

(As at 2.6.21)



Disposal and Acquisition of Assets – Policy

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1. Introduction

The Disposal & Acquisition policy intent was agreed by Finance, Procurement & Transformation Committee on 17 June 2021. Members agreed that the delivery of the Policy should ensure that the Council's asset portfolio supports our Council's Transformation Programme and Climate Emergency Action Plan; supports local businesses and communities; contributes to the longer-term budgetary position for the Council and ensures the Council continues to be an inclusive organisation.'

The Policy presented to Members of the FPT Committee illustrates a structured and coordinated approach to the disposal and acquisitions of assets (land and property). This approach also includes cognisance of the opportunity for the Council to be inclusive and empowering through communities requesting ownership of Council assets, by lease or sale, under Community Asset Transfer (CAT).

The intent is to ensure that the Council continues to work towards having fewer but better assets and that assets are seen as a dynamic resource managed in line with current and future operational demands of services. This dynamic resource would also enable the Council to generate essential capital receipts through the sale or commercial lease of surplus assets*.

The Policy Intent also reflects the desire to present a coordinated approach to achieving fewer but better assets (DAP) and empowering communities to make the most of their local assets (CAT) under the auspices of different areas of Legislation:

- Local Government (Scotland) Act 1973
- Disposal of Land by Local Authority (Scotland) Regulations 2010
- Community Empowerment (Scotland) Act 2015

*Where the Council is disposing of an asset that is determined Common Good, any receipts, either capital or revenue, will be directed to the relevant Common Good Fund.

2. Definitions

Throughout this Policy and the supporting DAP Procedures certain terms are used, some of which have been drawn from Legislation, Regulation, Guidance and Council Protocols. These terms are:

Term	Definition
Legislation	The process of making or enacting laws
Regulation	The action or process of regulating or being regulated
Guidance	Advice or information aimed at enabling an Authority to deliver on its duties under Legislation and Regulation.
Asset	Property including land, buildings, structures and fixtures and fittings annexed thereto.
Surplus	More than what is needed or used. Assets that the Council no longer has need for in order to deliver its services.
Disposal	The action or process of selling or transferring all or some responsibility/liability of assets by lease, licence or granting of rights.
Acquisition	An asset or bought or obtained through lease or licence or gift.
Delegation	Delegation is the assignment of any authority to another body or person to carry out specific functions and activities.
Scheme of Administration and Delegation to Committees	The Council will appoint such Committees, Sub-Committees and Area Committees as it considers necessary and prepare and adopt this Scheme of Administration and Delegation for the reference and delegation of business to Committees, Sub-Committees, Area Committees and a Scheme of Delegation and Statutory Appointments for Officers for the purpose of arranging for the discharge of all functions of the Council except those specified in Section 2 of the Scheme – Powers Reserved to the Council
Scheme of Delegation and Responsibilities to Officers and Statutory Appointments	The scheme that contains details of those functions, both statutory and non-statutory, which the Council has chosen to delegate to Officers.
Sub Delegation	<p>The Council promotes the principle that decisions should be made at the lowest or most local level consistent with the nature of the issues involved. The functions delegated to the Chief Officers are therefore also exercisable by other officers within the Council, such that decisions are taken as close to the point of service delivery as is appropriate in the circumstances.</p> <p>The approach in this Scheme to setting out the delegations of authority to officers is to require the delegations to be given to the Council's Chief Officers, who are the Chief Executive, Directors and Heads of Service. These officers can, in turn, delegate any of their delegated authority to other officers under their direction, except where this would be contrary to legislation.</p>

