

Community Asset Transfer Framework

Report by John Blair, Director, Resources

1 Purpose of Report

The purpose of this report is to seek Council approval for the Community Asset Transfer Framework arrangements.

2 Background

2.1 Community Empowerment Act (Scotland) 2015

On the 23 June 2015 the Council agreed to adopt the Community Management of Assets policy, and to authorise the Corporate Management Team to amend this as necessary in the event that the Community Empowerment Act (Scotland) 2015 required this in the future.

The Scottish Government moved forward from the voluntary approach to asset transfer with the introduction of the Community Empowerment (Scotland) Act 2015 ("the Act"). The Act introduced a right for community groups to make requests to all relevant authorities (which includes local authorities) for any land or buildings they feel they could make better use of.

Part 5 of the Act came into force on 23 January 2017 and sets out the formal asset transfer process that must be adhered to if a valid request is received under the Act by the Council.

When the Disposal of Land by Local Authorities (Scotland) Regulations 2010 came into effect on 1 June 2010 this removed the previous requirement in terms of section 74 (2) of the Local Government (Scotland) Act 1973 to seek Scottish Ministers' consent to dispose of land/property at less than the best value consideration subject to certain conditions.

The Council must publish and update the asset register every 3 months. The register will contain details of all buildings and land owned or leased by the Council in accordance with section 94 of the Act.

The Council must comply with the Asset Transfer Regulations of the Act <http://www.legislation.gov.uk/asp/2015/6/part/5/enacted>

Information on asset transfers in Midlothian is available on the Council's website <https://www.midlothian.gov.uk/yourcommunity>

The Community Management of Assets policy was a voluntary approach to asset management. The provisions of the Act supersede this policy and the Community Asset Transfer Framework helps ensure the Council complies with the legal requirements of the Act. It should be noted however that Scottish Government Guidance on the Act does not rule out voluntary agreement between community groups and relevant authorities.

2.2 Early Learning and Childcare Expansion

At its meeting on 26 June 2018 the Council approved a report by the Head of Education entitled 2020 Vision for Early Years, Early Learning and Childcare Expansion Plan. In approving the report the Council agreed the following specific recommendation.

“Ensure that prior to a Council facility or building being declared surplus and/or considered for transfer to a community group. Education be consulted to find out whether the Council or its partner providers had a need for the facility in terms of delivering the 1140 hour provision”

3 Report Implications

3.1 Resource

A key part of the Council’s financial strategy is the rationalisation of land and buildings. The effective implementation of the asset transfer regulations will help support the financial strategy. Asset transfers will be assessed against the seven Best Value themes of:

- Vision and Leadership
- Effective Partnerships
- Governance and Accountability
- Use of Resources
- Performance Management
- Sustainability
- Equality

The Community Management Assessment Group, which comprises relevant officers from across the Council, will oversee the implementation of asset transfers, with operational community capacity building support provided by the Communities Team. The effective implementation of the Community Asset Transfer Framework will require significant human resources from across the Council. This will be managed through the prioritisation of work programmes.

3.2 Risk

The Community Asset Transfer Framework has been prepared and reviewed by the Community Management Assessment Group. The input of legal, planning, property and communities’ staff will help ensure the framework mitigates against the risks of non-compliance with the statutory requirements.

The Council will require to have procedures in place to determine and review decisions on formal asset transfer requests.

It is proposed that the Director, Resources be granted delegated authority to determine initial asset transfer requests in accordance with the Act and the Council’s Community Asset Transfer Framework. In practice, the Director will need to consider and determine recommendations from the Community Management Assessment Group.

In relation to reviews, it is proposed that a new Community Asset Transfer Review Committee, comprising five elected members of Cabinet, be established to determine reviews arising from decisions made by the Director, Resources under delegated powers.

The Council’s standing orders will need to be amended to reflect the foregoing proposals.

Applicants have the right to appeal to Scottish Ministers if they are not satisfied with the decision of the Community Asset Transfer Review Committee.

3.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- Community safety
- Adult health, care and housing
- Getting it right for every Midlothian child
- Improving opportunities in Midlothian
- Sustainable growth
- Business transformation and Best Value
- None of the above

3.4 Key Priorities within the Single Midlothian Plan

The Community Asset Transfer Framework proposes that decisions on asset transfers will be made in relation to the extent that the transfer supports the strategic priorities of the Single Midlothian Plan.

