

County Buildings  
Wellington Square  
AYR KA7 1DR  
Tel. No. 01292 612436

8 September 2022

To:- **Councillors Dowey, Clark, Connolly, Davis, Ferry, Kilbride, Lyons and Pollock.**

**All other Members for INFORMATION ONLY**

Dear Councillor

## **CABINET (SPECIAL)**

In view of the urgency involved and in terms of Council Standing Order No. 5.6, you are requested to participate in a special meeting of the Cabinet to be held **on Friday, 9 September 2022 at 9.00 a.m.** for the purpose of considering the undernoted business.

This meeting will be held on a hybrid basis for Elected Members, will be live-streamed and available to view at <https://south-ayrshire.public-i.tv/>

Yours sincerely

**CATRIONA CAVES**  
Head of Legal, Human Resources and Regulatory Services

## **B U S I N E S S**

1. Declarations of Interest.
2. **Buildings, Housing and Environment.**
  - (a) Call-in relating to the Transfer of the Site of the John Pollock Centre to Housing Revenue Account - Submit Draft Minute Excerpt from the meeting of the Audit and Governance Panel of 7 September 2022 (copy herewith).

Papers issued for the above Audit and Governance Panel ([copy herewith](#)).

For more information on any of the items on this agenda, please telephone Andrew Gibson, Committee Services on at 01292 612436, at Wellington Square, Ayr or  
e-mail: [andrew.gibson@south-ayrshire.gov.uk](mailto:andrew.gibson@south-ayrshire.gov.uk)  
[www.south-ayrshire.gov.uk](http://www.south-ayrshire.gov.uk)

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**EXCERPT FROM THE MINUTES OF  
AUDIT AND GOVERNANCE PANEL  
OF 7 SEPTEMBER 2022**

**Call in from Cabinet – “Transfer of the Site of the John Pollock Centre to Housing Revenue Account”**

Reference was made to the Minutes of the Cabinet of 30 August 2022 (Page XX, paragraph 7) when the Cabinet had decided

- (1) to note that the consultation carried out by the Director - Place with tenants and the public had been largely in favour of the proposed transfer of the site from the General Fund to the HRA for nil consideration; and
- (2) to grant authority to transfer the site of the John Pollock Centre from the General Fund to the HRA at nil value ahead of a proposed residential development in accordance with the explanation set out in the report and provided that the Council's Housing Revenue Account met the abnormal costs of £3,222,539.

The Panel was advised that the report had been the subject of a [call-in](#) (issued), details of which were outlined by Councillor Philip Saxton when he introduced and spoke to the call-in.

A full discussion took place in relation to the public consultation exercise which the Panel noted had been broadly supportive; the apparent discrepancy of costings for demolition works within the report, and the requirement to ensure that public money was spent responsibly.

Questions were raised by Panel Members in relation to:-

- (a) whether Officers had considered carrying out the consultation again once the demolition cost figure had been updated; and the Assistant Director – People advised that error was not considered a material change and tenants and residents had been given three weeks to respond to the consultation;
- (b) the transfer of the monies from General Services Capital Programme to Housing Revenue Account; and the Assistant Director – People advised that a decision on this matter had been taken at Leadership Panel of 26 November 2019 as outlined in the responses to the call-in (issued); and that the total abnormal costs had been included in the costs detailed in the report entitled “Affordable Housing – Mainholm Road, Ayr” which had been approved by Cabinet on 30 August 2022, however, the recommendations contained in this report could not be progressed until the transfer value was agreed; and
- (c) the impact of transferring the costs to HRA; and the Service Lead – Corporate Accounting advised that there was no impact as this was factored into projected calculations.

The Chief Executive referred to the previous decisions taken on this matter at Leadership Panel and Cabinet; advised that, in order for costs to be met from General Services, approval of a subsidy from General Services Capital Programme to Housing Revenue Account would be required from the Scottish Government; and outlined that the total abnormal costs of £3,222,539 had been included in total project costs outlined in a separate report Affordable Housing – Mainholm Road, Ayr approved by Cabinet on 30 August 2022.

The Chair then outlined the options open to the Panel when considering this call-in.

Councillor Bell, seconded by Councillor Weir moved that the Panel uphold the decision of the Cabinet.

By way of Amendment, Councillor McGinley, seconded by Councillor Scott moved that the matter be referred back to the Cabinet with the recommendations that the Cabinet consider if the consultation was materially flawed and required remedy; and to ascertain if the additional cost of demolition to be borne by the Housing Revenue Account met the Best Value criteria.

Four Members voted for the Amendment and three for the Motion. The Amendment was accordingly declared carried and the Panel

**Decided:** that the matter be referred back to the Cabinet with the recommendations that the Cabinet consider if the consultation was materially flawed and required remedy; and to ascertain if the additional cost of demolition to be borne by the Housing Revenue Account met the Best Value criteria.

