

Working together to achieve the best with the people of East Dunbartonshire

East Dunbartonshire Council
Community Asset Transfer Policy
2018

Contents

| | |
|--|----|
| 1. Introduction | 3 |
| 2. Background and Context | 3 |
| 3. Assessment of Community Asset Transfer Requests | 4 |
| • <i>Expression of Interest</i> | |
| • <i>The formal Community Asset Transfer Application.</i> | |
| • <i>Business and Financial Plan</i> | |
| • <i>Additional Information</i> | |
| • <i>The Assessment</i> | |
| • <i>Local authority functions</i> | |
| • <i>Funding, Valuation and EU State Aid Rules</i> | |
| • <i>Prohibition on disposal of land</i> | |
| • <i>Council Asset Register</i> | |
| 4. Support and Monitoring of Community Asset Transfer | 8 |
| • <i>Support</i> | |
| • <i>Monitoring</i> | |
| 5. Decisions | 10 |
| • <i>Decision Notice for a Community Asset Transfer request</i> | |
| • <i>Contract</i> | |
| • <i>Conclusion of contract</i> | |
| • <i>No contract concluded</i> | |
| • <i>Refusal of Community Asset Transfer Request</i> | |
| 6. Review | 11 |
| 7. Appeals | 12 |
| Appendix 1 – Stage 1 Expression of Interest Form | 13 |
| Appendix 2 – Stage 2 Community Asset Transfer Application Form | 15 |
| Appendix 3 – Stage 3 Business Plan Form | 27 |
| Appendix 4 – Community Asset Transfer Application Guidance and Help Notes | 34 |
| Appendix 5 – Equality Impact Assessment Form | 48 |
| Appendix 6 – Environmental Screening Form | 50 |

1. Introduction

This policy sets out the approach taken by East Dunbartonshire Council (the Council) to meet the new requirements of the Community Empowerment (Scotland) Act 2015 in relation to Community Asset Transfer. The potential benefits of a Community Asset Transfer can be measured in terms of the economic, social and environmental wellbeing of the community. In considering potential asset transfers, the Council will evaluate each proposal against the benefits based on the submission of a Community Asset Transfer request. This policy will provide the context for Community Asset Transfer and explain the process which applicants must follow to have a request considered. It also sets out the type of support available from the Council and other agencies.

2. Background and Context

The Council recognises that improving outcomes and delivering better services requires the active input and collaboration of a wide range of partners. The strong partnership approach present in East Dunbartonshire has focused on delivery and improvement across six key priority areas:

1. Economic Growth and Recovery
2. Skills for Learning, Life and Work
3. Children and Young People
4. Safer and Stronger Communities
5. Health Improvement
6. Vulnerable People and Carers

The Community Empowerment (Scotland) Act 2015 (the Act) provides an opportunity to build on the progress made through community planning, strengthening partnership working and community participation and ensure that local citizens are engaged fully in the design and delivery of services that affect them.

This work supports the National Outcome relating to having *'strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.'* The Council is committed empowering communities and strengthening their voices in the decisions that matter to them.

The new Act places new responsibilities on the Council in relation to Community Asset Transfer which were brought into force in 2017. This formalises and sets specific timescales that the Council must adhere to when considering a Community Asset Transfer request to buy, lease, manage or use land or buildings belonging to the Council.