3.5 Impact on Performance and Outcomes

The implementation of the Community Asset Transfer Framework will have a positive impact on the performance and outcomes of the authority.

3.6 Adopting a Preventative Approach

The Community Asset Transfer Framework will enable community groups to utilise the council's assets to deliver preventative programmes of activity.

3.7 Involving Communities and Other Stakeholders

The Community Asset Transfer Framework will empower communities to be involved in utilising council assets. The Framework has been informed by practice from East Ayrshire Council.

3.8 Ensuring Equalities

The Community Asset Transfer Framework will ensure an open, transparent and fair transfer of council assets for community benefit. The Framework will directly support the equalities outcomes of the Single Midlothian Plan.

3.9 Supporting Sustainable Development

A key part of the Community Asset Transfer Framework is that decisions will be based on the extent to which the transfer contributes to sustainable development.

3.10 Digital Issues

There are no digital issues arising from this report.

4 Recommendations

It is recommended that Council:-

- a) Approve the Community Asset Transfer Framework included in Appendix 1 of this report.
- b) Agree that Standing Orders be amended to reflect the roles of the Director, Resources and the Community Asset Transfer Review Committee as detailed in Appendix 2 of this report.

- c) Note the recommendation arising from the Council of meeting of 26 June 2018 as set out in section 2.2 of the report.

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Report Contact: Stephen Bermingham
0131-2713338
stephen.bermingham@midlothian.gov.uk

Background Papers:

Appendix 1: Midlothian Council Community Asset Transfer Framework.

Appendix 2 Community Asset Transfer Review Committee Proposed Change to Council's Scheme of Administration

Appendix 1

COMMUNITY ASSET TRANSFER FRAMEWORK

1. Introduction

- A. The aim of this framework is to set out the Council's approach to manage the transfer of assets from the Council to community organisations.
- B. The aim of asset transfers is to empower local communities to address local needs whilst at the same time making the most of the Council's assets including land and buildings.
- C. The transfer of assets needs to be carefully managed and contribute to the delivery of Council and national strategic priorities.
- D. The procedures and statutory guidance for asset transfer is covered under part 5 of the Community Empowerment (Scotland) Act 2015. This is available on the Council's website: www.midlothian.gov.uk/info/200284/your_community/487/Council_properties

2. The Council's commitment to community asset transfer

- A. The Council recognises that asset transfer can empower communities, build the capacity of local citizens and inspire others to create responsive solutions to community needs.
- B. The asset transfer process presents local groups and communities with opportunities to get involved in running assets and delivering services; empowering them to help themselves and create a more sustainable future.
- C. An asset transfer can empower communities and should be a catalyst to work "with and for" local communities.
- D. Community groups wishing to consider the transfer of an asset will be provided with a dedicated member of staff to help build their capacity and to assist with the application process.
- E. The Council recognises that some assets must remain within Council ownership to support delivery of essential services, provide an income stream or may have restrictions on their future use making them unsuitable for transfer.
- F. The Council will consider, as part of the initial assessment, whether the asset should be retained by the Council or whether a transfer could be possible. Community groups will be encouraged to contact the Council at the earliest possible point to 'express an interest'. This will help ensure that expectations are managed and community groups do not put resources into developing proposals that are unlikely to result in the outcome they are hoping for.
- G. The decision making and asset transfer process has to be transparent. Decisions need to follow due process and are subject to public and ministerial scrutiny.

3. The legal context

- A. The Scottish Government moved forward from the voluntary approach to asset transfer with the introduction of the Community Empowerment (Scotland) Act 2015 (“the Act”). The Act introduced a right for community groups to make requests to all relevant authorities (which includes local authorities) for any land or buildings they feel they could make better use of. The community group can request ownership, lease or other rights and the Act requires those requests to be assessed transparently against a specified list of criteria. The relevant authority must agree to the request unless there are reasonable grounds for refusal.
- B. Part 5 of the Community Empowerment (Scotland) Act 2015 came into force on 23 January 2017 and sets out the formal asset transfer process that must be adhered to if a valid request is received under the Act.
- C. When the Disposal of Land by Local Authorities (Scotland) Regulations 2010 came into effect on 1 June 2010 this removed the previous requirement in terms of section 74 (2) of the Local Government (Scotland) Act 1973 to seek Scottish Ministers’ consent to dispose of land/property at less than the best value consideration subject to certain conditions.
- D. The Council will publish and update the asset register every 3 months. The register will contain all building and land owned or leased by the Council in accordance with section 94 of the **Act**.
- E. The Council must comply with the Asset Transfer Regulations of the Community Empowerment (Scotland) Act <http://www.legislation.gov.uk/asp/2015/6/part/5/enacted>

