

Highland Council – Asset Transfer Request Approach

The Community Empowerment (Scotland) Act 2015 seeks to empower communities by giving them control over assets in their communities so that they are enabled to drive change and achieve their goals. The Act moves asset transfer from a voluntary approach by public bodies to one which introduces a right for community bodies to make requests for ownership, lease, management or use of publicly owned buildings or land whether or not they are available for sale or deemed surplus to requirements by the owning body .

The Act requires those public authorities to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal.

The following documentation sets out the process for submitting an Asset Transfer Request to Highland Council, what is expected of your organisation and how you can expect your request to be dealt with. We are encouraging groups to submit an initial Expression of Interest Form in order to understand your interest, direct you to appropriate supports and provide you with a contact for accessing any relevant information that you may require in order to submit a complete Asset Transfer Request.

Who can make an asset transfer request?

Under the terms of the Act, to make an asset transfer request, an organisation needs to be a "community transfer body". There are different requirements depending upon if the organisation wishes to own an asset or to manage/lease it.

For ownership, the community transfer body has to be:

- A Scottish Charitable Incorporated Organisation (SCIO) the constitution of which includes provision that the organisation must have not fewer than 20 members; or
- A Community Benefit Society (BenCom) the registered rules of which include provision that the society must have not fewer than 20 members; or
- A company the articles of association of which include provision such as:
(a) the company must have not fewer than 20 members; and

(b) on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes—

- (i) to another community transfer body, or
- (ii) to a charity.

The community transfer body also has to be a **Community-Controlled Body**, which means a body (whether corporate or unincorporated) which has a written constitution that includes the following—

- (a) a definition of the community to which the body relates;
- (b) provision that the majority of the members of the body consists of members of that community;
- (c) provision that the members of the body, who consist of members of that community, have control of the body;
- (d) provision that membership of the body is open to any member of that community;
- (e) a statement of the body's aims and purposes, including the promotion of a benefit for that community; and
- (f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Stage 1 – Expression of Interest

Role of the Community Transfer Body

- Complete the expression of interest form. This will set out the interest of your organisation. You do not have to have completed an Expression of Interest Form prior to submitting a formal asset transfer request. However, we recommend that you do, as this will help to ensure that you have the appropriate information to be able to complete a valid asset transfer.
- Provide a copy of your constitution.
- Submit the form to the Council's Single Point of Contact at: cat@highland.gov.uk

Or Community Asset Transfer, Housing and Communities, Highland Council,
Glenurquhart Road, Inverness IV3 5NX

Role of the Highland Council

- To assess the Expression of Interest and allocate this to a named officer. This will be the named contact for the organisation. The named contact will ensure appropriate ATRs are progressed and engage with the community transfer body to provide information as appropriate.
- Ownership – we will make initial investigations on whether the asset is owned by the Council and also an indication of the potential to transfer.
- Status of the Community Transfer Body – we will advise whether you currently have the right status to apply for an asset transfer or whether you would need to make governance changes.
- Signposting – we will advise and signpost you to organisations who will be able to support you in developing your asset transfer.

Stage 2 – Assessment and Consideration

Role of the Community Transfer Body

Submit a completed Asset Transfer Request. You do not have to have completed an Expression of Interest Form prior to submitting a formal asset transfer request. However, we recommend that you do as this will help to ensure that you have the appropriate information to be able to complete a valid asset transfer.

All the required information must be provided before the request can be validated. Any request should be submitted on the Asset Transfer Request form at and must include:

- Organisation constitution and evidence of the type of organisation you are.
- Details of the asset being requested and what type of transfer - ownership, management, leasing or use.
- What you intend to use the asset for.
- A business plan of how you propose to fund the purchase/lease of the asset and the ongoing associated revenue costs. You should also provide an indicative price.
- What benefits you believe this will bring to your community: economic, regeneration, health, social wellbeing, environmental, and whether it will tackle inequalities.

- You need to outline and demonstrate community support for the ATR

Role of the Highland Council

ATR Check

- Your named contact will check that the ATR is complete and confirm this with you. We will have 6 months from the date of confirmation to respond to your request with a decision.

Internal Assessments

We will undertake a range of assessments in order to assess your Asset Transfer Request. These may include:

- Property – on the ability for the Council to transfer and the potential impact on Council assets and services.
- Legal – to check the governance of the organisation and any legal title.
- HR – should the asset requested be currently in use and have staff members.
- Finance – financial assessment of the business plan and sustainability.
- Community Benefit – assessment of the level of community benefit and the level of community support for the ATR.

Community Asset Transfer Board

The Board will consider the ATR and accompanying assessments.