**Audit and Governance Panel  
Call-In Requisition**

We, the undersigned, require that the following decision of the Cabinet be called-in to the next meeting of the Audit and Governance Panel.

<b>Date of Cabinet</b>	30th AUGUST. 2022
<b>Item No.</b>	5A
<b>Report Title</b>	TRANSFER OF SIGHT OF JOHN P. GRE

**Signature**

**Print Name**

(1) **Councillors responsible for call-in**



..... *Philip SATON* .....

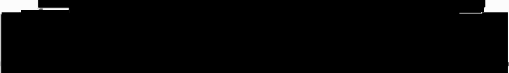
(2) **Councillors supporting call-in (three required):**

(a) .....



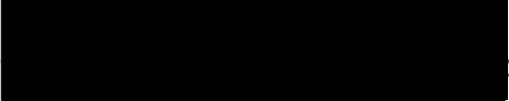
**IAN CAVANA**

(b) .....



**WILLIAM GRANT**

(c) .....



**CAMERON RAMSAY**

**Date** 31/8/22 .....

## Reason

In order to improve information for Councillors, to assist officers in briefing the Panel and to improve the quality of Scrutiny, we confirm that the item is being called-in for the following reason(s).

Councillors are reminded that the 'reasons' section should be completed with sufficient detail as to allow members of the Audit and Governance Panel and officers to appreciate the cause for concern prompting the call-in. (This may be by reference to a part or parts of the Report or Decision or by describing an issue which may not have been adequately addressed or by requesting the provision of additional information which should be specified). Where a call-in requisition contains any questions, or requests for further or additional information, officers, in consultation with the relevant Portfolio holder, shall, where possible, provide written responses to be intimated to all Councillors in advance of the Panel. Receipt of responses to questions shall not itself preclude further scrutiny of the item called-in for the reason set out in this form.

REASONS ATTACHED ON SEPERATE PAPER

### Note

Call-ins must be delivered to the Chief Executive no later than 4.00 pm on the day (usually Thursday) two days following the day (usually Tuesday) on which the Cabinet has met.

Time Received...12.55pm.... Date Received ....31/8/22..... Received by..

Reasons:

13.1 Consultation taken place with Tenants and residents and were broadly in favour, can we have the outcome and detail of the consultation and outcome, it states in the consultation paper the market value £3.4m for private housing, and £2,2m for social housing, it also states before affordable housing can begin on the land estimated costs would be £2.632.539m yet in the paper at 2.1.2 and 4.3 the Abnormal cost would be £3.222.539 before housing can begin.

Can you explain please.

Estimated private housing market value to sell the land is £3.4million less abnormal costs stated in 2.1.2 and 4.3 is £3.222.539 so selling the land to a private developer would be the difference between the abnormal costs and the market value and would be £177.461 if a buyer was found,

Can you explain please:

Social Housing value is £2.2million less the abnormal costs of £3.222.539 then this would be a minus of £1.022.539 so for the HRA to take over the transfer of land from general services they would be paying £1.022.539m to much.

Can you explain please:

To offset the difference, it was agreed on the 18<sup>th</sup> January 2022 stated in the paper at 3.4 the cost of to demolish the existing buildings on the site would be funded by the General services capital fund I believe in the region of £1million-, why has this now been included for the HRA to fund this considering the costs as above is £1.022.539 over the social housing value.

Can you explain please:

Conclusion:

Does the panel realise that the difference above could allow the HRA to build a further estimated 20 social homes along with the Scottish government grants, and that the new south Ayrshire policy for acquisition of land from the general services for social houses should be at the social housing value.

**EXCERPT FROM THE MINUTES OF  
THE CABINET  
OF 30 AUGUST 2022**

**Transfer of the Site of the John Pollock Centre to Housing Revenue Account.**

There was submitted a report ([issued](#)) of 23 August 2022 by the Director – Place seeking approval to transfer the site encompassing the John Pollock Centre and playing fields in Mainholm Road, Ayr from the General Fund to the Housing Revenue Account (HRA) at nil value provided that the HRA met the abnormal costs of £3,222,539 ahead of a proposed development of Council housing.

The Cabinet

**Decided:**

- (1) to note that the consultation carried out by the Director - Place with tenants and the public had been largely in favour of the proposed transfer of the site from the General Fund to the HRA for nil consideration; and
- (2) to grant authority to transfer the site of the John Pollock Centre from the General Fund to the HRA at nil value ahead of a proposed residential development in accordance with the explanation set out in the report and provided that the Council's Housing Revenue Account met the abnormal costs of £3,222,539.



# South Ayrshire Council

## Report by Director - Place to Cabinet of 30 August 2022

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**Subject: Transfer of the Site of the John Pollock Centre to  
Housing Revenue Account**

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### 1. Purpose

- 1.1 The purpose of this report is to obtain Cabinet approval to transfer the site encompassing the John Pollock Centre and playing fields in Mainholm Road, Ayr from the General Fund to the Housing Revenue Account (HRA) at nil value provided that the HRA meets the abnormal costs of £3,222,539 ahead of a proposed development of Council housing. The extent of the site is shown in [Appendix 1](#).

