



Community Asset Transfer Guidance

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1. Introduction and Background Information

What is community asset transfer?

Community Asset Transfer (CAT) involves a community organisation, voluntary or social enterprise group taking over responsibility for an asset from the Council. This includes assets such as public halls and community centres, public conveniences, parks, sport facilities and play areas. This guidance focusses on a formal Asset Transfer Requests under the relevant statutory procedure, but depending on the circumstances officers will discuss transfers outwith that formal process.

For a full list of available assets in Inverclyde please see the Council's asset register at <https://www.inverclyde.gov.uk/council-and-government/asset-transfer-requests/apply-for-an-asset-transfer>

An asset transfer request can be a request for:

- the transfer of outright ownership;
- the granting of a lease; or
- the transfer of other rights.

The Asset Transfer Policy sets out a transparent framework to manage the transfer of assets from the Council to voluntary and community organisations.

National policy context

The Community Empowerment (Scotland) Act 2015 introduced the right for community bodies to make requests to all local authorities, Scottish Ministers and a range of public bodies for any land or buildings they feel they could make better use of. Public authorities must transparently assess requests against a specified list of criteria, laid out in the Act, and agree the request unless there are reasonable grounds for refusal. If a request is refused, the community group have a right to appeal or to ask for a review of that decision.

Local policy context

Inverclyde Alliance, the area's Community Planning Partnership, has produced a Partnership Plan for 2023-33 which seeks to achieve the following:

- Development of strong community-based services that respond to local need;
- Communities can have their voice heard, and influence the places and services that affect them;
- Gaps in outcomes linked to poverty are reduced; and
- Easy access to attractive and safe public spaces, and high-quality arts and cultural opportunities.

Community asset transfer will contribute to the achievement of these priorities.

The Council's commitment to asset transfer

Inverclyde Council is committed to supporting community asset transfer due to the numerous benefits to both the local community, as well as the Council and other public sector agencies. It not only helps to build strong and sustainable communities by enabling local people to shape and regenerate their communities, but it also has benefits for the Council. It can lead to financial savings for the Council, contribute to the achievement of corporate priorities and lead to increased levels of volunteering, civic participation and engagement.

2. Asset Transfer Process

Community groups are encouraged to approach the Council to discuss their ideas at an early stage. Groups may have identified an asset that they are interested in, or they may simply have an idea which they would like to discuss. Groups can contact the Council by emailing CommunityAssets@inverclyde.gov.uk to start that discussion.

Stage 1 - Expression of interest (non-statutory)

The first stage of the process is to complete and submit an expression of interest form using the link below. This enables information to be gathered such as information about the organisation and a summary of the proposal or idea.

The completion of an expression of interest form also facilitates the beginning of dialogue between the Council and the community group. Upon receipt of an expression of interest form, the Council will arrange an initial meeting with the community group to discuss their proposal and agree what advice and support is required. For example:

- Whether the asset is available or not. If the asset isn't available, then alternative assets can be suggested.
- We can arrange for the community group to have a site visit and ask any questions about it they may have.
- Whether the community group meet the criteria for a community asset transfer and identify what they have in place and areas that need to be developed
- Help them to develop a business plan
- Refer them to other organisations for support.

Stage 1 enables the Council to begin working with a community group and support them to get to the stage where are ready to formally apply for a community asset transfer and explore what sort of transfer is sought (i.e. whether ownership, lease or other options are being considered).

The Stage 1 is an **INFORMAL** process for gathering information and building relationships for both parties.

The formal statutory process of community asset transfer does not start until a full application has been submitted. There may, depending on all the facts and circumstances, be discussion at this informal stage of a progressing a proposal without a formal application being submitted. The information required and things taken into account will be broadly the same whether a transfer proceeds on a formal or informal basis.

Community groups have the right to go straight to stage 2 and submit a formal request if they wish to do so.

Development Trust Association Scotland (DTAS)

Our Partners at Development Trust Association Scotland (DTAS) can provide free advice on all aspects of the community ownership process, along with access to training, for more information please visit <https://dtascot.org.uk/> or email info@dtascot.org.uk

Stage 2 – Formal Community Asset Transfer Request (statutory)

Requests for CAT can be made in writing stating that the request is being made under PART 5 of the “Act”. Applications can be made by completing the Inverclyde Council Request Form. All completed applications should be emailed to CommunityAssets@inverclyde.gov.uk.