Strategic Asset Board	The Strategic Asset Board, on behalf of Corporate Management Team, provides the strategic leadership to deliver these effective use and development of our assets.
Asset Management Planning	A tactical plan for managing an organisation's infrastructure and other assets to deliver an agreed standard of service
Property, Estates and Programmes	Council Service responsible for the management of buildings and assets.
Community Asset Transfer	Means by which Community Transfer Bodies can take ownership or long-term lease of assets and create additional social value within a community.
Community Transfer Body	Community Group (of interest or place) as defined by legislation – Community Empowerment (Scotland) Act 2015
Community Groups	A collective of like-minded individuals organised by place or interest.
Marketing	Marketing is the process to preparing an asset for sale on the open market, including preparation of sales particulars, advertising the property for sale, erecting a For Sale board, and conducting viewings by interested parties
Off-market / Negotiated Offer	An off-market sale is a term used to define the sale of an asset without any public advertising, usually through a negotiated sale to a person or persons to whom the property has special value that would not be recognised or achieved by an open market sale.
Clear title	Clear title is the phrase used to state that the owner of real property owns it free and clear of encumbrances.
Community facilities	Town halls, village halls and community centres, leisure facilities that provide space for groups or individuals and community groups to meet for community purposes or undertake group activities
Competent Application (CAT)	A CAT application that meets all the necessary requirements of the Stage two level of the Community Asset Transfer process.
Validated Application	Once an application has been deemed competent it is therefore validated by the service of a Validation Notice.
Best Value	The duty placed upon Local Authorities by the Local Government in Scotland Act 2003, whereby the Authority must: <ul style="list-style-type: none"> • Make the best use of public resources, including land and property; • Be open and transparent in transactions; • Ensuring sound financial controls are in place to minimise the risk of fraud or error; • Assess the full financial consequences of decisions at an appropriate level before major financial decisions are taken or commitments entered into; • Demonstrate responsiveness to the needs of communities, citizens, customers and other stakeholders, where relevant.

Best Consideration	The best / highest offer for an asset that can reasonably be obtained.
Less than best consideration	A commercial offer for an asset that is less than can be reasonably be expected given the financial climate at the time. A less than best consideration offer must be supported by a Best Value assessment. This type of market offer should not be confused with a CAT request.
Market Value	The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing where the parties had each acted knowledgeably, prudently and without compulsion.
Threshold amount	The threshold amount for the purposes of section 74(2A)(a) of the Local Government (Scotland) Act 1973 is £10,000..
Marginal amount	The marginal amount for the purposes of section 74(2A)(b) of that Act is 25% of the best consideration that can reasonably be obtained
Delegated Authority	The principle that decisions should be made at the lowest or most local level consistent with the nature of the issues involved
Delegated Authority – Best consideration	Delegation to Chief Officer -The authority delegated for accepting a best consideration offer. Delegation to Managers - The authority delegated to a specified officer of the Council to dispose of an asset where it is less than 0.5 acres or has a financial value of less than £10,000.
Social Capital / Value	'The qualification of the relative importance that people place on the changes they experience in their lives. Some, not all, of this value is captured in market prices. It is important to consider and measure the social value from the perspective of those affected by an organisations work' – Social Value UK.
Common Good	Property, assets or items that are owned by the Local Authority which have been passed down, through Local Government reorganisation, from former Burghs
Alienable Common Good	Common Good assets that can be transferred, sold or the use changed.
Inalienable Common Good	Common Good assets that can only be transferred, sold or use changed by the authority of a Sheriff.

3. Context

3.1 National

Local Government (Scotland) Act 1973

- As amended by section 11 of the Local Government in Scotland Act 2003
- The Disposal of Land by Local Authorities (Scotland) Regulations 2010

It is a legal requirement that when our Council sells land it should be for the best consideration that can be reasonably be obtained.

The financial level which illustrates best consideration that can reasonably be obtained will be determined by a 'suitably qualified valuer. Guidance on what suitable qualifications are is laid out in the section 74 of the Local Government (Scotland) Act 1973, as well as the factors to be considered by the suitably qualified valuer in making the valuation.

The Community Empowerment (Scotland) Act 2015 formalises the opportunity for Communities to take ownership of their assets where 'better use' of the asset can bring benefit to that community. These opportunities are presented under Part Five of the Act - Asset Transfer Requests.

Part Eight of the Act also sets out how a Local Authority should manage assets that are deemed to be Common Good assets.

3.2 Local - Our Council

Priorities and Commitments: -

- Build the local economy
- Provide the best start in life for all our children
- Protect the most vulnerable
- Be an inclusive Council
- Urgently respond to climate change and transition to a carbon neutral region

Delegation to Committees

Finance, Procurement & Transformation:

- Strategic oversight of and leadership in the Council's Transformation Programme
- Oversight of the Council's Capital Strategy and Financial Strategy
- To set financial, procurement and transformation key performance measures, to be monitored by the Committee
- To take decisions on Community Asset Transfers and Property Sales at less than market value, as required by the Council's Disposal and Acquisitions Policy.