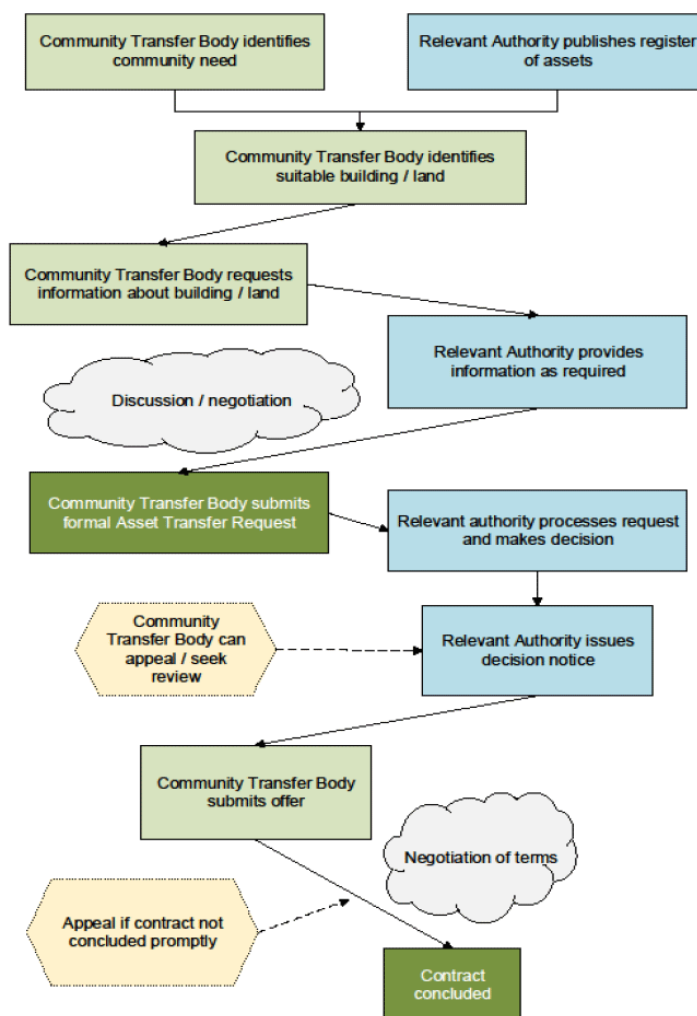
This policy sets out the approach taken by the Council to meet the new requirements of the Act and the process through which an application for a transfer is made. The potential benefits of a Community Asset Transfer can be measured in terms of the economic, social and environmental wellbeing of the community. In considering potential asset transfers, the Council will evaluate each proposal against the benefits based on the submission of a Community Asset Transfer request form (**Appendix 2**) and any additional appendices of information submitted.

3. Assessment of Community Asset Transfer Requests

There are several stages to an asset transfer and the whole process can take several months. Once a valid asset transfer request is received by the Council, it has six months to decide whether to accept or reject the request. Interested community bodies are required to demonstrate an organisational capacity in order to maintain and develop any assets long-term. Groups must also ensure that they can independently access and manage funding to acquire any assets.

The Council will aim to acknowledge receipt of an asset transfer request within 20 working days and advise the Community Transfer Body (CTB) if there is any additional information required to support the application. Following receipt of a valid formal asset transfer request the Council has six months to issue a Decision Notice and publish that decision on the Council website. If the Council's decision is to transfer the asset then the Decision Notice sets out the Council's requirements for the transfer including the price (or rent if the transfer is by lease) and may include extra conditions in addition to the standard conditions of sale or lease. If the CTB wishes to proceed with the transfer, it must submit a formal legal offer within six months from the date on which the Decision Notice is given.

The flow diagram below summarises the key stages of the process, and further detail relating to each of these and other key considerations is provided in this document.



Expression of Interest

The initial stage is recommended as submission of an 'Expression of Interest' (**see template at Appendix 1**). Following this the Council will discuss the outline proposal with the CTB. If more than one CTB expresses an interest in an asset, the community bodies will be encouraged to work together to seek a joint transfer.

This initial stage request provides information on the address of the asset (building or land), the type of transfer the CTB is interested in (transfer of ownership or leasing) and, if leasing, the length of the lease the CTB may require and the price it is able or willing to pay.

At this stage the CTB will also be asked about the experience it has in running an asset, what the asset would be used for and what benefits it is expected to bring to the local community.

The 'Expression of Interest' will be used to explore the current position of the CTB alongside the suitability of the asset. The eligibility criteria that will be explored are all outlined in the guidance and help notes in **Appendix 4**.

