

# Shetland Islands Council: Community Asset Transfer under the Community Empowerment (Scotland) Act 2015 – POLICY v1.3

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## **1 Introduction**

- 1.1 Shetland Islands Council (the Council) holds assets as resources to be used in the delivery of services and support in the delivery of objectives and outcomes.
- 1.2 The Council recognise that the best use of assets may involve certain assets being transferred to community transfer bodies as a means of empowering communities to help achieve improved outcomes. The development of a Community Asset Transfer Policy is an acknowledgement of the role assets can play in enhancing community empowerment and sustainability, where appropriate measures are put in place from the outset.
- 1.3 This Policy sets out the Council's approach to meeting its legislative duties under [Part 5 of the Community Empowerment \(Scotland\) Act 2015](#) (the Act). This policy draws on Part 5 of the Act and the regulations below:
- [The Asset Transfer Request \(Procedure\) \(Scotland\) Regulations 2016](#)
  - [The Asset Transfer Request \(Appeals\) \(Scotland\) Regulations 2016](#)
  - [The Asset Transfer Request \(Review Procedure\) \(Scotland\) Regulations 2016](#)
  - [The Asset Transfer Request \(Appeal Where No Contract Concluded\) \(Scotland\) Regulations 2016](#)
  - [The Community Empowerment \(Registers of Land\) \(Scotland\) Regulations 2016](#)
- 1.4 A reference in this policy to particular legislation includes that legislation as amended, consolidated, re-enacted or replaced, and all subordinate legislation made under it as is, in each case, from time to time in force.
- 1.5 In the event of a conflict between this policy and applicable law, the applicable law shall prevail.
- 1.6 This policy does not in any way fetter the discretion of the Council and each application will be considered on its individual merits and with reference to any other relevant considerations.

## **2 Procedures**

- 2.1 The accompanying procedures to this Policy detail the roles and functions to be carried out by Managers and employees of the Council in order to fulfil the obligations set out in the legislation and this Policy.

## **3 Definition of Asset Transfer Request**

- 3.1 An 'asset' refers to land or buildings owned or leased by a public body. This Policy relates to assets owned or leased by the Council. An 'Asset Transfer Request' can be made by a community transfer body to the Council asking to have:
- land or buildings owned by the authority to be transferred to them;
  - land or buildings owned or leased by the authority to be leased or assigned to them; or,
  - the authority to confer rights of management or occupancy for a specific purpose.

## 4 [Rights and Responsibilities](#)

- 4.1 This Policy acknowledges the rights afforded to community transfer bodies under the Community Empowerment (Scotland) Act 2015 and commits to support and uphold these rights in the spirit of the legislation. However, the Council has a duty to protect the public interest and maximise community benefit and, therefore, there must also be an acknowledgement of the responsibilities that go along with stewardship of public assets.

## 5 [Principles](#)

- 5.1 The Policy is based on the following principles:
- Informal dialogue to establish shared understanding of needs, circumstances and ways forward is the foundation upon which successful asset transfer is built;
  - Proposed asset transfer should support Local Outcomes Improvement Plan outcomes, and should not be to the detriment of other strategies and policies;
  - The Council has an important role in supporting community bodies, but also acknowledge their stewardship of publicly owned assets;
  - Arrangements for asset transfer strike a balance between rights and responsibilities to ensure the best possible outcome for Shetland;
  - The transfer of assets will be carried out in a transparent, equitable and accountable way;
  - A strategic approach will be adopted for all assets, in accordance with the Council's Asset Strategy and associated Implementation Plan;
  - All Council services will support the Council's Policy on the community transfer of assets and assist in delivering the aims and objectives contained in this Policy, and;
  - All assets being transferred for less than market value will be subject to satisfying the terms and conditions of the [Disposal of Land by Local Authorities \(Scotland\) Regulations 2010](#).

## 6 [Eligibility](#)

- 6.1 To make an asset transfer request, an organisation needs to be a 'community transfer body' as defined in [section 77 of The Community Empowerment \(Scotland\) Act 2015](#). Community transfer bodies can be either a 'community controlled body' or a body 'designated by the Scottish Ministers'.
- 6.2 A community transfer body must fulfil certain criteria when it wants to make an asset transfer request for lease or other rights in respect of land and additional criteria when it wants to make an asset transfer request for ownership – see paragraph 7.
- 6.3 A community controlled body means a body that has a written constitution which includes:
- (a) **A definition of the community to which the body relates** (whether geographic or a community of interest<sup>1</sup>),
  - (b) **Provision that membership of the body is open to any member of that community** (the body must be open to anyone who is a member of the community)

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<sup>1</sup> 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.

