

PROCEDURAL GUIDE TO SURPLUS PROPERTY/LAND DISPOSALS

Report by Chief Officer, Assets and Infrastructure

PURPOSE

- 1.1 The purpose of the Report is to advise the Comhairle of work undertaken by officers to review and update the Comhairle's approved Surplus Property/Land Procedure in light of legislative changes and operational experiences and to seek the Comhairle's approval to implement the updated procedure.

EXECUTIVE SUMMARY

- 2.1 The purpose of this Report is to update the Comhairle's approved Surplus Property/Land Procedure in light of legislative changes and operational experiences since the procedure was last considered and approved by the Comhairle on 8 March 2017, with the aim of ensuring that the Comhairle's approved procedures and practices remain fit for purpose going forward.
- 2.2 The Comhairle is committed to the efficient and effective management of assets to support the delivery of services. Property/land assets are managed as a corporate resource and represent one of the highest areas of expenditure for the Comhairle. If properties/land that are no longer required for the delivery of services are retained without being fully utilised, then they will become a drain on scarce financial and management resources. Properties/land that are not used also represent a risk of dereliction in communities and are an ongoing statutory compliance burden on the Comhairle.
- 2.3 Assets that are no longer required for service delivery are required to be formally declared surplus and be subject to a standard process that will ensure transparent and consistent decision making.
- 2.4 The Comhairle's current Surplus Property/Land Procedure establishes the Comhairle's agreed corporate approach to the disposal of surplus assets and is reflective of best practice. Officers consider however that, given the introduction of legislation around community asset transfer under Part 5 of the Community Empowerment (Scotland) Act 2015 respectively, and in light of operational experiences since the current procedure was last considered and approved by the Comhairle on 8 March 2017, the current procedures require to be reviewed and updated to ensure they remain compliant and fit for purpose going forward.

RECOMMENDATIONS

- 3.1 **It is recommended that the Comhairle:**
 - (a) **note the work undertaken by officers to review and update the Comhairle's approved Surplus Property/Land Procedure in light of legislative changes and operational experiences.**
 - (b) **approve the updated Asset Disposal Guide included at Appendix 1 to the Report and agree that it should be implemented with immediate effect.**

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Appendix:	Asset Disposal Guide
Background Papers:	Reports to Transportation and Infrastructure Committee, 18 February 2010 and 8 March 2017

IMPLICATIONS

- 4.1 The following implications are applicable in terms of the Report.

Resource Implications	Implications/None
Financial	The letting, sale, asset transfer or demolition of assets identified as surplus will allow financial resources used for these assets to be re-directed to other corporate budgets.
Legal	The Surplus Property/Land Procedure complies with legal requirement to obtain “Best Value” under the 1973 and 2003 Local Government (Scotland) Acts and the Disposal of Land by Local Authorities (Scotland) Regulations 2010. It is also consistent with the requirements of Part 5 of the Community Empowerment (Scotland) Act relating to community asset transfer.
Staffing	None
Assets and Property	The sale of surplus assets will reduce the Comhairle’s surplus asset stock.
Strategic Implications	Implications/None
Risk	When there is no interest in a surplus asset there is the risk of its condition deteriorating to the point where it requires expenditure to make safe.
Equalities	None
Corporate Strategy	Corporate Asset Management, by collating and managing key asset information across the Comhairle Departments enables operational efficiencies to be realised and strategic decisions to be made which contribute towards the outcome of strategic priority “4.1.1 <i>The Comhairle has achieved a systematic approach to improving organisational effectiveness that aligns strategy, people and processes and the service provided is high quality, continually improving and cost effective.</i> ”
Environmental Impact	The Comhairle’s carbon footprint can be reduced by rationalising the estate.
Consultation	None

BACKGROUND

- 5.1 It is a legal requirement that local authorities sell or lease property/land for the best consideration that can reasonably be obtained. The legislation recognises that there may be circumstances where local authorities consider it appropriate to dispose of property/land for a consideration less than the best consideration that can reasonably be obtained, and guidance is provided on how this can be demonstrated.