The statutory requirements for a community asset transfer can be found within the Provisions of Community Empowerment (Scotland) Act 2015 section of this document.

To allow comprehensive consideration of any request, and connected proposal, requests should:

- demonstrate that the group has the capacity to manage the asset and has members who have the necessary and appropriate skills, experience and qualifications to deliver the project, or has plans for engaging people who provide evidence that the group has good governance and robust financial systems.
- provide details of how the project will contribute to the achievement of the Council’s priorities; and
- demonstrate that the proposed project will not duplicate activities, services or facilities already provided in the local community.

Once the Council is satisfied with all aspects of the asset transfer request, this includes both the group’s constitution and business plan, then the application can be progressed. It should be noted that there is no timescale regarding how long it may take to get to this stage and that there may be several iterations of documents before

they meet the requirements of the Community Empowerment Act (Scotland) 2015. The Council will support the community group and provide advice and feedback on the group's constitution and business plan to help the group meet all requirements.

Acknowledgement

Once the Council is satisfied that all the required information has been provided, it will send you an acknowledgement in writing. This will include the following information:

- The validation date for your request – this is the date on which the last of the required information was received by the Council (the date the request was received if it was complete). This is the date from which other time limits will be calculated;
- An explanation of the timescale, i.e. the time period for the Council to notify you of its decision – this is 6 months from the validation date.
- Information about the appeals process and the right to request a review by the Council or appeal to the Scottish Ministers, as appropriate.

At this stage, the Council will publish the notice of request and notify other parties (i.e. owner/ tenants / occupiers, local Community Council etc) therefore you are agreeing to the name of your organisation being published on the Community Asset Transfer page on the Council website. Personal information will be redacted prior to publication.

In some instances, there may be more than one request received with interest in the same asset. Each asset transfer request that is received will be processed in line with the procedures and timescales set out. In this situation we may support all community transfer bodies interested in a particular property to work together to submit a single request, however this is not always practical.

During this process representations may be received about this request from other parties (within 20 working days of publication), these will be copied to the organisation making the transfer request. Community transfer bodies will have 20 working days to make comments on any representations received.

Further information may be sought by the Council throughout this process if required to support the decision-making process.

Assessment Process

The Council has an Asset Transfer Group, the role of which is to provide a co-ordinated approach to community asset transfer. The group has responsibility for overseeing all expressions of interest and asset transfer requests received by the Council and making recommendations to committee on whether a community asset transfer request should be approved or not.

All community asset transfer requests will be reviewed and assessed by the Asset Transfer Group.

The Asset Transfer Group will put forward a recommendation to the Environment and Regeneration Committee as to whether the asset transfer request should be approved or not.

Reviews and Appeals

Community Bodies have the right to seek a review by the Council in the following circumstances:

- The Council refuses their request.
- The Council agrees to the request but includes conditions materially different from those specified in the request; or
- The Council does not provide a decision notice within 6 months (or such other period as has been agreed with you) of the validation date.

A review is a formal procedure conducted by the Council itself. Decisions on reviews are made by the Council's Policy and Resources Committee. A formal decision notice is also issued at the end of this process.

Community Bodies have a right to appeal to the Scottish Ministers if:

- They have submitted an offer complying with a decision notice, and the Council has not accepted that offer within a period of 6 months of the date of the offer (or such longer period as may be agreed between you and the Council or directed by the Scottish Ministers).
- The Council, following a valid request for review, refuses the request.
- The Council, following a valid request for review, agrees to the request but includes conditions materially different from those specified in the request; or
- The Council, following a valid request for review, does not provide a decision notice within 6 months (or such other period as has been agreed with you) of the date of your application for review.

3. Further Information

Scottish Government

Community Empowerment (Scotland) Act 2015 -
www.legislation.gov.uk/asp/2015/6/part/5 Guidance for Community Transfer Bodies -
www.gov.scot/Resource/0051/00513211.pdf

National

Development Trusts Association Scotland - www.dtascot.org.uk/
Community Ownership Support Service - www.dtascommunityownership.org.uk/
Community Woodlands Association - www.communitywoods.org
Community Energy Scotland - www.communityenergyscotland.org.uk/
Community Land Advisory Service Scotland - sc.communitylandadvice.org.uk/
Forestry Commission Scotland – scotland.forestry.gov.uk/managing/get-involved/communities
National Standards for Community Engagement - www.scdc.org.uk/what/national-standards/
Communities Channel Scotland - www.communityscot.org.uk/
Community Land Scotland - www.communitylandscotland.org.uk/
Community Funds - www.gov.scot/Topics/Built-Environment/regeneration/communityfunds
Scottish Council of Voluntary Organisations - www.scvo.org.uk/
Social Enterprise Scotland - www.socialenterprisescotland.org.uk/
Co-operative Development Scotland - www.scottish-enterprise.com/services/develop-your-organisation/co-operative-development-scotland/overview