- defined above; there must be no additional requirements. Where membership is based on a fee, this should be affordable to anyone from the defined community),
- (c) **Provision that the majority of the members of the body is to consist of members of that community** (people (and organisations) who are not members of the defined community may be allowed to join the body, but the governing documents must require that those who are members of the community must always be in the majority. This can be accomplished by providing for Ordinary Members and Associate Members or Junior Members – the number of Ordinary Members should always exceed the number of other members),
  - (d) **Provision that the members of the body who consist of members of that community have control of the body** (having “control of the body” means that the members of the community are in charge of the decisions made by the body. This may be arranged by providing that only Ordinary Members can vote at General Meetings, a majority of the Board must be made up of Ordinary Members and the Chair and Vice-Chair must be Ordinary Members, where they have a casting vote),
  - (e) **A statement of the body's aims and purposes, including the promotion of a benefit for that community** (the aims and purposes may include activity that goes wider than the defined community, such as raising money for charity, promoting their interest to other people or sharing experience with communities in other areas; however, at least one of the purposes of the body must clearly be for the benefit of the community they represent), and
  - (f) **Provision that any surplus funds or assets of the body are to be applied for the benefit of that community** (any money or property the body has, after covering its running costs, must be used to benefit the community as a whole. Bodies incorporated as co-operatives, which distribute their profits or dividends to members of the body, are not eligible to make requests for ownership).

6.4 The Scottish Ministers can also designate a body to be a community transfer body. They will do this by making an order.

## 7 Eligibility for Ownership

- 7.1 If a community transfer body wants to acquire ownership of a property, it must meet additional requirements. It must be a community controlled body (as above), and it must also be a company, a Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Company, and its constitution must require that it has at least 20 members. If the request is for ownership, and the community transfer body is a company, the Articles of Association must include arrangements for what happens to the body's assets if it is wound up. This must require that the property is transferred:
- to another community transfer body;
  - to a charity;
  - to such community body (within the meaning of [section 34 of the Land Reform \(Scotland\) Act 2003](#)) as may be approved by the Scottish Ministers;
  - to such crofting community body (within the meaning of [section 71 of that Act](#)) as may be so approved, or;
  - if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

- 7.2 If the organisation is a SCIO or Community Benefit Society, there will be similar provisions to ensure that remaining property is transferred to another body with similar structure and aims.
- 7.3 Should the Council deem it appropriate, community transfer bodies will have to constitute themselves in one of the ways outlined above. This could be because the terms or the responsibilities (maintenance, energy etc.) entailed by the type of asset transfer involved would be difficult for an unincorporated body to administer. If a community transfer body wishes to use the asset to deliver a service, they must be incorporated.

## **8 Pre-application stage**

- 8.1 In accordance with Scottish Government [guidance](#) and in order to maximise the benefits afforded by this Policy, the Council has designed a pre-application stage for prospective community transfer bodies wishing to consider the possibility of making an asset transfer request. This process will be administered by the Council's Community Planning and Development Service, acting as a single point of contact for community transfer bodies to discuss their proposals at an early stage.
- 8.2 The pre-application stage is designed to help community transfer bodies understand the requirements of the legislation and to assess their readiness to submit a competent application. This stage will also involve dialogue with key officers from relevant Council Services (such as Governance and Law, Planning and Assets, Commissioning and Procurement) to enable all parties to share information and knowledge.
- 8.3 Community transfer bodies are strongly advised to contact the Council's Community Planning and Development Service and discuss their proposals before any formal request is submitted.

## **9 Valuation – prior to submission**

- 9.1 The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value<sup>2</sup> or at a discount. The community transfer body has to state in the asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver, and the Council has to decide whether to accept that price. Valuation of an asset is a key consideration that can be discussed during the pre-application stage.

## **10 Joint Valuation**

- 10.1 Where market value can be determined, both the Council and the community transfer body are likely to need to understand the market value of the asset, for accounting, borrowing or funding purposes, and to ensure transparency about the amount of any

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<sup>2</sup> Market Value: the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

reduction from market value. A market value may also be required for Best Value and Subsidy Control assessments.

- 10.2 This Policy recommends that, where possible, a joint valuation is obtained in order to reduce overall costs and provide an agreed asset valuation. The Council and community transfer body should share the cost of a joint valuation equally.
- 10.3 Where a joint valuation is not possible parties will require to seek their own valuations at their own expense.
- 10.4 The Council reserves the right to instruct its own independent valuation in addition to any joint valuation which has been obtained, should this be necessary.

