Guidance by Scottish Government in relation to the Disposal of Land by Local Authorities (Scotland) Regulations 2010 dated May 2010.

Scheme of Delegation to Officials approved by Council on 27 September 2016.

Report on Community Asset Transfer Framework made to Council on 2 October 2018.

APPENDIX C

EXAMPLE OF THE CRITERIA FOR CONSIDERATION WHEN MAKING AN ASSESSMENT OF A PROPOSAL TO DISPOSE OF LAND FOR LESS THAN BEST CONSIDERATION THAT CAN REASONABLY BE OBTAINED.

Under Best Value obligations, local authorities are expected to demonstrate sound governance at a strategic, financial and operational level. The following criteria may be of help to a local authority in drawing up their assessment of a proposed disposal at less than the best consideration that can reasonably be obtained. This is a guide only and the local authority will want to determine what is appropriate and proportionate in each case.

1. A plan and/or written description of the site and buildings, its physical characteristics, location and surroundings.
2. Details of the current use of the land.
3. The best consideration that can reasonably be obtained for the interest as assessed by a qualified valuer (i.e. a chartered Member of, or is authorised to practice by, the Royal Institution of Chartered Surveyors) and the date that this assessment was obtained.
4. Details (where applicable) of the key terms and any restrictions imposed by the authority regarding the disposal, including any clawback provisions.
5. Details about the purchaser: name of the person or organisation, aims and objectives, Board or governance structure, how it is funded and whether charitable status is held etc.
6. An outline of what the purchaser intends to do with the land and whether there has been involvement of local people/service users.
7. A copy of the most recent accounts (if available) or written evidence that the purchaser is financially able to maintain, renovate, etc. the land to be disposed of or leased.
8. Details of the options appraisal and cost benefit analysis carried out by the local authority including any alternative use for the land, (e.g. a copy of the options appraisal report and Committee/Council decision/Minute).
9. Details of the inclusion of the proposed land disposal within the authority's asset management plan.
10. Details of how the disposal at less than best consideration that can reasonably be obtained, will contribute to one or more of the purposes set out in Regulation 4(2) of the Regulations.

11. An indication of the local demand for these services and details of any known opposition or support for the proposal and the measures (if applicable) taken by the authority to deal with the opposition.

12. Confirmation the disposal complies with the European Commission's State aid rules.

13. When using arms length organisations to deliver services, information on there views and option appraisals taking account of the COSLA/Accounts Commission Code of Guidance on Funding External Bodies and Following the Public Pound.