4. Setting the local policy context and links to other plans and strategies

- A. The Council will evaluate each request in relation to the outcomes outlined in the Single Midlothian Plan.
- B. The Single Midlothian Plan continues to be recognised as the sovereign planning document for Midlothian, providing the overarching strategic policy framework for the delivery of services by all partners.
- C. Any asset transfer request must demonstrate a clear contribution to the Single Midlothian Plan priority of reducing inequalities.
- D. Asset transfer is an opportunity to unlock the knowledge, skills and capacity of local people in Midlothian.
- E. Neighbourhood planning underpins the Council’s aspiration to transform our relationship with the communities we serve, ensuring communities are empowered to plan, prioritise and progress community led regeneration in their area. This provides further opportunities to take forward or identify asset transfer opportunities.

5. What is a community asset transfer?

- A. A community asset transfer will apply to all transfers of land or buildings from the Council to a community group at below market value.

- B. Community asset transfer 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.
- C. 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.

6. What are the different types of transfer?

- A. Management Agreement – a management agreement will generally clarify responsibilities between the Council and the community group such as key holding, janitorial duties and any income sharing arrangements.
- B. Leases - the terms of the lease will outline responsibilities for issues such as repairs, maintenance and insurance.
- C. Ownership - the purchase price will be negotiated and will be dependent on the asset being transferred and the nature of the request.

7. Additional Ownership requirements

- A. It should be noted that in order to be eligible for a disposal at less than market value the community group proposal must contribute, in respect of the local authority's area, or part of it, or the residents, to at least one of the purposes set out at Para 4(2) of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 regulations being:
 - (a) Economic development or regeneration;
 - (b) Health;
 - (c) Social well-being; or
 - (d) Environmental wellbeing
- B. In relation to disposals, the Council will consider whether any particular conditions require to be included having regard to the facts and circumstances in each case. It will also be a prerequisite of any transfer that a financial condition be inserted into the title restricting the use of the asset to that provided for in terms of the approved project. In the event of the approved use ceasing, e.g. by reason of the implementation of a planning consent for an alternative use, the Council would require an additional payment based on the current market value to reflect the uplift in value of the property because of the change of use.

8. What if a community group wants to improve or maintain amenity land / open space?

- A. If a community group is looking to improve or maintain an area of Council land and they meet the following criteria then a "light touch" approach can be adopted whereby no detailed business plan is required. Such requests will be dealt with under existing delegated powers.

- B. The criteria is as follows:
 - a. the site is less than 1 acre in size;
 - b. there are no major funding requirements; and
 - c. there is no requirement for planning consent

9. Who are eligible organisations?

- A. Organisations eligible to seek community asset transfer are community groups who are providing, maintaining or promoting cultural, social, welfare, recreation or sporting activities, or involved in community based projects which are in the interests of local communities and/or are meeting the objectives of the Single Midlothian Plan.
- B. The community group must meet the requirements detailed in section 80 of the Community Empowerment (Scotland) Act 2015. In summary the community group must:
 - a. Be formally constituted with articles of association;
 - b. Have at least 20 members. If the community is very small and getting 20 members would be difficult the community group can apply to the Scottish Ministers to be designated as a Community Transfer Body;
 - c. Have sound long-term management and governance arrangements; and
 - d. Have their own decision-making system and accountability to independent trustees or its own members or constituents;
 - e. Be non-political;
 - f. Have an element of involvement of volunteers; and
 - g. Be not for private profit i.e. it does not distribute any surplus to owners or members but applies it to serving its objects.
- C. Community groups meeting the above criteria but wishing to use the asset for ancillary commercial purposes will require to demonstrate that they require the social enterprise for a recurring income stream in order to make the project sustainable. The income received from the social enterprise will require to be reinvested in the activities of the project.