Economy & Resources:

- To ensure the effective use, including shared services development, of the Council's resources, including people, property (asset management planning) and technology, to further the Council's Priorities

Audit & Risk:

- To ensure that Best Value is achieved in the decision making process, through consideration of the impact decisions on policy and on service delivery.

Transformation Programme

The scale of the current and anticipated budget challenges means that to deliver the Council's Priorities within the means available the Council needs to radically consider what it must provide; what should be provided with communities or with other partners; what the community or other partners can and should provide; what Council can no longer provide. Therefore, transformation is required to deliver a modern Council.

A relevant and forward-thinking Disposal and Acquisitions Policy will support the Council to maximise the use of fewer assets, working with and within communities.

By minimising the size, scale and nature of the Council's Estate it will naturally make surplus buildings and properties that no longer serve a purpose operationally or remain of significant value to the Council.

People & Transformation Theme 4:

Assets – We will work with services to provide relevant guidance and support to maximise the use of fewer assets, working with and within communities.

Therefore, Council must be able to maximise the potential of every asset by seeing them as dynamic resources that can be managed to support the achieving of strategic performance measures around finance and transformation; asset management planning and Best Value from decisions made around assets.

By using property as a dynamic resource, the disposal of assets through sales can contribute to the annual capital receipts target set by our Council. The selling of property can through offers deemed best consideration, or through offers of less than best consideration under the Disposal and Acquisitions Procedure or through Community Asset Transfer.

The opportunity for community groups to acquire assets through Community Asset Transfer (CAT) has come about under the Community Empowerment (Scotland) Act 2015. Through CAT communities can be supported to make the best use of their local assets, by taking ownership of them through long term lease or transfer of ownership, and help transform the way in which services are designed and delivered with and within a community setting and tackle inequality of outcome through creating additional social capital and value.

Communities Directorate Vision – ‘enabling communities to take increased responsibility for the prioritisation, management and ownership of services and community assets’.

When requesting a Community Asset Transfer, the Community must demonstrate benefit across a number of aspects of community life, and our Council must compare the proposed benefits against the benefits of many alternative proposal, including the selling of the asset. Demonstrating the benefits of a proposal will enable the Council to assess whether or not it can achieve Best Value can be achieved through the transfer or the asset.

4. Development of the Policy

Our Policy has been built upon drivers that are both national and local, and it looks to deliver Best Value and transformation in local communities and our Council. Our approach to the Disposal and Acquisition of assets has been informed by consultation with Elected Members, benchmarking and experience from other Councils.

5. Disposal & Acquisitions Policy - Intent

In order to deliver on the policy intent specific objectives have been identified:

Intent One: Best Value – All disposals and acquisitions must achieve Best Value for the Council or the Common Good

Intent Two: Disposing of assets should positively impact the Council by maximising capital receipts where assets are sold and minimising ongoing revenue costs by timeously disposing of assets that are empty & surplus.

Intent Three: Policy should enable the Council to manage its estate in a dynamic fashion by responding to opportunity and need.

Intent Four: Council and Council assets should serve the needs of communities and provide opportunities for them to become empowered by making the most of their local assets where need has been identified.

Intent Five: Disposal & acquisition of assets must contribute to the Councils strategic objectives and align with its Priorities and Plan.

Acquisitions

Whilst the Council looks to reduce its estate, there are occasions where the acquiring of additional assets is required. As with the disposal of assets the acquiring of assets must secure Best Value to the Council and be based on clear and robust evidence of need.

6. Delivering and Monitoring the Policy

Delivering the Policy

- Set out clear procedures for DAP
 - Alongside the Policy existing detailed procedures and flowcharts will be utilised and set out step by step how our Council will dispose of surplus assets.
- Training and Development
 - Officers from across the Council will be trained in the DAP in order to communicate effectively how and why the Council disposes of and acquire assets.
- Communicate our Procedure
 - Provide accurate and understandable information that enables interested parties to successfully navigate both the Policy and existing Procedures.

Monitoring the Policy

Strategic Asset Board will monitor the effectiveness of the Policy on a frequent basis and also identify future opportunities to deliver Policy and its intent and Objectives through recommending to Council which of its assets are surplus and can be disposed of through DAP.