

Agenda Item	4
Report No	CP/35/21

HIGHLAND COUNCIL

Committee: Communities and Place

Date: 10 November 2021

Report Title: **Increasing community ownership and the role of Community Asset Transfer**

Report By: Executive Chief Officer, Communities and Place

1. Purpose/Executive Summary

- 1.1 The Community Empowerment (Scotland) Act 2015 (the Act) introduces a right for community bodies to request to own, lease or use public sector assets through a process known as Community Asset Transfer (CAT). It came into force in 2016. As part of the process the community body can request a discount on market value.
- 1.2 Community ownership of assets has an important role in inspiring people to create local opportunities and transform their communities, responding to local challenges by taking control of land and buildings where they live. It can also support bringing redundant or underutilised assets back into use for the benefit of the community. It is therefore a key priority for the Council to support greater community ownership.
- 1.3 The report describes the current challenges within the statutory process. Of the 163 Expressions of Interest received only 61 have gone on to become full asset transfer requests. To date 33 formal CAT requests have been approved and only 14 have concluded. As reported to this Committee in August and following the Member workshop, a review has identified several key opportunities for increasing and improving community ownership in order to realise the benefits it can bring for communities and get the best out of public assets.
- 1.4 This report includes recommendations to improve the process, the experience for groups and increase community ownership. It sets out a series of proposals to broaden the approach for considering CAT requests, strengthen the expression of interest

phase to better support and inform groups and take a more proportionate response to economic development burdens.

1.5

The report also provides an update on key supporting actions being progressed to support community bodies and an update on the number of CATs that have been agreed since the last meeting of this committee.

2. Recommendations

2.1 Members are asked to:

- Note the challenges identified with the current approach to CAT and the rationale for improving our processes outlined at section 5;
- Agree the broader approach to CAT outlined at 6.3 which includes a more streamlined and proportionate application process dependent upon the nature of the CAT request and to consider requests outwith the scope of the Act;
- Agree the stronger Expression of Interest phase proposed at 6.4 including the requirement for a Title Investigation prior to submitting a CAT request;
- Agree the revised approach to Economic Development Burdens outlined at 6.5;
- Note the supporting actions outlined at section 7 that are being progressed to further encourage and support groups to take forward asset transfers; and
- Note the transfer recommended for approval at the Badenoch and Strathspey Area Committee on 9.11.21 and the transfer approved by lease in Thurso by delegated authority, as outlined at section 8.

3. Implications

3.1 **Resource implications:** The paper sets out proposals and actions to improve the asset transfer process for groups and the Council. The new approach intends to better support the Council's wish to divest itself of unused assets where this aligns with a group wishing to achieve key local outcomes. This reduces future property costs for the Council.

3.2 **Legal implications:** CAT is a statutory process in terms of the Community Empowerment Act. Communities have the right to request their CAT request is considered under the terms of the Act. While recognising those legal rights, this paper seeks to augment them with more expedient options which still adhere to the spirit and ethos of the Act.

3.3 **Community Impacts** (Equality, Poverty and Rural): One of the Council's key strategic priorities within its Corporate Plan is to:

Work to invigorate local democracy and put our communities at the heart of the design and delivery of services at a local level. We will also develop the capacity of communities to decide and deliver their local priorities.

3.4 This is supported by several outcomes targeted at increasing engagement, increasing and encouraging community led and run services and involving more

people in local decision making. The CAT programme contributes to this strategic priority.

3.5 Demonstrating community support for any proposed CAT is a crucial element to each asset transfer request. It is proposed to retain this crucial element when streamlining the approach as this is fundamental to understanding whether any CAT is delivering wider community benefit.

3.6 **Climate Change** - normally, when assets are transferred, they are improved by community bodies. This often makes assets more energy efficient with consequential reductions in carbon emissions. Asset transfer can also support wider use of land assets that can have positive impacts on climate change e.g. community food growing.

3.7 **Risk implications:** although any CAT assessment considers sustainability, there are risks that any group could fail in the future or choose to dispose of the transferred asset. The Economic Development Burden (defined at 6.5.1) contained within the terms of transfer helps protect the Council, and public money, against this and the Community Empowerment Act provides a clause which stipulates how dissolution must be dealt with to ensure any transferred asset remains in community hands, for the benefit of the community, in the event of an organisation ceasing to exist.

3.8 **Gaelic implications** – there are no Gaelic implications for this paper.

