

## **Written submission from East Ayrshire Council**

In reply to your letter regarding the Disposal of Local Authority Assets on 16<sup>th</sup> December 2014, I have completed the following information on behalf of East Ayrshire Council for the Rural Affairs, Climate Change and Environment Committee:

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**1. Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**

No. Land and buildings remain on either the General Service Account or Housing Revenue Account as appropriate.

**2. When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**

As per the Council's Community Asset Transfer policy the assets will be valued at 10% of the proposed use value (whether rental or sale) unless another discount is considered appropriate dependant on the asset being transferred and the nature of the proposal. The difference between the value and the rent/price payable will be recorded as being the level the Council's "in-kind" support to a project.

**3. What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?**

As per the Council's Community Asset Transfer policy, the Council has in the past generally pursued long lease arrangements but a disposal at less the market value would be considered:

- (a) Where it is necessary to comply with the funding criteria of the proposed project; or
- (b) For the sustainability of the project i.e. the project is predominantly capital funded or long-term in nature.

Clawbacks are inserted in order to protect the interest of the Council in the event that they deviate from the approved community use or sell on for alternative use in the future. This was following advice from Audit regarding protecting the public pound.

**4. What is your experience of disposal and what difficulties had the authority encountered?**

The majority of the Council's asset transfers have been by way of lease unless they are for example a new build facility when they are acquiring a price of land. Many groups particularly newly established ones prefer the option to lease as the Council retain responsibility for statutory compliance and, there is a fall-back in the event the project is unsuccessful.

We have had issues internally between balancing community wish to acquire of at less than market value and corporate objectives to follow the public

pound. It is hoped that clawbacks will protect this but some community groups seem reticent to accept these.

We had particular issue with an existing tenant who wished to purchase their property. The view of Legal Services was that the interpretation of the Disposal of Land Regulations did not allow for this as there was no additional benefits it felt that this would be contrary to the Disposal of Land Regulations. Perhaps clarity could be provided on this.

It is felt that there is still a conflict between the Disposal of Land Regulations and the obligation on local authorities to follow the Public Pound.

I have enclosed a copy of East Ayrshire Council's Community Asset Transfer policy for your information.

## **Annex 1**

### **EAST AYRSHIRE COUNCIL**

#### **COMMUNITY ASSET TRANSFER POLICY**

##### **1 INTRODUCTION**

- 1.1** The aim of this policy is to set out a transparent and enabling framework to manage the transfer of assets from the Council to Voluntary and Community Organisations (VCOs).
- 1.2** The overall aim of this policy is to empower local communities, recognising at the same time, optimising the use of all of our assets including land, property and equipment.

##### **2 COUNCIL COMMITMENT**

- 2.1** The Council is committed to Community Asset Transfer where it will bring benefits to the local community and contribute towards the Council aims and objectives.
- 2.2** The Council recognises that Community Asset Transfer can be a valuable tool in empowering communities, building the capacity of local citizens and to inspire others to create locally responsive solutions to community needs.
- 2.3** Community Asset Transfer will become integrated within Council practice and the Council will put in place a transparent process for Community Asset Transfer.
- 2.4** The Council will provide designated support staff to assist VCO's wishing to consider the transfer of a community asset. The staff will support communities to build their capacity and skills to manage facilities and assist with the application process.
- 2.5** The Council also recognises that some assets must remain within Council ownership and management to support delivery of essential services, provide an income stream or may have restrictive covenants on their future use

making them unsuitable for transfer or impact on the timescales for transfer e.g. being held in the Common Good. 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.

### **3 NATIONAL POLICY CONTEXT**

- 3.1** The Scottish Government launched the “Promoting Asset Transfer” programme in 2009 to increase levels of awareness and interest within local authorities in asset transfer as a means of increasing community ownership of assets and together with COSLA they jointly launched a Community Empowerment Action Plan. This described their commitment to community empowerment with community ownership seen as one aspect that can help build capacity to deliver empowerment.
- 3.2** The Disposal of Land by Local Authorities (Scotland) Regulations 2010 came into effect on 1<sup>st</sup> June 2010 and these regulations 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.