A response will be provided to all 'Expressions of Interest' within 20 working days to confirm receipt of the expression and, where possible, provide any initial advice on meeting eligibility criteria and/or to arrange a discussion regarding the second stage.

Through initial discussions between the CTB and the Council, alternative potential routes to running an asset may be explored alongside the suitability of Community Asset Transfer.

Early engagement with the Council is greatly encouraged prior to a formal application.

The formal Community Asset Transfer Application

CTBs who are satisfied they meet the eligibility criteria may wish to submit a formal application (**Appendix 2**). **This stage of the process is the formal submission of a Community Asset Transfer request under the Act, and initiates the start of the six month timescale for the Council to approve or reject the request.**

At this stage the constitution of the CTB must be submitted alongside details of community support for the proposal and how it meets a need in the community that is not being provided elsewhere. Applicants must demonstrate that there has been consultation with the community.

Applications at this stage must also demonstrate the CTB has financial capability via the submission of approved accounts.

Proof that a risk assessment has been undertaken including assessment of insurance requirements in relation to liability, contents and the land or building must also be provided. If the project involves vulnerable young people or adults the applicant must have appropriate safeguards in place and must evidence these to the Council. If the project involves paid staff, the skills and experience to undertake the project must be demonstrated via submission of job descriptions for posts.

The project must also demonstrate that it is likely to deliver benefits in terms of economic development, regeneration, public health, social wellbeing, or environmental wellbeing. There is a requirement to submit an equality and environmental impact assessment as part of this stage **(Appendix 5 and 6)**.

To assist in the planning of the project, the CTB should consider any likely statutory consents required for the proposed use of the building, for example in relation to Licences, Planning Consents or Building Warrants. These should be detailed in the application.

Business and Financial Plan

The Council will require supporting information to be provided by the CTB to be proportionate and relevant to the scale of the application and what the CTB wishes to achieve.

This stage involves completion of a business plan **(see template at Appendix 3)** including short and longer term budget forecasts. Undertaking the management or ownership of a Council asset may require on-going funding and involve the CTB in undertaking a range of responsibilities. If the CTB applies to lease an asset from the Council, then the liabilities for the asset are shared depending on the terms of the lease agreement. The Council must therefore ensure that the CTB has the skills and supporting plans in place to meet the obligations of any lease agreement in relation to the responsibilities associated with property and to deliver the objectives of the CTB proposal.

Additional Information

If the application involves environmental or equality considerations, the CTB is required to submit an environmental screening and/or equality impact assessment forms. The environmental screening form asks for additional information about environmental duties that may be associated with the asset such as if the site is of special scientific interest or is a flood risk area.

The Council's Sustainability Policy Team will be able to provide advice on this and as with other potential support required, this can be scoped at the initial stage of the process. Similarly, if the application involves people, the Council has a duty to ensure that those with protected characteristics under the Equality Act 2010 are given due consideration in the development of any proposal. These completed forms will be considered when the application is assessed.

The Assessment

The arrangements for dealing with transfer requests for Council assets will involve the application firstly being considered by a multi service officer steering group comprising officers from Community Planning; Estates; Legal Services; Business Support; and Facilities Management.

This group will support and advise CTBs, assess the application, and form a recommendation. Where an asset is identified as surplus on the Council's Asset Register, then the recommendation will be presented to a panel of officers from the Council's Strategic Management Team comprising the Chief Finance Officer, the Strategic Lead – Assets & Facilities, the Strategic Lead – Place & Community Planning, and the Chief Solicitor & Monitoring Officer. These senior officers have delegated authority to approve such a request. Where officers refuse an application relating to a surplus asset, and the CBT requests a review of that decision, the review and recommendation will be presented to the Council's Place, Neighbourhood and Corporate Assets (PNCA) Committee for determination.