4. Background

4.1 The Act introduces a right for community bodies to request to own, lease or use public sector assets at a discount on market value through a process known as CAT. Once a formal request is submitted, Local Authorities have 6 months to assess the application against a range of potential community benefits and determine whether to grant the request.

4.2 Since the introduction of the Act, a process has been developed to implement the legislation and consider CAT requests from groups to own, lease, use or manage Council assets. All requests for this nature have been considered in this way.

4.3 Transferring assets to suitable community organisations can bring redundant and underutilised land and buildings into thriving use, for the benefit of the local community. Community ownership of assets has an important role in inspiring people to create local opportunities and transform their communities, responding to local challenges by taking control of land and buildings where they live. Increased community control of land and buildings helps to ensure future local service delivery can be both grounded in and responsive to local needs. It is therefore a key priority for the Council to support greater community ownership.

4.4 This process has now been operating over a number of years. Implementation of the process has increased our understanding of what groups are requesting but also the challenges of supporting CAT requests to reach a conclusion. Of the 163 Expressions of Interest we have received since the process has commenced, only 61 have gone on

to become full asset transfer requests. To date 33 formal CAT requests have been approved and only 14 have concluded.

4.5 It is important to continue to evolve and develop our approach to asset transfer in order to better support our communities and deliver the benefits which community ownership can realise. In addition to ongoing liaison with community bodies and partners, in May 2021 the Council hosted a workshop on community ownership in advance of the Committee meeting with Community Ownership Support Service (COSS) hosted by the Development Trusts Association Scotland (DTAS), HIE and the Scottish Land Fund. Key learning from the seminar was reported to the August Communities and Place Committee and included:

- Support and capacity building for groups – a partnership approach to support is crucial to enable groups to take on assets. The role of the Community Support Co-ordinators is significant, working alongside other key support bodies;
- Sources of funding support - community transfer bodies have highlighted particular challenges around limited availability of flexible financial sources to fund redevelopment of assets following transfer;
- Asset Transfer and Local Priorities – there are clear opportunities for CAT to support the delivery of local priorities as identified through local place plans and Community Learning and Development priorities. Wider approaches to community wealth building can also be realised through the asset transfer process.
- Developing the approach to CAT – one of the challenges identified by community bodies is the time taken to conclude transfer requests.

4.6 This report particularly focuses on the last learning point and specifically on developing our approach to CAT in order to improve the process, the experience for groups and to increase community ownership. It sets out a series of proposals for improving our approach to CAT. The report also provides an update on key actions being progressed to support community bodies and an update on the CATs that have been agreed since the last meeting of this committee.

5. Improving our Approach to Community Asset Transfer

5.1 Based upon internal discussions and review of the existing process and feedback from community groups involved in CAT, several key challenges with the existing approach have emerged:

- 5.2
- Time taken to conclude transfers
 - Finalisation of title investigations later in the process can uncover specific challenges that change the request from groups and delay conclusion of the process
 - Some groups are not eligible for an asset transfer under the terms of the 2015 Act
 - They are not classified as community transfer bodies, in terms of the Act
 - A group's proposals may be providing community benefit but would not necessarily be considered as providing *additional* community benefit as defined by the Act
 - A more flexible process is required that allows community groups to 'test' what they want to achieve over a shorter period
 - Any process needs to better capture the range of requests that could be received from different types of organisations but also groups with existing community leases looking to safeguard the benefits they deliver into an uncertain future, as well as social enterprises looking for innovative responses to both new and existing challenges in their areas.
 - External funding bodies placing restrictions on the adoption of Economic Development Burdens (defined at 6.5.1) of more than 5 years. This aligns with new guidance from Scottish Government therefore a new approach is required.
 - There needs to be better management of community group expectations and what can be achieved – the focus needs to be on outcomes for the community and not just the asset.

5.3 Given the challenges identified, the existing process has been reviewed and several key outcomes for any revised process identified. The process needs to:

- Enable greater community ownership and use by streamlining the process
- Clarify detailed requirements/purpose of any request earlier in process
- Ensure the process gets the best out of public assets
- Enable all groups to innovate

6. Proposed Changes to the Community Asset Transfer Process

6.1 This paper sets out a series of proposals for improving our approach to CAT. This includes broadening the approach for considering CAT requests, strengthening the expression of interest phase to better support and inform groups and taking a more proportionate response to Economic Development Burdens.

- 6.2 Whilst a broader approach for considering asset transfer is proposed, the following principles would still remain fundamental to each request and considering any request:
- Direct community benefit needs to be demonstrated from any CAT request
 - Groups need to demonstrate a level of community support for their project
 - Community involvement in the development of any proposal should be evidenced
 - The asset transfer request should have a clear purpose and outcome and be in response to an identified need within the community
 - Any group needs to be an identifiable constituted community group, with a clear community of benefit and purposes.