## **11 Submitting a formal asset transfer request**

- 11.1 Requests for a transfer of ownership can be made if the Council owns or leases the asset in question and the community transfer body is eligible.
- 11.2 Requests should be made in writing to the Council and must:
- (a) state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015;
  - (b) contain the name and contact address of the community transfer body;
  - (c) be accompanied by a copy of the constitution of the community transfer body;
  - (d) if the request is made by a body which is not a community controlled body, explain the basis on which the body is a community transfer body;
  - (e) specify the land or building to which the request relates;
  - (f) specify whether the request is a request for ownership, lease or other rights on the land or building;
  - (g) if the request is for ownership, specify the price that the community transfer body would be prepared to pay for the transfer of ownership of the land or building (with reference to the valuation – whether jointly or singly obtained);
  - (h) if the request is for lease, specify:
    - the amount of rent that the community transfer body would be prepared to pay,
    - the duration of the lease, and
    - any other terms and conditions that the community transfer body considers should be included in any lease;
  - (i) if the request is for other rights, specify the nature and extent of the rights sought;
  - (j) specify any other terms or conditions applicable to the request;
  - (k) specify the reasons for making the request;
  - (l) describe how the community transfer body proposes that the land or building is to be used;
  - (m) specify the benefits which the community transfer body considers will arise if the authority were to agree to the request;
  - (n) outline how it is proposed that—
    - the transfer of ownership of the land or building, the lease of the land or building or the conferral of other rights in respect of the land or building on the community transfer body (as the case may be); and
    - the proposed use of the land, are to be funded, and;
  - (o) describe the level and nature of support for the request from the community to which the community transfer body relates.

11.3 The request requires two signatures from officers of the community transfer body, with their full names and addresses. Requests should be accompanied by supporting information relating to the community transfer body itself and further details of how the asset is going to be used to provide positive outcomes in a sustainable manner.

11.4 Information, guidance and asset transfer forms are available from the Council's Community Planning and Development Service and are included in the procedures.

## **12 Receiving asset transfer requests**

12.1 Requests received by the Council will be checked to ensure they are valid, and contain the correct information. In the event that a request is not valid, or required information is missing, the Council will write to the community transfer body to inform them what is missing and how to complete their request. This will happen only once. If a valid, completed request is not received after this or a completed request is found to be ineligible, then it is not an asset transfer request and no further action need be taken.

12.2 Once a completed request is submitted, the Council will issue an acknowledgment to the community transfer body. The acknowledgement will include:

- the validation date – the date the request was received in its complete form. This is the date from which other time limits will be calculated
- an explanation of the time period for the Council to make its decision (within 6 months of the validation date)
- information about the right to appeal to the Scottish Ministers or request a review, as appropriate.
- whether another asset transfer request has already been made to the Council in respect of the same asset
- whether the Council considers that it is prohibited from disposing of the land to any other person (see 'Prohibition on disposal of land' below)

## **13 Notification and publication**

13.1 The Council is obliged by the legislation to make certain parties aware that an asset transfer request has been made and to give them the opportunity to comment on it. As soon as practicable after the validation date the Council must notify any tenant or occupier of the land the request relates to, and the owner if the Council leases the land that an asset transfer request has been received. It is recommended that this take place no later than 7 days after the validation date.

13.2 Notices sent to tenants, occupiers and owners and those published online (on the Council's website) and near the land all require to contain the same information. They must:

- state that an asset transfer request has been made
- identify the community transfer body making the request and the land to which the request relates
- give a brief description of the nature of the rights requested and how the community transfer body propose to use the land or building
- say how the asset transfer request and associated documents can be inspected



- say how representations about the request may be made, and by what date. This must be at least 20 working days after the notice is given or published

13.3 If any representations are received in response to these notices, the Council must send redacted copies to the community transfer body and give the body at least 20 days to comment on them.

## **14 Repeat requests**

14.1 The Act allows the Council the right to choose not to consider a request which is the same or very similar to a previous request which was refused. This applies if the new request relates to the same land or building, and seeks the same type of transfer, as a request made in the previous two years. It does not matter if the new request is made by the same body or a different one.

14.2 The Council can still choose to consider a repeated request if they wish.

14.3 The Council will write to the community transfer body to advise them of the situation and the reason for declining the request.

## **15 Prohibition on disposal of land**

15.1 Once an asset transfer request has been made, the Council is not allowed to sell, lease or otherwise dispose of the land or building the request relates to, to anyone other than the community transfer body that made the request, until the whole process is completed.

15.2 The prohibition on disposal does not apply if, before the asset transfer request is made, the land or building has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land or building to another person.

## **16 Publication of request documents**

16.1 The Council is required to make available copies of the asset transfer request, any supporting documentation and any representations or comments made in relation to the request. These will be displayed on the Council website until such time as the asset transfer process is completed. Any documentation will be redacted to remove any personal information prior to publication in line with The Data Protection Act 2018.

## **17 Decision Making**

17.1 Where a valid asset transfer request has been made by a community transfer body to the Council, the Council must decide whether to agree to or refuse the request. The Council must agree to the request unless there are reasonable grounds for refusing it.