### **4 LOCAL POLICY CONTEXT AND LINKS TO OTHER STRATEGIES**

- 4.1** The Community Asset Transfer will require to make a clear contribution to the Council’s priorities as set out in the following documents:
- Community Plan - 4 themes
    - Promoting Lifelong Learning
    - Delivering Community Regeneration
    - Improving Community Safety
    - Improving Health and Wellbeing
  - Single Outcome Agreement
- 4.2** Cabinet on 18 April 2012 agreed the values, guiding principles and planned outcomes of a new approach to Transforming Our Relationship with the Communities We Serve.

The guiding principles which have been agreed are detailed below:

- taking a community development approach to our activity – working with rather than for communities;
- listening to our communities and valuing their knowledge, skills and experience;
- empowering communities and building their resilience;
- focusing on reducing inequalities in our most deprived communities;
- prioritising prevention and early intervention approaches; and
- building sustainability into all activity.

### **5 COMMUNITY ASSET TRANSFER DESCRIPTION**

- 5.1** Community Asset Transfer involves the transfer of the responsibility for an asset from the Council to a VCO through either a transfer of management

responsibility, short or long term lease or through the transfer of outright ownership. Consideration will also be given to a phased transfer of responsibility dependent on the nature of the proposal.

**5.2** The Council has in the past generally pursued long lease arrangements but a disposal at less than market value would be considered:

- (a) where it is necessary to comply with the funding criteria of the proposed project; or
- (b) for the sustainability of the project i.e. the project is predominantly capital funded or long-term in nature.

## **6 ELIGIBLE ORGANISATIONS**

**6.1** Organisations eligible to seek community asset transfer are voluntary and community organisations (VCOs) who are providing, maintaining or promoting cultural, social, welfare, recreation or sporting activities, or be involved in community based projects which are in the interests of local communities and/or are meeting the objectives of the Council's Community Plan. Licensed clubs etc will not be eligible for an asset transfer.

**6.2** VCOs generally have the following characteristics:

- Are formally constituted;
- Have sound long-term management and governance arrangements;
- Have their own decision-making system and accountability to independent trustees or its own members or constituents;
- Are non-political;
- Have an element of involvement of volunteers;
- Is not for private profit i.e. it does not distribute any surplus to owners or members but applies it to serving its basic purposes

**6.3** Newly formed groups may also be considered suitable for asset transfer if they can demonstrate that they have the necessary expertise and experience to manage the asset and have a sound business plan in place. The Council will provide designated support staff to assist groups through the process.

**6.4** VCOs meeting the above description but wishing to use the premises/sites 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.

**6.5** In order to be eligible for a disposal at less than market value the VCOs proposal must contribute, in respect of the local authority's area, or part of it, or the residents, to 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 well-being

## **7 TERMS OF TRANSFER OF LAND / PREMISES**

- 7.1** Where a lease is to be granted, a discounted rental of 10% of the market rental will be payable unless another discount is considered appropriate dependant on the asset being transferred and the nature of the proposal. The difference between the market rental and the rent payable is recorded as being the level of the Council's "in-kind" support to the projects.
- 7.2** Where there is to be a disposal of an asset, the purchase price will be 10% of the proposed use value unless another discount is considered appropriate dependant on the asset being transferred and the nature of the proposal. Likewise, the difference between the market value and the purchase price payable will be recorded as being the level of the Council's "in-kind" support to a project.
- 7.3** Where a lease is to be granted, any premises will be let on a full repairing and insuring basis whereby the VCO is responsible for the cost of any repairs to the property which may arise throughout the duration of the lease, both internal and external. Other repairing covenants will be considered taking into the particular circumstance associated with each asset transfer.
- 7.4** Where a lease is to be granted, the Council will insure the structure of the premises against fire and special perils, with the insurance premium being recovered from the tenant who will be responsible for all other insurances, e.g. contents, third party liability, etc. The VCO will also be responsible for all excesses payable in the event of each and every claim.
- 7.5** All running costs and outlays associated with the occupancy of the premises will be payable by the VCO, e.g. electricity, gas, etc. The VCO will be responsible for payment of all rates and water/sewerage charges which may be levied on the premises/sites. Organisations that are charitable or of social benefit but non-profit making or recreational or sporting members clubs, which are not established for profit, may qualify for Rates Relief and, the Council's designated support staff will assist to determine the extent of liability for non-domestic rates.
- 7.6** All leases will be for a fixed term and contain a termination date linked to the funding available and proposed terms of the project. Leases with terms in excess of 5 years will include a Rent Review at the end of every fifth year.
- 7.7** It will be a pre-requisite of any disposal for less than market value for an economic development burden to be inserted into the title restricting the use of the land/property to that provided in terms of the approved project. In the event of the approved use ceasing i.e. the grant of planning consent for an alternative use the Council would seek an additional payment based on the current market value to reflect the change of use.