6.3 ***Broader Approach to Asset Transfer***

6.3.1 Current Position:

Currently, all community asset transfer requests – whether lease or ownership - are considered under the scope of the Act. This provides for specific timescales and process. When renewals of leases arise, sometimes these are considered under the Act but often these are renewed through existing property disposal routes. It is only where organisations have not met the prescriptive definition of a Community Transfer Body under the terms of the Act that an alternative process has been adopted utilising property disposal regulations. It is not the need of the organisation nor type of request that is driving how a CAT request is considered.

6.3.2 The Challenge:

- Transfer under the Act can be restrictive – in terms of the bodies that can apply and the strict timescales that need to be adhered to. This can be positive but at times this approach results in a push for a decision when a group has perhaps not fully defined their ask. This can lead to difficulty and a protracted legal/contracting stage.
- The process is currently the same for all organisations, whether for a lease or ownership and regardless of the value of the asset, whether it is surplus to requirement or the needs of the organisation. It is only when the Act could not be followed due to qualification requirements, that an alternative route has been sought.

6.3.3 What is Proposed:

- It is proposed to take a broader approach to CAT, recognising that CAT requests can be considered outwith the scope of the Act and that this may assist to streamline the process, encouraging and supporting groups to take on assets.
- The default for consideration of a CAT – whether lease or ownership - will be through existing property disposal regulations. This will include re-consideration of existing leases where discounts apply and the renewal of a lease is being considered.
- A group can specifically request that its interest be considered under the terms of the Act. This approach may be adopted if a group wishes to challenge the

decision or feels their request is not being progressed. This would only apply to groups who qualify under the terms of the Act.

- Core and consistent principles would remain under any assessment of a CAT, in relation to community benefit, community support and clear purpose of outcome. This would continue to be considered in relation to the discount proposed.
- Community ownership will be recognised as a potential community benefit, which it is not at present under the Act.
- The application process for assets under a value of £10k will require less information from the group. This will be supported by a stronger Expression of Interest phase (see 6.4.3) in order to inform the correct route for the group.

6.3.4 Benefits:

- Greater proportionality
- Wider community benefit outcomes
- Greater flexibility for groups to pursue community ownership
- The CAT process would be quicker and more streamlined
- Groups should experience no adverse impact – the current route into CAT would remain the same

6.4 ***Stronger Expression of Interest Phase***

6.4.1 Current Position

An Expression of Interest (EOI) is currently light touch and allows a group to indicate that they may be interested in a particular asset. Only limited information is provided both from the group and the Council and no further action is taken until a formal CAT request is submitted. There are currently 163 EOI that have been logged and based on experience, only around 37% will go forward and submit a CAT. Legal Title Investigations must be undertaken in any CAT request but at present this is undertaken later in the process and, given the timescales, sometimes the detailed check is not finalised until the contract stage.

6.4.2 The Challenge

- When a CAT request is submitted this triggers a formal process and deadlines which must be adhered to even if the request is not fully developed.
- Groups are often not aware of the scope of the asset they are requesting e.g. they do not know if the Council owns part or all of the asset, whether there are access issues, planning considerations or existing burdens, including rights of pre-emption. Each could impact on what the group wish to do and whether the asset is suited to those plans. This information is normally not factored in until after receipt of a full CAT request, leading to challenges obtaining information necessary for CAT decisions and challenges at the contracting stage, often including long delays and requests to change the scope of the CAT request.

6.4.3 What is Proposed

To strengthen the EOI phase by requiring groups to:-

- Clearly outline their proposal,
- Accurately define the asset,
- Describe the potential benefits foreseen as a result of the transfer,
- Make a monetary offer for the asset
- Instigate a full Title Investigation of the asset by either:
 - i) Instructing a private solicitor, or
 - ii) Depositing £500 with The Highland Council's legal team

The Title Investigation would be required prior to submitting a full CAT application.

6.4.4 Benefits

- Early clarification of group goals
- Early clarification of whether group goals are legally possible – does the Council own the asset and are there any restrictions on our ability to sell or lease it.
- This clarification should reduce delays later in the process
- This would enable the group to begin any planning or other relevant permissions (e.g. SEPA if flooding risks apply) earlier in the process
- Encourages group commitment - those who are less determined are unlikely to engage in the revised process .
- Facilitates the targeting of early support to groups.