### 2. Recommendation

#### 2.1 It is recommended that the Cabinet:

- 2.1.1 **notes that the consultation carried out by the Director - Place with tenants and the public has been largely in favour of the proposed transfer of the site from the General Fund to the HRA for nil consideration; and**
- 2.1.2 **grants authority to transfer the site of the John Pollock Centre from the General Fund to the HRA at nil value ahead of a proposed residential development in accordance with the explanation set out below and provided that the Council's Housing Revenue Account meets the abnormal costs of £3,222,539; and [Appendix 1](#)) from the General Fund to the HRA at nil value ahead of a proposed residential development in accordance with the explanation set out below and provided that the Council's Housing Revenue Account meets the abnormal costs of £3,222,539.**

### 3. Background

- 3.1 The playing fields at the rear of the John Pollock Centre had been identified for development of affordable housing within the Strategic Housing Investment Plan 2018-2023 (SHIP). The site currently occupied by the John Pollock Centre was also added and approved within the Strategic Housing Investment Plan 2020-2025 (SHIP) for further development of affordable housing. The site is scheduled in the SHIP to start this financial year and is attracting over £11m of funding, over four years from the Affordable Housing Supply Program (AHSP) fund.

3.2/

- 3.2 On 26 November 2019, a report was presented to Leadership Panel with a recommendation for the approval to submit a New Project Request to SWHub for the procurement and delivery of affordable housing at Mainholm Road, Ayr inclusive of the demolition of the John Pollock Centre. The site, which extends to approximately 5.89 hectares (14.55 acres), would see a development of around 160 units comprising a mix of flats and houses. The extent of the site is shown in [Appendix 1](#).
- 3.3 A report was submitted to Leadership Panel on 24 August 2021 seeking approval to transfer the site at Mainholm Road, Ayr from General Services to Housing Revenue Account (HRA). The report was continued to allow the development of a policy for asset transfer between General Services and Housing Revenue Account to be considered at a meeting of the Council in October 2021.
- 3.4 On 18 January 2022, approval was obtained from Leadership Panel to commence an enabling works contract to demolish the existing buildings on the site (John Pollock Centre and the former Mainholm Academy) to facilitate the development of new affordable homes funded from the General Services Capital Programme. This work is underway and will be complete Summer 2022.
- 3.5 On 29 June 2022, Council approved an Updated Policy for the Acquisition and Disposal of Land and Buildings. This followed an audit undertaken by Glasgow City Council to establish the facts around the proposed transfer and resulted in an audit action to: 'review (of) the Policy for the Acquisition and Disposal of Land and Buildings to be undertaken by Director of Place at an early date.' The policy on HRA land acquisition and disposal was included as part of the review and incorporated within the updated policy.
- 3.6 The Audit also concluded that an update report on the transfer of the site at Mainholm to the HRA be presented to elected members, following approval of the updated policy
- 3.7 Section 74 (2) of the 1973 Act places a duty on the Council to achieve the best consideration that can reasonably be obtained in the disposal of land or buildings, except where disposal at less than the best consideration is in accordance with the above Act and/ or Regulations. In addition the disposal of land or buildings from the Housing Revenue Account (HRA) may require the consent of Scottish Ministers under section 12(7) of the Housing (Scotland) Act 1987. Similarly, consent is required under section 203(2) of the 1987 Act to transfer land or buildings between the HRA and the General Fund.
- 3.8 The Scottish Government has introduced guidance on how Councils seek consent to dispose of assets from their HRA or to transfer assets between the General Fund and HRA. In order to improve efficiency and introduce uniformity across General Fund and HRA disposals, a general consent process in line with the existing 'Disposal of Land by Local Authorities (Scotland) Regulations 2010' has been developed. Under General Consent, Councils are able to 'self-certify' consent where two key considerations have been met: the disposal price is in line with a best consideration valuation performed by a surveyor accredited to the Royal Institution of Chartered Surveyors (RICS) and an appropriate level of tenant and public consultation has taken place

3.9 In the case of a proposed transfer from the General Fund to the HRA where the end use is the development of council housing, the market value test may not be met but the Council may determine that a transfer for less than market value will in fact represent 'best value' as the supply of social housing in the area will increase. In such cases, the Council should self-certify the following:

- That the disposal fits with the Council's strategic housing context (i.e. that a below market value disposal can be justified);
- The site value and anticipated disposal value; and
- That appropriate consultation has taken place.

3.10 The Market Value is the 'headline' amount a buyer could reasonably expect to pay to purchase the site for the development of housing, if it was being sold on the open market. As the site will be developed for Social Housing DM Hall has valued the site based on market value and Social housing value.

#### 4. Proposals

4.1 In order to comply with the approved policy and be in a position to self-certify consent valuations have been obtained from an independent surveyor and consultation on the proposal has taken place with tenants.

