



# **Clackmannanshire Council**

## **Community Asset Transfer Guidance**

**October 2022**

## 1. Introduction

Clackmannanshire Council is committed to community asset transfer where that will bring benefits to communities and contribute towards achieving the aims and objectives of the Council's Corporate Plan and the shared aspirations of Clackmannanshire's Local Outcomes Improvement Plan.

The Council recognises that community ownership of land and buildings can be a powerful tool for communities to drive change and achieve their own goals and where possible and appropriate this will process will be integrated with Clackmannanshire Council's Annual Property Review. Community Asset Transfer can provide stability and sustainability for the community organisation allowing them to develop new initiatives and support other groups, and create a stronger sense of community identity, cohesion and involvement. Recognising this, the Council is committed to forming long-term partnerships with voluntary and community organisations and sees community asset transfer as a key mechanism in achieving that.

This guidance sets out the process by which Clackmannanshire Council will manage asset transfer and provides information for communities considering asset transfer. This document has been developed in line with guidance published by the Scottish Government in January 2017 and with the Community Empowerment (Scotland) Act 2015 which can be found here <http://www.gov.scot/Publications/2017/01/5463> and associated Asset Transfer Request Regulations 2016 which can be found here <http://www.gov.scot/Topics/People/engage/AssetTransfer/Legislation>

This document should be read in conjunction with Scottish Government's Guidance for Community Bodies on Asset Transfer which can be found here <http://www.gov.scot/Publications/2017/01/2888>. Community bodies who are interested in asset transfer are asked to consider this guidance at an early stage as it contains useful **information, advice and checklists to help get started**. There are also a number of helpful guides and information available for community bodies interested in asset transfer and information about, and advice from, successful asset transfer projects in Scotland. These can be found here:

<http://www.hie.co.uk/community-support/community-assets/assettransfer.html>  
<http://www.dtascommunityownership.org.uk/>

Asset transfer can involve:

- transferring property the Council owns to a community organisation
- leasing property the Council owns to a community organisation
- conferring rights on a community organisation to manage, occupy or use property the Council owns

Clackmannanshire Council welcomes all enquiries from community-led organisations concerning the potential for community asset transfers and will provide, and signpost to, appropriate support where we can. To aid the process of Community Asset Transfer we have included an **Expression of Interest** stage to our asset transfer request process.

Community bodies wishing to make an asset transfer request are reasonably expected to discuss their options and plans with the Council through this process. This stage will also provide an opportunity for discussions about the support that may be available for community-led organisations wishing to request the transfer of an asset.

The Council will consider transfer of an asset to any community organisation that meets the definition of community transfer body and makes a credible application supported by an appropriate Business Plan and demonstrates that it has the skills and capacity to manage the asset.

Potential transfers will be considered on a case-by-case basis against the **criteria** outlined in this guidance. In each case, transfers will only be agreed with community-led organisations the Council considers suitable for managing the asset, in line with the legislation.

Suitable community-led organisations, for the purposes of this policy may have a variety of forms, and legal structures but their key defining factor will be that they are recognised in their communities as legitimate, transparent, democratic and accountable organisations.

In line with legislation, the Council has published its Register of Assets on our website. An Expression of Interest Application and a Full application form are also available from our website.

## **2. Who Can Make an Asset Transfer Request?**

To make an asset transfer request, an organisation needs to be either a community controlled body or a body designated by the Scottish Ministers. A community controlled body does not have to be incorporated, but it does have to have a written constitution. The constitution has to include a number of provisions which are set out below;

- A definition of the community to which the body relates.
- Provision that membership of the body is open to any member of that community
- Provision that the majority of the members of the body is to consist of members of that community
- Provision that the members of the body who consist of members of that community have control of the body
- A statement of the body's aims and purposes, including the promotion of a benefit for that community
- Provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Scottish Ministers can designate a body to be a community transfer body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make asset transfer requests. A designated community transfer body is only entitled to make a request for ownership, if the designation order states that it is allowed to do that. Further information on designation can be found here <http://www.gov.scot/Topics/People/engage/AssetTransfer/Legislation>

Assets will not be transferred to individuals or businesses and will not be transferred to groups for party political use.