SURPLUS PROPERTY/LAND PROCEDURE

- 6.1 The proposed process for all property/land assets that are surplus to service and Comhairle requirements is set out in Appendix 1 to the Report. In summary this consists of the following key stages:

Stage 1 - Identifying the Property/Land as Surplus

The property/land is identified as no longer being required for the direct delivery of service or has been replaced by a new asset.

Stage 2 – Seek Expression of Interest from Register Landlord (RSL)

Seek expression of interest from RSL.

Stage 3 - Marketing the Property/Land for Disposal

The asset would be subject to marketing processes that would seek to identify commercial and community interests. A closing date would be set with all interested parties provided the opportunity of submitting their offers or expressions of interest as appropriate. This part of the process will seek to ensure that all parties and interests are given the opportunity to bring forward proposals.

Stage 4 – Evaluation and Reporting Officers

Following the submission of offers / expressions of interest as appropriate, officers will undertake an evaluation of these and provide a recommendation to the appropriate committee for consideration.

Stage 5 – Implementation of Committee Decision

Following determination by the appropriate committee, officers will implement the decision. Where this is to dispose, lease or demolish the asset.

CONCLUSION

- 7.1 The proposed updated Surplus Property/Land Procedure seeks to ensure that any property/land that is no longer required for the delivery of services is considered within a standard framework. The proposed updated procedure will enable all interested parties the opportunity to submit offers or expressions of interest as appropriate whilst ensuring that the Comhairle complies with its statutory obligations. It is therefore recommended to approve the updated procedure included at Appendix 1 to the Report and agree that it should be implemented with immediate effect.

APPENDIX



Asset Disposals Guide

A Procedural Guide to Surplus Property/Land Disposals

1. Introduction
2. Interpretation
3. Statutory Framework
4. The purpose of Asset Disposal Guide
5. The Surplus Property/Land Procedure
 - i. Stage 1 – Identifying the Property/Land as Surplus
 - ii. Stage 2 – Seek Expression of Interest from Registered Social Landlords
 - iii. Stage 3 – Marketing the Property/Land for Disposal
 - iv. Stage 4 – Evaluation & Reporting Offers
 - v. Stage 5 – Implementation of the Committee Decision
6. Transfer of Assets to Community Groups

Appendix A Organogram of Surplus Property/Land Disposal Process

Appendix B Organogram of a Community Asset Transfer Request under the provisions of Part 5 of Community Empowerment (Scotland) Act 2015

1. Introduction

The extent of the Comhairle's property and land estate is considerable and whilst this can be seen as an important resource it can, if underperforming, become a significant burden.

Property and land that is not occupied can become subject to vandalism, deteriorate in condition and become a financial burden to the Comhairle in terms of vacant property and land holding costs.

It is therefore vital that the Comhairle delivers proactive management of its assets. In order to do that, it is necessary to establish a procedural guide for the disposal of surplus property and land.

Since 2014, the Comhairle has:



2. Interpretation

"CESA 2015" means the Community Empowerment (Scotland) Act 2015;

"Chief Officer" means the Chief Officer of Assets and Infrastructure for the time being or any successor or equivalent post;

"Community Asset Transfer Request" means Community Asset Transfer Request as defined in CESA 2015;

"the Disposal Regulations" means Disposal of Land by Local Authorities (Scotland) Regulations 2010/160;

"LGSA 2003" means Local Government in Scotland Act 2003;

"LGSA 1973" Local Government (Scotland) Act 1973; and

"RSL" means Registered Social Landlord as defined in the Housing (Scotland) Act 2010.

The terms 'land', 'property' and 'asset' are used separately, together and interchangeably throughout this document and shall mean, in each instance, heritable property in the Comhairle's ownership.

3. Statutory Framework

Disposal of Comhairle property and land is subject to the statutory duty to secure best value in terms of section 1 of the LGSA 2003, section 74 of the LGSA 1973 and the Disposal Regulations.

Section 74(2) of the LGSA 1973 requires the Comhairle to achieve the best consideration that can reasonably be obtained in the disposal of property and land, unless certain exceptions under the said Act and/or the Disposal Regulations are met.