The values reported by DM Hall were as follows:

- Market Value – assuming social housing £2,200,000; and
- Market Value – assuming private housing £3,400,000.

4.2 Both of the opinions of value reflect the subjects on a cleared site basis and assume the buildings presently on site have been demolished.

4.3 Abnormal development costs include items such as demolition of the buildings and the cost of addressing any unusual ground conditions or contamination. These costs are normally deducted from the gross Market Value to arrive at the amount payable. For this site, the abnormal costs have been estimated at £3,222,539 and consist of the following works:

Ground consolidation	£428,514
Preparatory ground works	£539,185
Demolitions	£590,000
Removal of roads, paths, pavings and surfaces	£340,240
Removal of fencing, railings and walls	£54,600
Drainage works	£1,155,000
Service diversions	£115,000
<b>Total</b>	<b>£3,222,539</b>

- 4.4 Building affordable housing on this site offers a number of social and economic benefits to the Council and its partners including:
- Increased economic activity throughout the construction process;
  - Improved health, poverty and environmental outcomes from providing warm and energy efficient affordable housing;
  - Increasing the supply of affordable homes that better meet the needs of South Ayrshire's ageing population; and
  - Contribution toward meeting some of the unmet housing needs in South Ayrshire and reducing homelessness attracting over £13m of grant to South Ayrshire's development costs.
- 4.5 Increasing the supply of good quality affordable housing is identified as a strategic priority in South Ayrshire's Local Housing Strategy 2017-22 and Council Plan 2018-22. The Council's Strategic Housing Investment Plan identifies Mainholm as a key site for delivering 160 affordable homes that will make a significant contribution towards meeting existing housing need in South Ayrshire. There are currently no other potential housing sites of this size immediately available to the Council in this locale.
- 4.6 Whilst recognising that a higher value may be obtained if the ground was sold on the open market it is proposed that the Council accepts the market value - social housing at £2,200,000 in order to support the delivery of affordable housing.
- 4.7 It is proposed that the abnormal costs of £3,222,539 are deducted from the market value – social housing. and that the site in Mainholm Road in Ayr is transferred from the General Fund to the HRA at nil value ahead of the proposed development of Council housing.
- 4.8 It is proposed that the HRA is responsible for the abnormal development costs as detailed in paragraph 4.36 which are part of the overall development costs for the proposed development.
- 4.9 Council tenants were consulted on this proposal at the Tenants Monitoring Group on the 2nd of August. An online consultation was available on the Council's consultation web page to both tenants and residents from the 1st of August until the 22nd of August.

## **5. Legal and Procurement Implications**

- 5.1 Legal advice has been provided with regard to the content of this report, but there will be no legal documentation required to transfer the site from the General Fund to the HRA.
- 5.2 There are no procurement implications arising from this report.

## **6. Financial Implications**

- 6.1 The HRA would be expected to pay the abnormal development costs of £3,222,539 resulting in a nil transfer value from the General Services account to the HRA.

6.2 The enabling works cost of £590,000 (demolitions) was originally funded from an allowance of £1.2m in the General Services Capital Programme. It is proposed that this cost is now funded by the HRA.to facilitate a transfer of the asset at nil value from General Services to HRA.

## **7. Human Resources Implications**

7.1 Not applicable.

## **8. Risk**

### **8.1 *Risk Implications of Adopting the Recommendations***

8.1.1 There are risks that the abnormal costs associated with adopting the recommendations will increase.

### **8.2 *Risk Implications of Rejecting the Recommendations***

8.2.1 If this proposal is rejected the site will not be able to be developed for Council housing, as approved by the Council in the SHIP, which will impact adversely on housing supply numbers.

8.2.2 If this proposal is rejected the costs incurred by the general services budget as part of the enabling works would be abortive. It is estimated that this would be approximately £590,000.

8.2.3 If this proposal is rejected there is a risk that the Council could lose the funding allocated to the project from the Affordable Housing Supply Programme (AHSP).

8.2.4 If this proposal is rejected there is a risk that the wider economic benefits of significant construction activity in Ayr will not be realised.

8.2.5 If this proposal is rejected there is a risk that housing list waiting times and time spent in temporary homeless accommodation will increase.

8.2.4 If this proposal is rejected, there is a risk that the housing capital programme, as approved, will not be delivered.

## **9. Equalities**

9.1 The proposals in this report were recently equality impact assessed and, as the completed Equalities Impact Assessment still applies, it is attached as [Appendix 2](#).

## **10. Sustainable Development Implications**

10.1 ***Considering Strategic Environmental Assessment (SEA)*** - The proposals in this report do not represent a qualifying plan, programme, policy, or strategy for consideration for SEA. There exists therefore no obligation to contact the Scottish Government Gateway and no further action is necessary. An SEA has not been undertaken.

## 11. Options Appraisal

- 11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

## 12. Link to Council Plan

- 12.1 The matters referred to in this report contribute to Commitment 6 of the Council Plan: A Better Place to Live/ Enhanced environment through social, cultural and economic activities.