### 3. What is Asset Transfer?

The key requirement for transfer is that the community organisation has a clear vision for the use of the asset, is clear and specific about the benefits to and outcomes for the community of the transfer, and in most cases has a viable business case. In some instances it may be the case that the business plan for a project is only viable if there is continuing revenue funding from the Council.

The Council may consider transferring management responsibility for an asset to a community organisation whilst maintaining some revenue funding in support of its operation where there is merit in doing so. It will be the responsibility of the community organisation to demonstrate the case for doing so.

The Council will consider the reasons for the request and the information provided in the request and compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. If the Council does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the property has been identified for disposal, disposal on the open market could be an alternative.

In assessing the benefits of the request, the Council will consider whether agreeing to it would be likely to promote or improve:

- economic development
- regeneration
- public health
- social wellbeing
- environmental wellbeing, or
- reduce inequalities of outcome which result from socio-economic disadvantage

The Council has a statutory duty to obtain the “best consideration” from the disposal of any asset. In general terms, the legislation provides that this should be the “market value” unless it can be demonstrated that the Council has appraised the advantages and disadvantages of the proposal, satisfied itself that the disposal for that consideration is reasonable and the benefits accruing to the community are such that a reduction in that value is justified. The community transfer body must state in their request how much they are prepared to pay for an asset, alongside the benefits that they will deliver.

The price offered for the transfer will also be considered alongside the non-financial benefits. In its simplest form, the Council will consider what it could achieve with any profit or savings it might make, or what impact any financial loss might have, compared with the benefits offered by the community project or alternative proposals. The Council will also take into account additional costs that may arise as a result of agreeing the request (ie relocation of staff and services) and may offset these against the value of the proposal.

In circumstances when a community organisation wishes to acquire the asset at best consideration (i.e. market value) and following a decision to dispose of a surplus or under-performing asset, the Council will protect the asset from the open market for an agreed period of up to six months to enable the community organisation to raise the required capital to complete purchase. If an asset has been approved for sale or lease by the Council and a community body offers the best or only bid this is a commercial transaction and not an asset transfer.

EU State Aid Rules are in place to regulate financial assistance from public authorities that could distort competition between EU Member States. It applies to any type of financial assistance, including grants and discounts, and any organisation carrying out "economic activity", even if it is not for profit. "Economic activity" covers offering any goods or services that could, in principle, be carried out by someone for payment. The Council will have to consider whether any reduction from market value is allowed under the State Aid Rules.

More information on valuation, market value and EU state aid rules can be found here

<http://www.gov.scot/Topics/People/engage/AssetTransfer/Legislation>

#### **4. Criteria for Making an Asset Transfer Request**

The Council will need to be satisfied that the community transfer body can deliver the benefits set out in the request. The criteria for assessing an asset transfer request will be underpinned by the 7 Best Value themes. The information provided in the asset transfer request must demonstrate that the community transfer body can evidence best value for public money. The 7 themes are: **Use of Resources; Performance Management; Sustainability; Equality; Vision and Leadership; Effective Partnerships and Governance and Accountability.**

In addition to the Best Value themes an assessment on each application will be made on the following listed matters. This assessment will use a simple 1-5 scale framework.

- a. Realistic costings for the project;
- b. Viability of business plans;
- c. Appropriateness of funding;
- d. Long term sustainability and succession plans
- e. Competence, capability and experience of the community body;
- f. Governance arrangements
- g. Value of proposed and existing use and level of community benefit
- h. Impact and risk of project failure.

Community bodies applying for asset transfer must ensure that they refer to these criteria in their application. **Applications can only be acknowledged and formally validated when the application is completed in full and all accompanying information is received by the Council.** In the event that an application is incomplete, it will be returned to the applicant with an opportunity to provide the required information.

Further information may be sought at a later stage if required for the decision making process. If multiple requests are received for the same property each will be processed in line with the procedures and timescales set out in this guidance document. The Council can decline a request if it is the same or very similar to a previous request which was refused.