The CESA 2015 confers rights on qualifying community bodies to make requests to the Comhairle for the transfer of the ownership (or lease) of property/land and a framework for the processing of such requests.

4. The purpose of the Asset Disposal Guide

The purpose of this Asset Disposal Guide is to:

- a) inform Elected Members, services and members of the community of the principles and processes by which the Comhairle will, ordinarily, seek to dispose of surplus property and land assets.
- b) set out a consistent, transparent and compliant process that ensures surplus property and land assets can be disposed of efficiently and effectively, minimising vacant property holding costs and securing the best terms reasonably obtainable for the Comhairle and the community.
- c) secure the best consideration reasonably obtainable for the Comhairle (either by way of a capital receipt or commercial rental income) or the greatest benefit to the community pursuant to the Disposal Regulations.
- d) incorporate the CESA 2015 into the process, providing guidance for community or third sector organisations seeking to acquire or occupy Comhairle property and land on concessionary terms, or who wish community benefit to be taken into consideration, to pursue their objectives by way of a Community Asset Transfer Request.

5. The Surplus Property/Land Procedure

The Surplus Property/Land Procedure will have five stages as follows. It should be noted that expressions of interest in the transfer of assets can be made at any time in relation to CESA 2015, Part 5 Community Asset Transfer whether declared as surplus or not.

Stage 1 – Identifying the Property/Land as surplus.

This stage should commence as soon as the service department becomes aware that an asset will not be required for future service delivery. This may occur as a consequence of service modernisation, or the property/land being replaced by a new facility. The Assets and Infrastructure Section will take a lead on the disposal process. Revenue costs associated with the property, including clearance, remain with the vacating service until the disposal or transfer is complete. Costs associated with sale or transfer, such as valuations and title plan preparation will be recovered from any sale income.

Where the asset is no longer required, the vacating service(s) will be required to timeously clear the property/land of all movable items and equipment (including the removal of any confidential information in accordance with relevant Comhairle policies). Provision can be made for moveable items and equipment to be included in the asset sale.

The Chief Officer will make Corporate Management Team aware that the land/property is becoming vacant, whereby the opportunity is provided to other Comhairle services to utilise the asset. On expression of interest from another Comhairle service area a business case detailing proposed use and financial plan must be approved by Corporate Management Team.

If there is no interest from other Comhairle services, the asset shall be declared as surplus. Once the property/land has been declared as surplus, the process of valuation and collation of pre-sale documentation (including production of a title plan) will be undertaken. Legal Services will be instructed to undertake a title investigation in order to confirm good title and to identify any potential matters that could impact a proposed future sale or lease. If there are matters identified which may impact upon any proposed sale, the Chief Officer will consider whether to: (i) attempt to resolve those matters before moving to Stage 2; or (ii) progress directly to Stage 2 making allowance for prospective purchasers to resolve matters.

In exceptional circumstances, it may be in the Comhairle's best interests to dispose of an asset by way of an off market, negotiated sale. One such example might be if the property/land is landlocked and can only realistically be used or developed by the neighbouring landowner. These cases will be presented to Comhairle for consideration.

Stage 2 – Seek Expression of Interest from RSLs.

Should a future Comhairle use not be identified for the asset, expressions of interest will then be sought from RSLs who will be given 28 days to note their interest. The Chief Officer will then set a reasonable deadline for the receipt of a formal offer from the RSL. On receipt of such an offer, Comhairle approval will be sought to proceed to the disposal of the asset to the RSL at terms appropriate to the specific development circumstances.

Stage 3 – Marketing the Property/Land for Disposal

Where an expression of interest is not received from an RSL, the asset will proceed to disposal on the open market.

The Comhairle's appointed marketing agent will arrange for marketing particulars to be prepared and advertised (including on the agent's website, along with marketing signage being erected at the property). Virtual and/or in-person viewings will be arranged as necessary, and any interested parties will have the opportunity to have queries answered by the Comhairle through the agents.