## 13. Results of Consultation

- 13.1 Consultation on the proposed transfer has taken place with tenants of South Ayrshire Council and been available to all through the Council's consultation web page. Both tenants and residents were broadly in favour of the proposal.
- 13.2 Consultation has taken place with Councillor Martin Kilbride, Portfolio Holder for Buildings, Housing and Environment, and the contents of this report reflect any feedback provided.

## 14. Next Steps for Decision Tracking Purposes

- 14.1 If the recommendations above are approved by Members, the Director - Place will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Leadership Panel in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the decision is fully implemented:

<i>Implementation</i>	<i>Due date</i>	<i>Managed by</i>
Transfer site from General Fund to HRA	2 September 2022	Service Lead - Asset Management and Community Asset Transfer; and Head of Finance and ICT

**Background Papers** [Report to Leadership Panel of 29 November 2019 – Affordable Housing – Proposals for New Developments](#)

[Report to Leadership Panel of 26 October 2021 – Review of Capital Estimates: General Services Capital Programme 2021-22 to 2030-31](#)

[Report to Leadership Panel \(Special\) of 30 November 2021 - Strategic Housing Investment Plan \(SHIP\) - 2022/23 - 2026/27](#)

[Report to Leadership Panel of 18 January 2022 – Affordable Housing - Mainholm Enabling Works](#)

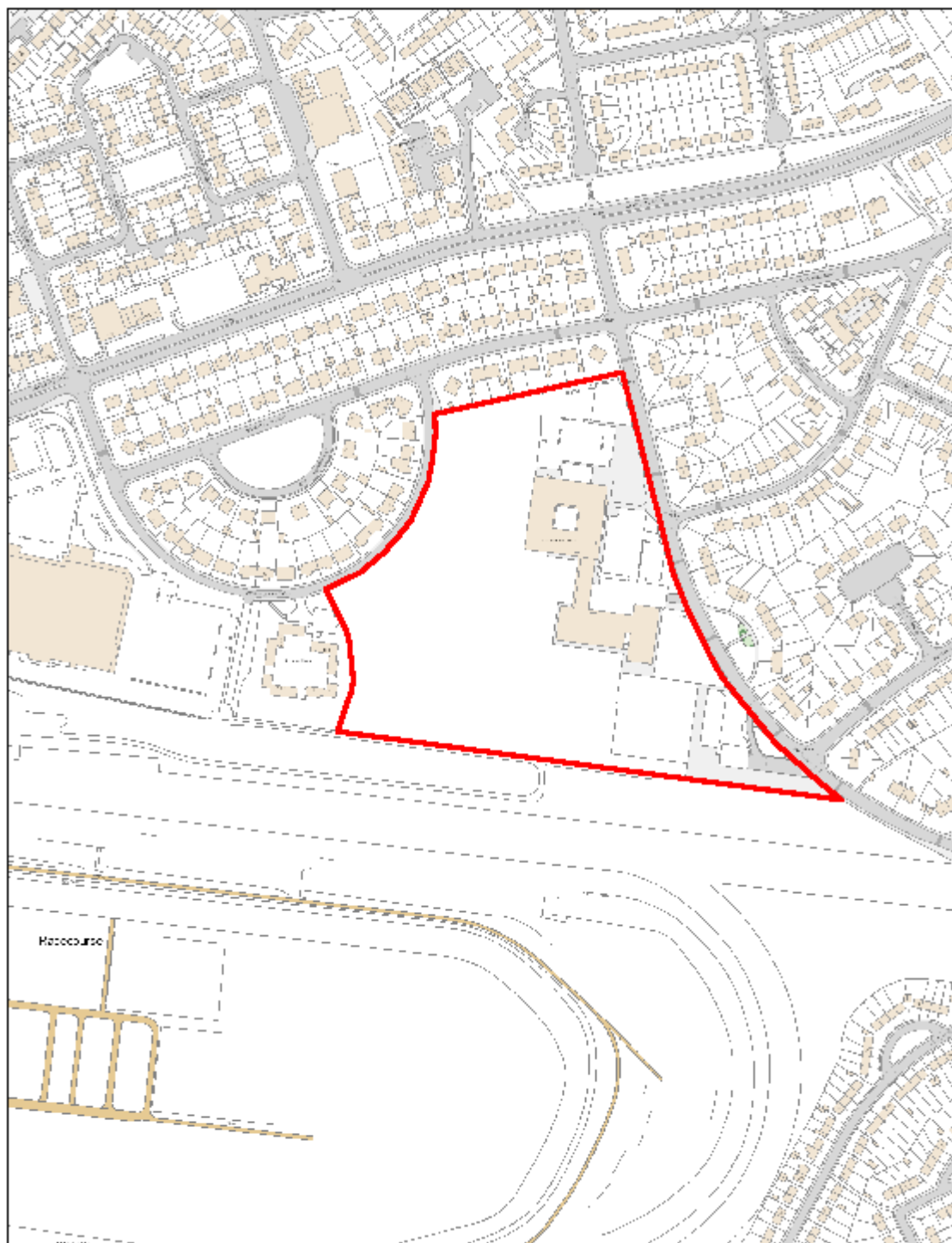
[Report to South Ayrshire Council of 29 June 2022 - Updated Policy for the Acquisition and Disposal of Land and Buildings](#)