6.5 ***Economic Development Burdens***

6.5.1 Current position

An Economic Development Burden (EDB) is a legal device used in the CAT process to protect the Council's position when it sells an asset at a discount. This can be to protect the Council financially, but the primary purpose is to ensure the asset remains in community use. The Council's current approach has been to apply a 25-year EDB to all CAT ownership requests.

6.5.2 The Challenge:

Some funding bodies will not support any EDBs of over 5 years. A further consideration is that for low value assets e.g. a toilet worth £5,000. Applying an EDB of 25 years does not seem proportionate when the group's intention is to improve and increase the value of the asset.

6.5.3 Proposal:

A new approach to EDBs is proposed that takes a more balanced approach, taking into account the value of the asset but also its significance to the community. An EDB should be considered where:

- i) The value of the asset is greater than £10k, and/or
- ii) The asset is considered to be of heritage significance to the community i.e. that it should be retained for community use.

6.5.4 In addition, or as an alternative to 6.5.3 the Council may reserve a right of pre-emption in a sold asset. A pre-emption is a legal device which would require the group to give the council first refusal should it wish to sell the asset in the future. This may be appropriate where there a potential future development opportunity involving any asset transferred.

6.6 **Governance and Review**

6.6.1 Whilst it is proposed to take a broader approach to the consideration of CAT, the same governance principles would apply.

- An officer CAT Board comprising of officers from Legal, Finance, Property and Facilities, Property Estates, lead Service, Community Support and Ward Management would assess the CAT request and make a recommendation.
- Where the CAT is being considered under the Act, existing Scheme of Delegation processes would be applied – under £10,000 delegated officer approval, £10,000-£100,000 considered at Area Committee, over £100,000 considered at C&P committee.
- Where the CAT is being considered under existing Property Disposals, existing Scheme of Delegation processes would apply: Any discounted leases or sales with a capital value of £10,000 or less or where the difference between what the group are offering to pay and the market value is 25% or less, will be approved under delegated officer authority in consultation with local Members, all others would be considered via the Economy and Infrastructure committee under normal property disposals.

6.6.2 It is proposed that even if the CAT decision is taken under delegated property disposals, groups will still be able to request a review, as allowed under the Act, although an appeal to Scottish Government would not be enabled through this process. All CATs will continue to be reported to the Scottish Government in the annual report, regardless of the route for decisions.

7. **Supporting Actions**

7.1 In addition to the proposed amendments to the CAT process in order to improve the experience for groups and promote greater community ownership and action, several additional operational actions are being taken forward to further support community organisations:

- Development of the Community Loans Fund – this has been established to support community bodies to take forward a range of projects and specifically support post-acquisition asset transfer projects. The Loan process will be managed by HOIL given the expertise in assessment and decision making with regards to business loans, but will also specifically include assessment for levels of community support as part of the process.
- Template Heads for Terms – currently under development by Property and Community Support officers, these would be provided to any community group's

legal team as a template to be adapted for their individual CAT with the aim of accelerating the post agreement transfer process.

- Support of Community Support Co-ordinators – as noted at item 5 on the agenda, the temporary Community Support Co-ordinators are now in post and undertaking a range of activity. A key role for them is proactive engagement and support to groups to enable them to take forward their projects and proposals. This will include supporting at an early stage in order to animate/encourage CAT and enable a group to develop proposals. They would play a key role in supporting the strengthened expression of interest phase.
- Improved online resources – it is planned to improve online web resources in order to support groups in relation to case studies, model articles and pre-planning guidance.

8. Community Asset Transfer Update

8.1 In accordance with the Scheme of Delegation, from March 2021 all CATs below the value of £100,000 are considered at the local Area Committee. In addition, any transfers below the value of £10,000 are subject to delegated officer approval.

8.2 The following asset transfer is due to be considered at local committee since the last meeting of this committee on 31 August 2021:

- Badenoch and Strathspey Committee: a request for ownership of Burnfield toilets and land immediately surrounding to Grantown Initiative. Recommended for approval. To be considered on 9 November 2021.

8.3 The following asset transfer was approved under officer delegated authority:

- Transfer of Thurso Greenhouse Complex to Thurso Development Trust on a 15-year lease.

Designation: ECO Communities and Place

Date: 15-10-21

Authors: Alison Clark, Head of Service (Community Support and Engagement,
Paul Nevin, Legal Manager
Kenny Forbes, Property Manager
Ewen McIntosh, Localism and Engagement Co-ordinator