Community groups/other third sector organisations may submit offers at this stage. However, the provisions of CESA 2015, Part 5 may not apply.

If such groups are looking to acquire assets on concessionary terms or wish to rely on community benefit being taken into account, it is recommended that they pursue their interest by way of a Community Asset Transfer Request under the CESA 2015. An offer received under CESA 2015 at this stage will be evaluated by the Asset Management Team and/or the Asset Transfer Committee in accordance with the provisions of CESA 2015 and will take into consideration any alternative proposals (including commercial offers received).

If the community group offer is not a Community Asset Transfer Request (for instance, if an application would not meet the requirements of the 2015 Act or the community group preferred not to use the process set out in the CESA 2015) it may be considered under the Disposal Regulations. Such offers may be accepted even if they are for less than market value if the community group proposal is considered reasonable and is likely to contribute to the promotion or improvement of:

- Economic development or regeneration;
- Health;
- Social wellbeing; and/ or
- Environmental wellbeing

Stage 4 – Evaluation and Reporting Offers

Following a period of open marketing, a closing date will be set for formal offers. Immediately after the closing date, confidential offers will be opened, witnessed and evaluated by the Comhairle's Asset Management Team.

The primary aim of the evaluation (based on predetermined criteria) is to secure the best terms reasonably obtainable for the Comhairle, either by way of a capital receipt, commercial rental income, or community benefit. The main focus of the evaluation will be to determine which of the offers provides the Comhairle with the best potential financial and/or community benefit return.

The Chief Officer will use his/her delegated powers to progress and conclude the transaction where possible/appropriate. Alternatively, where the terms of the proposed transaction go beyond those powers or he/she feels it is appropriate to do so, a report (complete with officer recommendation) will be submitted to the Comhairle's Service Committee seeking approval to proceed with the offer received from a preferred bidder.

Stage 5 – Implementation of the Committee Decision

The Asset Management Team will implement the Committee determination. Where the decision is to sell or lease the surplus asset, Legal Services will be instructed to proceed with the transaction. Officers will seek to conclude approved sales and leases expediently to ensure surplus properties are not left vacant for any longer than necessary.