Where an application relates to an asset identified as non-surplus and/or operational, officers must present any recommendation on the application to the Council's Place, Neighbourhood and Corporate Assets Committee for a decision. If the Council's Place, Neighbourhood and Corporate Assets Committee refuses any application (for surplus or non-surplus assets) and the CTB is entitled to request a review of the decision, then that review will be undertaken by full Council, excluding Members of the Place Neighbourhood & Corporate Assets Committee involved in the initial decision.

Although this policy is to help manage applications of proposals for Council assets only, these requests and general updates on the numbers and types of asset transfer applications will be provided to the Community Planning Executive Group and the Community Planning Partnership Board.

Applications will be assessed based on the following considerations:

- the reasons for the request
- any information provided in support of the request
- whether agreeing to the request would promote or improve:
 - (i) economic development
 - (ii) regeneration
 - (iii) public health
 - (iv) social wellbeing or
 - (v) environmental wellbeing, or
- whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage;
- any other benefits which might arise if the request were agreed to;
- whether there are linkages to local strategies and policies which support various types of regeneration for example, 'Place Plans' or Town Centre Strategies
- whether there are conflicts with relevant local plans, policies or strategies
- any benefits which might arise if the Council adopted another proposal in respect of the asset, which may include a transfer of the asset to another CTB;
- how the benefits of such other proposal would compare to the benefits of a transfer of the asset;
- how the benefits of such alternative proposal relate to other matters which the Council thinks is relevant (in particular, the functions and purposes of the Council);
- any obligations on the Council, statutory or otherwise, which might prevent or restrict or otherwise affect the ability of the Council to agree to the request.

Council functions

Where the proposed benefits of an asset transfer request will contribute to achieving local outcomes, or to national outcomes the Council will take this into consideration at assessment. However, there may be cases in which agreeing to the request would have an unacceptable impact on the Council's ability to deliver services. This could be direct impact, for example because the transfer to community would physically interfere with the carrying out of operations, or require the Council to put in place alternative arrangements that substantially increase costs. Affordability may be a factor, if the cost of the transfer would affect budgets to the extent that it reduced the Council's ability to deliver its functions, even after taking account of the value of the proposed benefits.

Funding, Valuation and EU State Aid Rules

The likely price of an asset is something the CTB should consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. CTBs should not assume that asset transfers will be at a nominal sum.

Both the Council and the CTB need to understand the 'market value' of the asset for accounting, borrowing or funding purposes as well as Best Value and State Aid assessments. If the Council already has an up to date valuation it may suggest that this is used as the starting point for discussions to take place. If at any stage a CTB and the Council are not able to agree on the approach then they may need to obtain separate valuations.

All asset transfers must comply with State Aid rules. State aid is any advantage granted by a public authority through state resources given on a selective basis to any organisations that could potentially distort competition and trade in the European Union. The definition of state aid is very broad because 'an advantage' can take many forms. A disposal at less than market value may constitute state aid, if it provides an economic advantage to an entity. There are four key tests that need to be met in order to establish whether any intervention is likely to affect trade between Member States. These rules can apply to not for profit organisations and activities as well as commercial businesses

If there is any risk of State Aid being an issue, the Council will provide an initial view at the earliest point possible in the application process.

Prohibition on disposal of land

The Council is not obliged to dispose of an asset to a CTB where, prior to the request being made, the Council, or its agent:

- has advertised or otherwise exposed the asset for sale or lease;
- has entered into negotiations with another person with a view to transferring or leasing the land or, proceeds further with a proposed transfer or lease of land which was initiated before the date on which the Community Asset Transfer request was made.

Asset Register

The list of assets that the Council owns or leases is available to view on the Council website. The Council is required to publish a list of applications for asset transfers (successful or otherwise) by 30th June each year. CTBs should check this list prior to submitting a request as the Council is not obliged to consider a request for the transfer of an asset if a request for that asset has been refused within the last two years.