10. How does the assessment process work?

- A. The Council has a clear and transparent process for asset transfer including a clear first point of contact. The process is proportionate and appropriate dependant on the nature of the asset and project.
- B. The Council will evaluate each proposal in terms of its ability to contribute to the following:
 - a. Single Midlothian Plan
 - b. Community benefit

- c. Community empowerment - building the capacity of voluntary groups and encouraging a sustainable voluntary sector
 - d. Economic development and social enterprise
 - e. Improvements to local services
- C. In terms of this framework, once the Council considers an asset to be suitable for transfer there will be a 2 stage process.
- D. **Stage 1** - The initial stage will be an expression of interest where the Council's Community Management Assessment Group will consider the outline proposal and the suitability of the community group seeking an asset transfer. If there is more than one interest expressed by a community group in an asset, the community groups will be encouraged to work together to seek a joint transfer. An expression of interest is the recommended first step although is not a legal requirement under the Act.
- E. **Stage 2** – A formal Asset Transfer will involve a detailed application and submission. Any community group requesting an asset transfer must be able to:
- a. Provide a well-prepared business case demonstrating that the proposal is financially viable and sustainable. This information is crucial to the assessment process and assistance will be provided to ensure it contains the relevant information. The information required will be proportionate and appropriate dependent on the nature of the asset and proposal;
 - b. Demonstrate a clear community/social demand for the transfer;
 - c. Demonstrate they have the capacity to manage the asset and have directors or management committee members who have the necessary skills and experience;
 - d. Show they have good governance and robust financial systems in place along with all necessary policies expected of a community group, such as compliance with relevant safeguarding legislation.
 - e. Show how their project objectives contribute to the Council's corporate and strategic priorities;
 - f. Prove that the proposed project complements activities, services or facilities already provided in the local community.
- F. To help ensure the application process is transparent, any information submitted as part of a formal application will be published online.
- G. The following table sets out the process with indicative timescales in relation to this once an expression of interest has been received.

Indicative timescales	Stage 1 – Expressions of interest
4 weeks	If the asset is suitable, and the community group meet the statutory requirements for a Community Transfer Body (CTB) a community group will be encouraged to complete an expression of interest form and provide a summary of the proposal identifying local support. The Community Management Assessment Group will review the information provided in support of the application to determine the strength of the proposals and the suitability of the CTB. If the assessment is satisfactory and no other interest identified, the community group will be invited to stage 2.
	Stage 2 – Detailed submission

3 months for CTB to submit application	The CTB will require to submit a formal application including Business Plan which should contain the key elements shown in the Guidance Notes provided to Community groups.
Stage 3 – Consideration of application	
16 weeks	On receipt of a valid formal application the Community Management Assessment Group will send an acknowledgement to the Community Transfer Body(CTB), notify owners, tenants and occupiers, publish notice of request (20 working days allowed for representations), copy any representations to CTB (CTB then have 20 working days to comment on representations) and assess the application against the assessment criteria (appendix 1),
Stage 4 – Director, Resources consideration	
4 weeks	A report will be submitted to the Director, Resources within 4 weeks of the Community Management Assessment Group's recommendation.
Stage 5 - Issue of Decision Notice	
Within 6 months of receipt of valid application	Following a decision by the Director, Resources the Decision Notice will be issued to CTB and published. Anyone who made representations will be advised of the decision by letter/email.

Stage 6 – Appeals

There is a right of appeal for a CTB who have submitted an application which has been refused by the Director, Resources. They can ask for an internal review of an asset transfer decision by the Committee Asset Transfer Review Committee. If the outcome of the internal review does not resolve the issue to their satisfaction the CTB can then appeal to the Scottish Ministers under section 88 of the Asset Transfer Request (Appeals) (Scotland) Regulations.

Stage 7- Implementation of Transfer

Scottish Government guidance states this will normally take a minimum of six months to allow time for community group to confirm funding. There is a further right of appeal to the Scottish Ministers if the community body consider the local authority is delaying concluding the contract covered in the Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016/360.

Version Control	Produced / Reviewed	Summary of Changes	By whom
1	Jan 2018	First draft	Stephen Bermingham & Catherine Duns

2	February 2018	Second draft, feedback from group	Community Management Assessment Group, Legal, Planning, Property and Communities Teams.
3	April 2018	Third draft, further feedback from legal and planning	Community Management Assessment Group, Legal, Planning, Property and Communities Teams.
4	June 2018	Fourth draft, changes to the proposed amendments to standing orders	Legal

Appendix 1

Asset Transfer Assessment Tool

- The value of benefits should be judged on a broad basis, not only in relation to the particular authority to which the request is made.
- The benefits of the request should be proportionate to the value of the asset and the level of discount