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**Date: 23 August 2022**



c 5.89 Ha at Mainholm Road, Ayr

Scale 1:3500



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## 1. Proposal details

Proposal Title <b>Transfer of John Pollock Centre from General Fund to HRA</b>	Lead Officer <b>Tom Burns</b>
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2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this proposal? Please indicate whether these would be positive or negative impacts

Community, Groups of People or Themes	Negative Impacts	Positive impacts
The whole community of South Ayrshire	No	No
People from different racial groups, ethnic or national origin.	No	No
Women and/or men (boys and girls)	No	No
People with disabilities	No	No
People from particular age groups for example Older people, children and young people	No	No
Lesbian, gay, bisexual and heterosexual people	No	No
People who are proposing to undergo, are undergoing or have undergone a process to change sex	No	No
Pregnant women and new mothers	No	No
People who are married or in a civil partnership	No	No
People who share a particular religion or belief	No	No
Thematic Groups: Health, Human Rights, Rurality and Deprivation	No	No

## 3. Do you have evidence or reason to believe that the proposal will support the Council to:

General Duty and other Equality Themes	Level of Negative and/or Positive Impact (high, medium or low)
Eliminate discrimination and harassment faced by particular communities or groups	-
Promote equality of opportunity between particular communities/groups	-
Foster good relations between particular communities or groups	-
Promote positive attitudes towards different communities or groups	-
Increase participation of particular communities or groups in public life	-
Improve the health and wellbeing of particular communities or groups	-
Promote the human rights of particular communities or groups	-
Tackle deprivation faced by particular communities or groups	-

## 4. Summary Assessment

<b>Is a full Equality Impact Assessment (EQIA) required?</b> (A full EQIA must be carried out on all high and medium impact proposals)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<b>Rationale for decision:</b> <p style="text-align: center;"><b>The proposal does have a significant positive impact with regards to community participation and health and wellbeing therefore an EQI is required</b></p>			
Signed : Tom Burns – Service Lead – Asset Management and Community Asset Transfer			
Date: <b>07 June 2022</b>		Copy to <a href="mailto:equalities@south-ayrshire.gov.uk">equalities@south-ayrshire.gov.uk</a>	

# Policy for the Acquisition and Disposal of Land and Buildings

June 2022



RESPECTFUL  
SUPPORTIVE



# **Policy for the Acquisition and Disposal of Land and Buildings**

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- [Appendix 2:](#) **Provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and Procedure**

## **1. Introduction**

- 1.1 The purpose of this policy for the Acquisition and Disposal of Land and Buildings is to inform Elected Members, services and also other interested parties of the principles and rules by which the Council will acquire and dispose of land and buildings.
- 1.2 The extent of Council land and buildings assets is significant and whilst this can be seen as a tremendous resource it can, if underperforming, become a major burden. It is therefore vital that the Council delivers proactive management of its land and buildings assets through the introduction of a policy for the acquisition and disposal of land and buildings and assessment of appropriateness for other uses, including for community use, or disposal.
- 1.3 As the strategic arrangements outlined within the Council's Asset Management Plan are embedded within the Council, it is likely that land and building assets will be identified as being surplus to requirements. The Council must make the most of the potential opportunities to rationalise the Council's land and buildings portfolio.
- 1.4 This policy aims to formalise the basis for the identification of any future need for land and buildings and the means of its disposal and contribute to the efficiency saving in future years.

## **2. Statutory Framework**

- 2.1 The disposal of the Council's land and buildings is subject to the statutory duty to secure best value in terms of section 1 of the Local Government Act 2003, the provisions of section 74 of the Local Government (Scotland) Act 1973 as amended and the Disposal of Land by Local Authorities (Scotland) Regulations 2010.
- 2.2 Section 74 (2) of the 1973 Act places a duty on the Council to achieve the best consideration that can reasonably be obtained in the disposal of land or buildings, except where disposal at less than the best consideration is in accordance with the above Act and/ or Regulations.
- 2.3 In addition to the requirements explained in paragraph 2.2 above, the disposal of land or buildings from the Housing Revenue Account (HRA) may require the consent of Scottish Ministers under section 12(7) of the Housing (Scotland) Act 1987. Similarly, consent is required under section 203(2) of the 1987 Act to transfer land or buildings between the HRA and the General Fund. This is also the case where land held on the HRA consists of common or open space or is held for use as allotments, under section 12(5) of the 1987 Act. The Scottish Government has introduced guidance on how Councils seek consent to dispose of assets from their HRA or to transfer assets between the General Fund and HRA. In order to improve efficiency and introduce uniformity across General Fund and HRA disposals, a general consent process in line with the existing 'Disposal of Land by Local Authorities (Scotland) Regulations 2010' has been developed. Under General Consent, Councils are able to 'self-certify' consent where two key considerations have been met: the disposal price is in line with a best consideration valuation performed by a surveyor accredited to the Royal Institution of Chartered Surveyors (RICS) and an appropriate level of tenant and public consultation has taken place.