4. Support and Monitoring of Community Asset Transfer

Support

The Council can support CTBs in a number of ways by:

- Providing a named main contact in the Council, who will have responsibility for liaising with the CTB and with the different services of the Council;

- Providing information on the asset – such as the current condition of the building, the running costs, the cost of utilities, the current income from users, and the cost of other outgoings;
- Provide templates for requests including business and financial management plans, ensuring consistency in the information required;
- Providing support to help build the capacity of a CTB (through the Community Learning and Development Team); to develop the business case (through the Business Support team);
- Signposting to appropriate local and national support services and agencies to help progress applications. Examples of support and funding to develop proposals is available from a number of other organisations, examples of these are listed below.

Architectural Heritage Fund – www.ahfund.org.uk

Big Lottery Fund Scotland – www.biglotteryfund.org.uk/scotland

Communities Channel Scotland – www.communityscot.org.uk

Community Councils – www.communitycouncils.scot

Community Land Scotland - www.communitylandscotland.org.uk

Community Land Advisory Service Scotland – sc.communitylandadvice.org.uk

Community Ownership Support Service – www.dtascommunityownership.org.uk

Development Trusts Association Scotland – www.dtascot.org.uk

East Dunbartonshire Voluntary Action - www.edva.org

Federation of City Farms and Community Gardens – www.farmgarden.org.uk

First Port – www.firstport.org.uk

Heritage Lottery Fund – www.hlf.org.uk

National Standards for Community Engagement – www.voicescotland.org.uk

Office of the Scottish Charity Regulator – www.oscr.org.uk

The Prince's Regeneration Trust – www.princes-regeneration.org

Resourcing Scotland's Heritage – www.resourcingscotlandsheritage.org

Scottish Community Alliance – www.localpeopleleading.co.uk

Scottish Community Development Centre – www.scdc.org.uk

Scottish Council for Voluntary Organisations – www.scvo.org.uk

Scottish Land Fund – www.biglotteryfund.org.uk/scottishlandfund

Social Enterprise Scotland – www.socialenterprisescotland.org.uk

Social Return on Investment (SROI) Network – www.thesroinetwork.org

Monitoring

It is the responsibility of CTB's to ensure the necessary provisions are in place and sustained to properly manage the asset and run the service or activity safely in compliance with relevant guidance, standards, legislation or regulation.

Depending on the nature of the asset transfer, the Council may require a CTB to submit an annual monitoring return and to undertake any remedial action where issues are identified. Some examples of the types of things which this may apply to are outlined below. This is not an exhaustive list and other areas may be subject to monitoring work identified through the request application process.

- CTBs are required for example to demonstrate that they are able to meet the requirements of running the asset in the longer term and have developed a business and financial management plan to do this. This may include being able to demonstrate income generation to cover the minimum operating costs associated with the asset;
- The ability to ensure the safety of vulnerable persons;
- Meeting any environmental obligations associated with running a particular area of land or building.

5. Decisions

Decision Notice for a Community Asset Transfer request

Once the Council makes a decision on a transfer request, it will issue a Decision Notice within 6 months of the validation date. The Decision Notice will set out:

- whether the request has been accepted;
- any terms and conditions applicable to the transfer of ownership, lease or grant of rights in the asset, as applicable;
- the requirement for the CTB to submit a formal legal offer in order to proceed with the transfer;
- the time limit for submitting a formal legal offer, which will be at least 6 months from the date on which the Decision Notice is issued.

Contract

Once agreement has been reached between the CTB and the Council, the CTB must make an offer to take ownership of the asset, to lease the asset, or take up the rights covered by the request. This must be done within 6 months from the date of the Decision Notice (unless a different timescale is formally agreed between both parties).

If no offer is made by the date set in the Decision Notice, and the CTB does not appeal nor request a review in relation to the Decision Notice or any conditions in the Notice, the process is at an end and the Council may keep or dispose of the asset as it determines.