Projects Objectives	Evidence	Assessment Score 1-5 (1-Weak, 5-Very Strong)
<p>Do the project objectives meet the Single Midlothian Plan objectives?</p> <ul style="list-style-type: none"> • Reduce the economic circumstances gap • Reduce the gap in learning outcomes • Reduce the gap in health outcomes 		

Value to relevant authority in existing use of asset? <ul style="list-style-type: none"> • Feasibility and cost of relocation of services elsewhere • Potential revenue savings arising from transfer 		
Level of community benefits <ul style="list-style-type: none"> • Extent of community served • Nature of benefits to be delivered • Community need/demand for the services 		
Likelihood that benefits will be delivered over a 5 year period <ul style="list-style-type: none"> • Strength of organisation • Sustainability of business plan/project • Sources and level of funding support 		
Impact of project failure <ul style="list-style-type: none"> • To surrounding local environment • To reputation of the parties • To the service users'/relevant authority's objectives 		
7 Best Value themes	Evidence	Score 1-5 (1-Weak, 5-Very Strong)
Vision and Leadership – does the organisation have in place a clear vision and plan for what it will do to contribute to the delivery of improved outcomes for Scotland?		
Effective Partnerships – does the organisation have a collaborative approach to the challenges that communities face?		
Governance and Accountability – can the organisation demonstrate structure, policies and leadership		

behaviours?		
Use of resources – how does the organisation demonstrate effective management of all resources to deliver on outcomes?		
Performance management – does the organisation have robust arrangements in place to monitor and report on outcomes?		
Sustainability – what is the organisation doing to contribute to sustainable development?		
Equality – has the organisation taken consideration of an embedded equality issues into its strategy?		

Score	Overview of evidence
5, Very strong	<ul style="list-style-type: none"> • Governance and financial arrangements are strong and sustainable • Best Value characteristics are evidenced throughout the overall approach • Related project benefits are very robust and demonstrate value for money
4, Strong	<ul style="list-style-type: none"> • Governance and financial arrangements are sound and sustainable • Best Value characteristics are in evidence in the proposal • Related projected benefits are demonstrated well and represent value for money
3, Moderate	<ul style="list-style-type: none"> • Governance and financial arrangements are in place and acceptable • Best Value characteristics have been considered as part of the proposal • Related projected benefits are acceptable and could lead to value for money
2, Weak	<ul style="list-style-type: none"> • Governance and financial arrangements are weak • Best Value characteristics are not well demonstrated in the proposal • Related projected benefits are not based on robust information and demonstrate questionable value for money
1, Poor	<ul style="list-style-type: none"> • Governance and financial arrangements are poor • There is little evidence of Best Value characteristics in the proposal • Related projected benefits are ill defined and/or unrealistic and do not demonstrate value for money

Appendix 2 - Proposed Changes to the Council's Scheme of Administration.

The proposal assumes that the first instance decision on Asset Transfer Requests be taken by the Director, Resources with reviews being the responsibility of a new statutory committee comprising 5 elected members of Cabinet.

Add new delegation to Director, Resources:

[] Considering and determining Asset Transfer Requests made in terms of Part 5 of the Community Empowerment (Scotland) Act 2015 in accordance with the Act and the Council's Community Asset Transfer Framework but excluding the review of such requests which is the responsibility of the Community Asset Transfer Review Committee.

Add new Statutory Committee:

Community Asset Transfer Review Committee	Will comprise 5 Elected Members of Cabinet. One of the Elected Members of the Committee will be the Chair.
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Community Asset Transfer Review Committee

The Community Asset Transfer Review Committee will comprise 5 Elected Members of Cabinet.

The Community Asset Transfer will have a Chair from its composition, determined by the membership of the Committee.

Business:

The Community Asset Transfer Review Committee will be responsible for considering and determining reviews of decisions or failures to take decisions by the Director, Resources on Asset Transfer Requests made in terms of Part 5 of the Community Empowerment (Scotland) Act 2015.

Frequency of meetings:

The Community Asset Transfer Review Committee will meet as required and determined by the Chair in liaison with Director, Resources.

Quorum

The quorum for meetings of the Community Asset Transfer Review Committee will be 3 Councillors.

Minutes

The Minutes of the Community Asset Transfer Review Committee will be recorded by the Officer clerking the meeting and circulated to Members for approval. They will also be submitted to the Council for information. Meetings of the Community Asset Transfer Review Committee will also be audiocast subject to the exemptions contained within the Local Government (Scotland) Act 1973.