- 2.4 Removal of HRA assets that are no longer connected to the housing stock or are not providing a financial return can take two forms - sale (or lease) to a third party or transfer to the General Fund. There is no obligation for the General Fund to receive HRA assets no longer required by the HRA. A transfer will only occur where the Council determines there is a benefit to the General Fund by retaining the asset.
- 2.5 If transferring to the General Fund at market price, the Council has the option to keep the asset and use it productively as a General Fund asset or dispose of it at a later date. This approach ensures the HRA receives the full financial compensation for any disposal of HRA assets. Assets may be transferred for less than the market value but this requires the consent of Scottish Ministers.
- 2.6 If it is proposed to appropriate or dispose of any land or buildings which form part of the Common Good and with respect to which a question arises as to the right of the Council to alienate, authorisation must be obtained from the Court in accordance with section 75(2) of the Local Government (Scotland) Act 1973. This restriction applies in addition to the requirements explained at paragraph 2.2 above. In addition, in terms of the Community Empowerment (Scotland) Act 2015 section 104, before taking any decision to dispose of, or change the use of, any land or buildings forming part of the Common Good, the Council is required to carry out a public consultation. These processes must also be adhered to with regard to Community Asset Transfers of Common Good assets. Furthermore, under section 15(4) of the Local Government etc. (Scotland) Act 1994, regard must be had by the Council to the interests of the residents in the area of the former burgh to which the particular common good fund relates.
- 2.7 Before disposing of any land consisting or forming part of a common or open space (except land used for allotments), the Council will publish notice of the proposed disposal and consider any objections, in terms of the Town and Country Planning (Scotland) Act 1959 section 27(2A). There are also similar requirements in respect of the appropriation of common or open space of land (not being land held for use as allotments) under section 24(2A) of the 1959 Act.
- 2.8 The Community Empowerment (Scotland) Act 2015 Part 5 provides rights for qualifying community bodies to make requests to the Council for the transfer of the ownership of land or for land to be leased to the community body. There is a presumption in favour of granting such requests.

### **3. Acquisition of Land and Buildings**

#### **3.1 *Options for Acquisition of Land and Buildings***

- 3.1.1 The Council can choose to acquire land and buildings in either of the following forms:
- (i) ownership; or
  - (ii) leasehold.
- 3.1.2 The reasons for the Council to acquire land or buildings would be:
- (i) opportunities for improved service delivery;
  - (ii) investment purposes; and
  - (iii) acquisition in line with Council's strategic objectives.

- 3.1.3 Prior to the purchase or lease of any asset a full options appraisal should be carried out which should involve appraisal of all the options for delivery of the final objective. Consideration should be given to all other Council-owned land and buildings and whether these could be used to fulfil the requirement prior to any acquisition.
- 3.1.4 Authority for the decision to pursue a purchase of any land or buildings will be by the Cabinet/ Council except insofar as included within the provisions of paragraph 3.1.5 below.
- 3.1.5 It is recognised that from time to time, it will be necessary to supplement new build Council housing with the acquisition of second hand residential properties on the open market. Scottish Government subsidy can be used to assist Councils to purchase properties on the open market which can then be used as affordable housing for rent. This, together with options for bringing empty private properties back into use as affordable housing through the Empty Homes Strategy and loan scheme, will increase the number of available Council houses for rent. In order to streamline this process (often referred to as Council House buy-backs as often the properties have previously been owned by the Council and sold under 'Right to Buy') the Director – Place has delegated authority to purchase individual residential properties to be used as Council houses for rent on behalf of Housing Services up to the value of £150,000 and the acquisition of land either in Council ownership or on the open market of up to £250,000 with agreement from the Portfolio Holder or in their absence, the Leader or Depute Leader of the Council each subject to available funds.

## 3.2 ***Compulsory Purchase***

- 3.2.1 The Council may consider, where appropriate the acquisition of land or buildings through its compulsory purchase powers. In this regard Legal Services would advise on the compulsory purchase powers available to the Council.
- 3.2.2 The Head of Legal, HR and Regulatory Services should be consulted at the earliest opportunity if consideration is being given to acquisition in this way.
- 3.2.3 Powers of compulsory purchase are conferred on public authorities by legislation. They enable the authorities authorised to compulsorily purchase land or buildings for a wide range of purposes, where there is a strong enough case for this in the public interest. The Council requires to be satisfied that the purposes for which a compulsory purchase order is made justify the interference with the rights of the people affected. The justification for making a compulsory purchase order will be subject to the requirements of the law and will be a matter of facts and circumstances in each case. These powers will be used where the owner or occupier of the land is unwilling to sell by agreement or where agreement cannot be achieved in a project timeframe or at reasonable cost, or where the owner cannot be traced.
- 3.2.4 The Council will consult and engage with people affected by compulsory purchase at every stage of the process. Where compulsory purchase powers are used, the land owner or occupier is entitled to compensation.