- 17.2 This policy is based on delegated authority for decisions to be taken in the first instance by the Chief Executive or their nominee. Decisions will be informed by an appraisal of the completed asset transfer application conducted by a core team of senior officers drawn from relevant areas of business across Shetland Islands Council. Using a standardised decision making framework, these senior officers will assess whether the asset transfer request should proceed or not and, if the recommendation is to proceed, the terms and conditions that the Council should put forward. The appraisal framework and membership of the core team is outlined in procedures.
- 17.3 A decision notice will be issued by the Council to the community transfer body no later than 6 months after the validation date.

## **18 Decision notice**

- 18.1 The decision note will set out the decision reached and the reasoning for that decision.
- 18.2 If the decision is to accept the asset transfer request, the decision notice will:
- Specify the terms and conditions on which the authority is prepared to transfer ownership, lease the land or building or confer the rights requested
  - State that, to proceed with the process, the community transfer body must submit an offer
  - Specify the period within which the offer must be submitted. This must be no later than 6 months from the date of the decision notice.

## **19 Reviews and Appeals**

- 19.1 A community transfer body can ask for their asset transfer request to be re-examined in certain circumstances. This can either be in the form of a review (where the asset transfer request is considered by Members) or an appeal (where the asset transfer request is considered by the Scottish Ministers).
- 19.2 A community transfer body can seek a review or appeal if:
- their request is refused;
  - the terms and conditions in the decision notice are significantly different from those in the request;
  - no decision notice is issued within the required period.
- 19.3 A community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

## **20 Review by Elected Members**

- 20.1 A community transfer body can ask for an internal review if their asset transfer request to the Council is declined. This review will be carried out by the Policy and Resources Committee. Applying for a review must take place within 28 days of the decision notice being issued.

- 20.2 The review can proceed either via written submission or a hearing panel. The Policy and Resources Committee will constitute the hearing panel. In carrying out a review, the Council must consider the request in the same way as the original process, taking account of the same factors and benefits of the request as well as any additional or alternative proposals.
- 20.3 Having carried out the review, the Council may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. The time period for issuing the decision notice is 6 months from the date that the application for review was received.

## **21 Appeal to the Scottish Ministers**

- 21.1 If they are still not satisfied with the result following the review by the Council, the community transfer body can appeal to the Scottish Ministers. This request should be submitted within 28 days of the original or revised (following review) decision notice. Procedures for the appeals process are set out in regulations ([Asset Transfer Request \(Appeals\) \(Scotland\) Regulations 2016](#)).

## **22 After agreement**

- 22.1 The Act sets out the next steps after the Council has issued a decision notice agreeing to an asset transfer request. The same process applies whether the request was agreed to initially or following a review or appeal.
- 22.2 In response to the decision notice, the community transfer body must submit an offer to take ownership of the land, lease it or take up the rights covered by the request. That offer must reflect the terms and conditions set out in the decision notice.
- 22.3 The offer must be submitted to the Council within the period stated in the decision notice, which must be at least 6 months. If no offer is made within that time (and the community transfer body does not appeal or request a review) the process comes to an end. The agreement to transfer the property to the community transfer body has no further effect, and the relevant authority is free to keep it or dispose of it as it wishes.
- 22.4 The contract must normally be concluded within 6 months of the community transfer body's offer. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any other terms and conditions must be agreed. The contract may be conditional on other factors that are needed to allow the community proposals to go ahead, such as receipt of funding or planning permission. The process for concluding a contract is set out in procedures.
- 22.5 If a contract for the transfer has not been concluded within 6 months of the community transfer body making an offer, the asset transfer request comes to an end and the agreement to transfer has no further effect. If the community transfer body wants to extend the period but the Council does not agree, the community transfer body can apply to the Scottish Ministers for a direction to extend it.

- 22.6 If a contract is not agreed within the required period, the community transfer body can appeal to the Scottish Ministers. An appeal should be made within 14 days of the end of the period to conclude a contract.

## 23 Reporting

- 23.1 Annual reports will be presented to the Development committee to update Elected Members on live asset transfer requests and any asset transfers that have been determined by officers during the preceding year.
- 23.2 An annual report on asset transfer will be published by the Council to include for that year:
- how many asset transfer requests were received
  - how many asset transfer requests were agreed to or refused
  - for asset transfer requests agreed to, whether they resulted in transfer of ownership, lease or conferral of other rights
  - where decisions made by the Council have been reviewed, how many have been confirmed, modified or substituted by a different decision
  - for appeals relating to asset transfer requests made to the Council, how many have been allowed, dismissed, or have resulted in any part of the Council's decision being reversed or changed.