Inverclyde Council

Community Assets Team communityassets@inverclyde.gov.uk

Provisions of Community Empowerment (Scotland) Act 2015

Statutory Requirements re ATR

Under Section 79(4) of the Community Empowerment (Scotland) Act 2015, an asset transfer request must specify:

- the land to which the request relates;
- whether the request is for –
 - transfer of ownership;
 - grant of a lease; or
 - transfer of rights;
- the reasons for making the request;
- the benefits which the community transfer body considers the transfer would bring;
- where the request is for transfer of ownership, the price that the community transfer body would be prepared to pay for the transfer;
- where the request is for grant of a lease;
 - the amount of rent that the community transfer body would be prepared to pay in respect of any lease;
 - the duration of any such lease, and
 - any other terms and conditions that the community transfer body considers should be included in any such lease,
- where the request is for a transfer of rights, the nature and extent of the rights sought, and
- any other terms or conditions applicable to the request.

Under Regulation 3 of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 an asset transfer request must:

- be made in writing.
- state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland Act) 2015.
- state the name and address of the community transfer body applying.
- describe how the community transfer body proposes that the land to which the request relates is to be used.
- outline how it is proposed that—
 - the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be) is to be funded; and
 - the proposed use of the land is to be funded.
- describe the level and nature of support for the asset transfer request from the community to which the community transfer body relates.
- 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; and

- be accompanied by a copy of the constitution of the community transfer body.

Statutory Requirements for Community Transfer Body

ALL REQUESTS

An **asset transfer request** under the **Community Empowerment (Scotland) Act 2015** can only be made by a **community transfer body** as defined in **Section 77** of the Act.

A **community transfer body** is a body which has a written constitution that includes:

- a definition of the community to which it relates.
- provision that the majority of the members of the body must come from that community.
- provision that the members of the body who are from that community have control of the body.
- provision that membership of the body is open to any member of that community.
- a statement of the aims and purposes of the body, which must include proposition of a benefit for that community; and
- provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

There are additional requirements set out below that must be met where a community transfer body wishes to take outright ownership of an asset.

Under **Section 77(2)** of the Act the Scottish Ministers can by order designate that a body is a community transfer body, or that a class of bodies are all community transfer bodies.

REQUESTS FOR TRANSFER OF OWNERSHIP

In addition to the above requirements, an **asset transfer request** for transfer of ownership can, in terms of **Section 80** of the **Community Empowerment (Scotland) Act 2015**, only be made by a **community transfer body** if:

- it is a company the articles of association of which include provision that it must have not fewer than 20 members and that on the winding up of the company any property (including any land, and any rights in land, acquired as a result of an asset transfer request the Act) passes—
 - 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.
- it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,
- it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,
- in the case of a body designated by an order by the Scottish Ministers under the Act, the order includes provision that the body may make an asset transfer for transfer of ownership, or
- in the case of a body falling within a class of bodies designated in an order made by the Scottish Ministers under the Act, the order includes provision that bodies falling within the class may make an asset transfer request for transfer of ownership.

Matters the Council must consider in relation to a request.

Under **Section 82(3)** of the **Community Empowerment (Scotland) Act 2015**, in deciding whether or not to agree to an **asset transfer request** the Council must consider the following matters:

- (a).the reasons for the request,
- (b).any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
- (c).whether agreeing to the request would be likely to promote or improve—
 - i. economic development,
 - ii. regeneration,
 - iii. public health,
 - iv. social wellbeing, or
 - v. environmental wellbeing,
- (d).whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,
- (e).any other benefits that might arise if the request were agreed to,
- (f). any benefits that might arise if the Council were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,
- (g).how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (e),
- (h).how any benefits such as are mentioned in paragraph (f) relate to other matters the Council considers relevant (including, in particular, the functions and purposes of the authority),
- (i). any obligations imposed on the Council, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and

- (j). such other matters (whether or not included in or arising out of the request) as the authority considers relevant.

Under **Section 82(5)** of the Act the Council must agree to the request unless there are reasonable grounds for refusing it.