6. Transfer of Assets to Community Groups

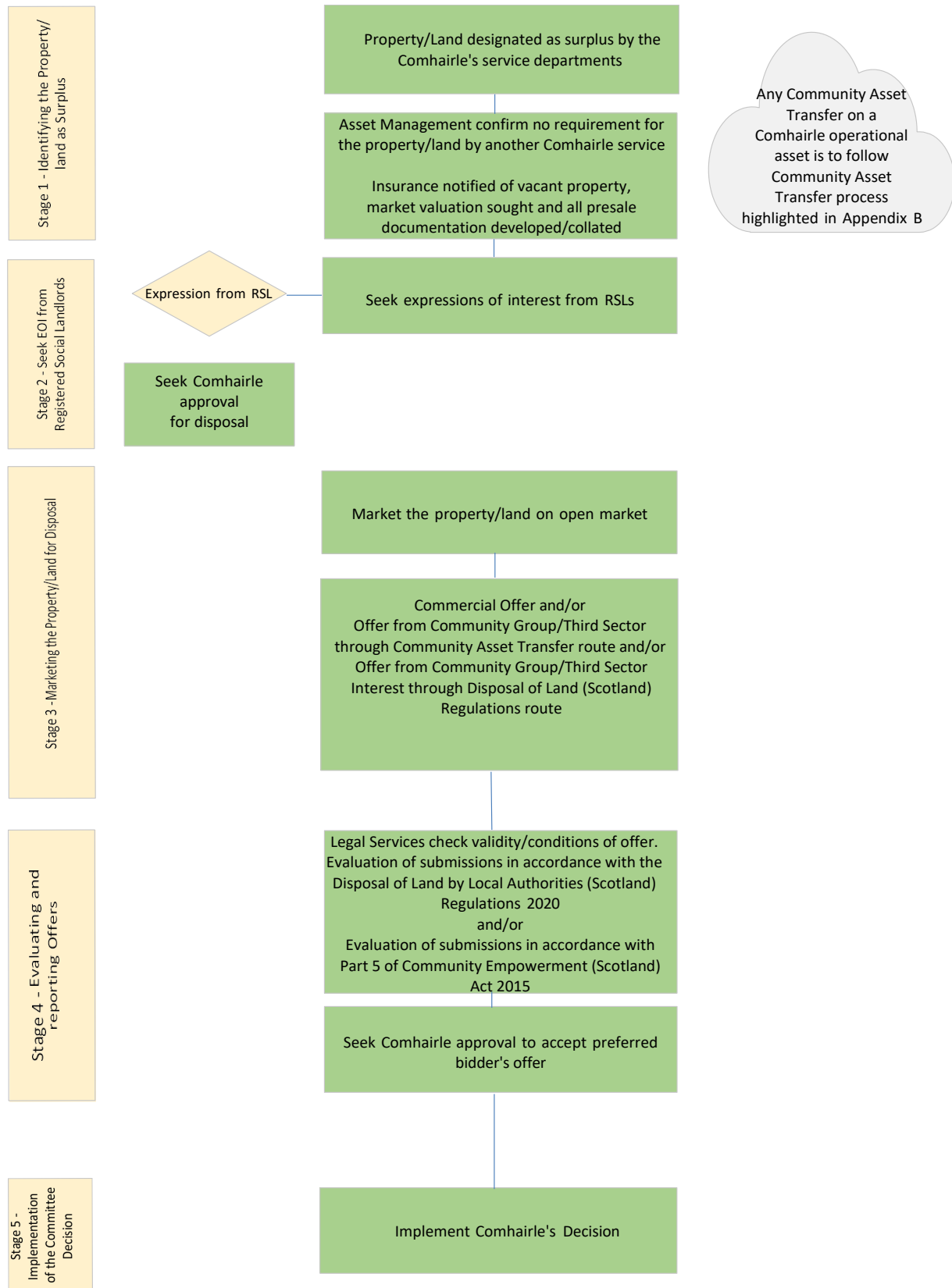
The transfer of assets from local authorities and other public sector organisations to community organisations is legally recognised as an important means of supporting communities to own assets. One of the main objectives of the CESA 2015 is to increase the flow of assets into community ownership. Scottish Government aims to facilitate this by encouraging and supporting local authorities and community organisations to gain a wider appreciation of the benefits and risks associated with asset transfers.

Community ownership of assets can make an important contribution to innovative solutions which community organisations can develop to address local needs. Such solutions can contribute to the delivery of both the Comhairle's Single Outcome Agreement and Scottish Government objectives. The Comhairle does, however, recognise that the community ownership of land and buildings assets is a major financial commitment for eligible bodies.

To follow Best Practice the Comhairle has introduced a stage prior to a formal Community Asset Transfer Request whereby Community groups can enter into discussion with the Comhairle in relation to a specific asset. This enables an Expression of Interest to be made and ensures that the interested party meets the requirements of the Act. Community Organisations expressing an interest in a specific asset will be afforded up to 6 months to submit a formal Community Asset Transfer Request. Failure to submit a formal request will result in the asset following the normal disposal route on the open market.

CESA 2015 sets out a specific process for transfer of assets to community groups (referred to as Community Asset Transfer). The Act gives community bodies the right to make requests for ownership, lease management or use of publicly owned buildings and land which are still in operational use by the Comhairle. Such applications are determined under the Community Asset Transfer process set out in the Act, rather than the Surplus Property/Land Procedure set out above. However, as set out in Stage 3 above, it is possible for a Community Asset Transfer Request to be submitted for an asset on the open market. Submitting a request at this stage deprives community bodies of certain rights that would attach to a request at an earlier stage. Community bodies should read Scottish Government guidance on Community Asset Transfer Requests or contact the Comhairle's Assets Management team for more information.

Appendix A - Organogram of Surplus Property/Land Disposal Process



Appendix B – Community Asset Transfer Process

(extract from Scottish Government Asset Transfer Guidance for Relevant Authorities)