## 8 ASSESSMENT PROCESS

- 8.1** The Council will have a clear and transparent process for asset transfer including a clear first point of contact. Once the Council considers an asset to be suitable for transfer there will be a 2 staged process. The initial stage will be an Expression of Interest where the Council will consider the outline proposal and the VCO seeking transfer. If there is greater than one interest expressed by a VCO in an asset, the VCO's will be encouraged to work together to seek a joint transfer.
- 8.2** Thereafter, the second stage will involve a detailed application and submission. Any VCO requesting an asset transfer must be able to:
- i. Provide a well-prepared business plan. This document is crucial to the assessment process and assistance will be provided to ensure it contains the relevant information.
  - ii. Demonstrate a clear community/social demand for the transfer.
  - iii. Demonstrate they have the capacity to manage the asset and have directors or management committee members who have the necessary skills and experience.
  - iv. Show they have good governance and robust financial systems in place along with all necessary policies expected of a community group such as health and safety policies, compliance with relevant legislation etc.
  - v. Show how their project objectives contribute to the Council's corporate and strategic objectives.
  - vi. Prove that the proposed project compliments activities, services or facilities already provided in the local community.
  - vii. The Council will assist VCO's to build their capacity and provide the necessary information and experience to assist in the Community Asset Transfer process through the provision of designated support staff.
- 8.3** The following table set out the process with indicative timescales. Appendix 1 sets out the process in a flowchart.

Timescale	Stage 1 – Suitability of Assets
	A multi-disciplinary Officer Working Group will determine whether an asset is suitable for transfer. This will involve a consideration of community need, a review of the assets condition, current running costs and establish if there are any title restrictions. (internal process)
	Stage 2 – Expressions of interest
6 weeks	If the asset is suitable, a VCO will complete an Expression of

for VCO to apply	interest form and provide a summary of the proposal identifying local support.
4 Weeks to determine application	The Officer Working Group will review the information provided in support of the application to determine the strength of the proposals and the suitability of the VCO. If the assessment is satisfactory and no other interest identified, the VCO will be invited to stage 3.
	<b>Stage 3 – Detailed submission</b>
3 months for VCO to submit application	The VCO will require to submit a detailed application including Business Plan which should contain the key elements shown in the Guidance Notes provided to VCOs.
	<b>Stage 4 – Consideration of application</b>
6 Weeks	<p>The Officer Working Group will then assess the application against the assessment criteria.</p> <p>Where the Officer Working Group considered the application favourably, a report will be prepared for Cabinet outlining the terms and conditions of the proposed transfer.</p> <p>Where the Officer Working Group considers it not appropriate to proceed with an application, the VCO will be advised accordingly.</p>
	<b>Stage 5 – Cabinet approval</b>
6 weeks	A report will be presented to Cabinet within 4 weeks of the Officer Working Group recommendation.
	<b>Implementation/Transfer</b>
Up to maximum of 6 months	<p>Following a Cabinet decision to recommend transfer, the VCO will work to secure the necessary funding and Council officers will also work with the VCO to finalise the legal aspects of the transfer. Once funding is in place and any necessary planning consent secured, the asset can be transferred to the VCO.</p> <p>It is recognised that there may require to be ongoing support from Council officers to ensure a successful transfer.</p>

## APPENDIX 1

### SUMMARY OF COMMUNITY ASSET TRANSFER PROCESS