For assets with a capital market value of below £10,000, the Board may approve terms of transfer under the Scheme of Delegation, without onward referral to committee

For assets with a capital market value of £10,000 or over, the Board may make recommendations for consideration by the relevant Highland Council Committee:

- Refusal of the Request;
- Approval of the Request – potentially, including varied terms for transfer which differ from the original terms of the Asset Transfer Request.

Committee Consideration

If the ATR is recommended for refusal or approval by the CAT Board, the request will be considered by elected members at Committee, where it will either be approved, or refused. For assets with a capital market value of up to £100,000, a decision will be made by the relevant local area committee. For assets with a capital market value of £100,000 or over, the decision will be made by the Housing & Property Committee. Any approval may include conditions which the Council has chosen to place on the transfer of the asset.

Decision Notice

A Decision Notice will be published either following the decision of the Asset Transfer Board, or following the Committee Decision. If the Decision is to Approve, the Decision Notice will also set out any conditions of the transfer.

Member Asset Review Panel

Community Transfer Bodies have the right to appeal a decision, if:

- The request has been refused (whether at the Board or at Committee);
- There was no decision given within the correct timescale (within six months following confirmation of a valid CAT request);
- They disagree with the conditions set out in the Decision Notice to approve.

Any appeal should be made within 20 days of the decision notice.

The ATR will be re-assessed by a Member Asset Review Panel. The Panel will have the option to confirm the decisions already taken or, if they disagree, they can refer it back to Housing and Property Committee for further consideration.

Stage 3 – Negotiation of Contract

Role of the Community Transfer Body

Engage in the process to agree contractual terms. This will include agreeing legal, financial and any legacy elements. The Transfer Body will need to engage their own legal representation for this process to issue an offer to The Highland Council.

You will also need to finalise any financial arrangements during this stage of the process.

You have the right to appeal to Scottish Ministers, if the contract is not agreed within 6 months following the decision and there has been no mutual agreement to extend the period.

Role of the Highland Council

The Council will work to agree final terms of transfer of ownership/lease.

This process should be concluded within 6 months following a decision. Although this can be extended by mutual agreement. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any 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 planning permission.

Summary of Asset Transfer Approach

Asset Transfer Request Stage	Community Transfer Body Role	Highland Council role
<p>Phase one – expression of interest</p>	<p>Complete Expression of Interest Form</p> <p>Submission to central point of contact</p> <p>Provide the constitution</p>	<p><i>Provide a named contact</i> – to ensure appropriate ATRs are progressed, engagement with community organisation</p> <p><i>Determine ownership</i> – needs to be determined re. ability to potentially transfer – indication not a formal judgement.</p> <p><i>Status of the organisation</i> – is the body suitable as defined in the Act.</p> <p><i>Signposting</i> – named contact to signpost group to external supports (e.g. Community Ownership Support Service, Highland Third Sector Interface), who can support the organisation to develop their ATR</p>
<p>Stage 2 – Assessment and Consideration</p> <p>Asset Transfer Request Submitted</p> <p>Time period of 6 months from complete asset transfer request</p>	<p>Submit a completed Asset Transfer Request. This must include</p> <ul style="list-style-type: none"> ● Constitution ● What is being requested – ownership, management, leasing or using ● What the organisation wants it for ● Business Plan - How the organisation proposes to fund the purchase/lease and ongoing revenue costs and provide an indicative price ● Outline and demonstrate 	<ol style="list-style-type: none"> 1. ATR Check – named contact check that ATR is complete. If yes, confirm with Community Organisation 2. Internal Assessments <ul style="list-style-type: none"> ● Property – on the ability for the Council to transfer and the potential impact on Council assets ● Legal – to check the governance of the organisation and any legal title ● HR – should the asset requested be currently in use and have staff members ● Finance – financial assessment of the business plan and sustainability

	<p>community support for the ATR</p> <ul style="list-style-type: none"> Describe the benefits this will bring to the community:- economic, regeneration, health, social wellbeing, environmental; or tackle inequalities 	<ul style="list-style-type: none"> Community Benefit – assessment of the level of community benefit and the level of community support for the ATR <ol style="list-style-type: none"> CAT Board – to consider ATR and accompanying assessments Committee Consideration - consider and decide upon recommendations from the CAT Board (for assets with a capital value above £10,000). Member Asset Review Panel – right of review where ATR refused / varied / not concluded within statutory timescale.
<p>Phase 3 – Negotiation of Contract</p> <p>Time period – 6 months maximum, can be extended on agreement</p>	<p>Engage in agreement of contract terms – legal, terms, costs, legacy</p> <p>Group needs to finalise financial arrangements</p>	<p>Property, legal and finance support to agree contract terms</p>