## 5. Application and Decision Process

### Getting Started

As a starting point, community bodies should ensure that they have thought about their asset transfer proposal prior to making contact with Clackmannanshire Council. There are a number of helpful guides outlined in section 1 that can help with this.

As a basis, community bodies should consider the following:

- a. What are your objectives and what do you want to improve?
- b. Who are your community and do you have their support?
- c. Do you need land or buildings to deliver your objectives?
- d. Is there suitable land or buildings and who does it belong to?
- e. Do you want to purchase or lease the land or building, or just have rights to manage, use or occupy it?
- f. Is the asset that you have identified appropriate for your proposal?
- g. If you want to use asset transfer or community right to buy are you eligible?

### Stage 1 – Expressions of Interest

Community organisations are reasonably expected to discuss a potential asset transfer on an informal basis prior to making any formal application for an asset. They can do this by making an initial Expression of Interest. An expression of interest will be acknowledged and an appropriate council officer will make contact with the group within 10 working days.

### Stage 2 – Formal Application and Decision Making Process

The formal application sets out the need or demand for the intended use of an asset; the benefits of the asset transfer; the detailed business case for the transfer demonstrating the applicant's capabilities, and the offer price where applicable.

The request form must be completed in full for the application to be valid.

Once a formal application with all required information has been received, the Council will acknowledge the application within 5 working days and provide a **validation date**. A valid application for an asset transfer and accompanying information will be made available online until the process is completed. Information will be provided on how people can make representations on an asset transfer request. Any representations received in relation to a request will also be made available online.

Tenants and occupiers of the land must also be notified and notices of the request must be put up at the site or in the vicinity of the land. Applicants may be asked to undertake this requirement.

A valid application will be assessed and a decision made by the Planning Committee.

The Council decision will be conveyed to the applicant by issue of a decision notice within **6 months** of the validation date and, if positive, will set out the terms of the proposed transfer. Complex requests may take longer and extensions to the time period may be agreed between the Council and the applicant. Terms and conditions of the offer will form part of the decision notice if the request is agreed. If the request is refused, the decision notice will set out the reasons for doing so.

Applicants can request a review of appeal on the decision and information is provided on doing so below.

### Stage 3 – Implementation

In response to the decision notice the applicant is required to submit an offer to take ownership of the land, lease the land or take up the rights covered by request. They must do this within **6 months** of the decision notice. The offer must reflect the terms and conditions set out in the decision notice. If no offer is made (and no appeal or review is requested) within the deadline the process comes to an end and the Council can deal with the asset as it wishes.

Once the offer is received, further negotiations will take place to conclude the contract. This may involve a legal process depending on the transfer type. The contract will normally be concluded within 6 months of the date of the offer being made. If no contract is concluded within 6 months and no further action is taken the process will come to an end.

Applicants have the right to appeal to the Council to extend conclusion of the contract and can apply to Scottish Ministers for a direction to extend the time allowed to conclude a contract.

### Decision Reviews and Appeals

An applicant can seek a review or appeal if: their request was refused; the request was agreed but the terms and conditions in the decision notice are significantly different to the request or if no decision notice is issued within the required period.

The Council can be asked to review the decision or process, depending on the nature of the appeal. If the outcome of the review is not resolved at this stage an appeal can be made to the Scottish Ministers.

A review must follow set procedures which are set out in regulation. A review will be carried out by Elected Members. An application for a review must be made in writing to Clackmannanshire Council within 20 working days of the decision notice, or if no decision has been made within 20 working days beginning with the date of deadline for the decision.

In the event of a review, the Council is required to issue a new decision notice, which may or may not confirm or modify the original decision notice within 6 months of the date the application for review was made.

Prior to submitting a review community transfer bodies should familiarise themselves with the requirements which must be made in writing.

Further information on reviews, appeals and extensions can be found here <http://www.gov.scot/Topics/People/engage/AssetTransfer/Legislation>

An overview of the outline process for an asset transfer request can be found at Diagram 1.

Further information on the Community Empowerment (Scotland) Act 2015 or Community Asset Transfer can be found at: [www.clacks.gov.uk/](http://www.clacks.gov.uk/)

You can also contact us at:

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Diagram 1

Outline process of Asset Transfer.