The contract must normally be concluded within 6 months of the date of the CTB's offer. This does not mean the transfer has to take place within that time, but the date for transfer, price or rent and 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 confirmation of funding or grant of planning permission.

Conclusion of contract

Once a CTB's offer has been received there may be further negotiations required to conclude the contract. If the request is for ownership or a long term lease this will be treated in the same way as any other property transaction, with exchanges between lawyers to agree the final wording. For other rights the process may be much simpler.

No contract concluded

If no contract is concluded within 6 months of the offer, and no other action is taken, the process is at an end. Sometimes this is by mutual consent – circumstances may change, funding or other requirements may not be secured, and it may no longer be practicable to take the project forward.

Where a CTB believes progress can still be made, there are 3 options available to progress the request further:

- i. Agree an extension with the Council,
- ii. Apply to the Scottish Ministers for a direction to extend the period, or
- iii. Appeal to the Scottish Ministers to determine the terms and conditions of the contract.

Where the time period ends, whether the original 6 months or any extended period, and no contract has been concluded, the CTB can appeal to the Scottish Ministers. This must be done within 10 working days of the end of the period.

Refusal of Community Asset Transfer Request

If the Council refuses an asset transfer request, then it must provide reasonable grounds for doing so. Reasons may, for example, be that the Council requires the asset to deliver statutory service or has earmarked the asset for a capital receipt. CTBs may ask for a review of the Council's decision where:

- the Council initially refuses a request for transfer of an asset
- the Council agrees to a request but the Decision Notice specifies material conditions which significantly differ from those specified in the request
- the Council does not give a decision within the required timescale

If the CTB requests a review of its application, then the Council must carry out the review.

6. Review

If a CTB asks the Council to review a decision, the duty to review the case must be discharged by the Council, and be made by Members not previously involved in considering the application. The Council's Place Neighbourhood & Corporate Assets Committee will carry out a review where an application relates to an asset declared as surplus. In all other cases the review will be carried out by a meeting of the full Council.

Following review of the case, the Council may:

- confirm its decision;
- change its decision or part of the decision (including any terms and conditions specified in the Decision Notice);
- make a different decision.

Following a review, the Council will issue a new Decision Notice to replace the earlier Notice.

7. Appeals

There is a right of appeal to the Scottish Ministers where, following a review, the Council:

- refuses a request;
- agrees to a request but the Decision Notice specifies material conditions which differ to a significant extent from those specified in the request;
- does not give a decision within the required timescale.

The Council is not required to consider the same, or a substantially similar, request for an asset within two years of refusing an earlier request for the same asset, whether by the same CTB or another CTB. A register of requests and the status of each, is published on the Council's website to enable CTBs to ascertain whether a previous asset transfer request has been made in relation to an asset which that CTB may be interested in.

Other Formats & Translations

This document can be provided in large print, Braille or on CD and can be translated into other community languages. Please contact the Council's Corporate Communication

本文件可按要求翻譯成中文，如有此需要，請電 0300 123 4510 。

اس دستاویز کا درخواست کرنے پر (اردو) زبان میں ترجمہ کیا جاسکتا ہے۔ براہ مہربانی فون نمبر 0300 123 4510 پر رابطہ کریں۔

ਇਸ ਦਸਤਾਵੇਜ਼ ਦਾ ਮੰਗ ਕਰਨ ਤੇ ਪੰਜਾਬੀ ਵਿੱਚ ਅਨੁਵਾਦ ਕੀਤਾ ਜਾ ਸਕਦਾ ਹੈ। ਕਿਰਪਾ ਕਰਕੇ 0300 123 4510 ਫੋਨ ਕਰੋ।

Gabhaidh an sgrìobhainn seo cur gu Gàidhlig ma tha sin a dhìth oirbh. Cuiribh fòin gu 0300 123 4510

अनुरोध करने पर यह दस्तावेज़ हिन्दी में भाषांतरित किया जा सकता है। कृपया 0300 123 4510 पर फ़ोन कीजिए।