3.2.5 Any resolution to pursue acquisition by compulsory purchase of any land or buildings will be passed by a meeting of the Council as appropriate. The report to the Council will explain the public benefits to be delivered by the scheme and explain why these justify the interference with the rights of the people affected. The extent of the land to be acquired will be shown on a plan or map attached to the report.

3.2.6 Notification and advertising procedures which apply to the making of a compulsory purchase order will be adhered to. Once made, the order will be confirmed with the Scottish Ministers (where there are objections to the order, the Scottish Ministers may hold a public local inquiry or a hearing). Once the order has been confirmed by the Scottish Ministers any further notification or advertising procedures will be adhered to. Thereafter, provided there is no challenge to the validity of the order, the Council can take possession and legal title to the land, and pay any compensation due.

### 3.3 ***Acquisition of Land or Buildings for Service Delivery***

3.3.1 Land or buildings may be acquired for the purpose of service delivery, subject to the following conditions:

- (i) an options appraisal has been carried out and reported to the Director - Place, the result of which identifies the requirement for the land or buildings for service delivery;
- (ii) the ongoing revenue and capital costs are contained within an approved budget which has been confirmed as appropriate by the Head of Finance and ICT and/ or an appropriate budget is approved by the Council; and
- (iii) the Cabinet/ Council has approved the acquisition of the land or buildings for the purpose of service delivery.

3.3.2 Where land is identified for HRA housing purposes which is currently held under the General Services account then any transfer will follow this policy.

### 3.4 ***Acquisition of Land or Buildings for Investment Purposes***

3.4.1 Land or buildings may be acquired for the purpose of investment, subject to the following conditions:

- (i) an options appraisal has been carried out and reported to the Director - Place, the result of which identifies the suitability of the land or buildings for investment purposes;
- (ii) the ongoing revenue and capital costs are contained within an approved budget which has been confirmed as appropriate by the Head of Finance and ICT, and/ or an appropriate budget is approved by the Council; and
- (iii) the Cabinet/ Council has approved the acquisition of the land or buildings for investment purposes.



## 4. Disposal of Land and Buildings

### 4.1 *Options for Identification of Surplus Land and Buildings*

- 4.1.1 The identification of surplus assets is an ongoing process which will require the co-operation of all Council services. There are clear benefits to the Council in reducing its portfolio of properties and therefore a rigorous examination of assets is required.
- 4.1.2 The Asset Management Plan (land and buildings) highlighted that a key priority for the Council is to continually review the land and buildings it currently manages and assess whether these assets are surplus to Council requirements.
- 4.1.3 Vacant and surplus properties cost the Council money. It is therefore important that once a property is declared surplus its future use is determined in a timely manner to minimise ongoing costs to the Council. Until the property has been disposed of by the Council or formal transfer of a property to another Council service has been completed the incumbent holding service will continue to be responsible for the property and all associated costs.
- 4.1.4 Property may be identified as being potentially surplus to the Council's requirements as a result of any one or more of the following circumstances:
- (i) the holding service determining it no longer has a requirement for its property due to changes in its operational requirements;
  - (ii) as part of a wider strategic review of the Council's land and buildings an alternative and more cost effective service delivery site has been identified;
  - (iii) the property has no potential for future strategic or regeneration/ redevelopment purposes (including affordable housing);
  - (iv) the income generated from the land or buildings is nil or less than £1,000 per annum and there is a potential regeneration or redevelopment opportunity for the asset; and/ or
  - (v) the site has been identified by the Council's Housing Services or local or national Housing associations as being suitable for affordable housing.
- 4.1.5 All land and property that is potentially surplus to requirements will be offered to use as follows:
- (i) Housing Services;
  - (ii) Council Directorate; and
  - (iii) Public Sector Organisations.
- 4.1.6 Following consideration with the appropriate party above and with the Director – Place, a report will be presented to Cabinet/ Council which details

all valuations obtained for the transfer of the property and this report will include a recommendation on the appropriate value for that transfer and will, where appropriate, take into account the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the procedure set out in Appendix 2. Council/ Cabinet will determine the value to be applied to the transfer of the land and property.

- 4.1.7 The internal transfer of all land or property from General Services or Common Good for affordable housing to Housing Services and disposals to Housing Associations will take into account any abnormal costs, nature of the site and any other factor considered to be appropriate. Abnormal or 'extraordinary' development costs are site-specific costs that relate to additional works that would otherwise not be required on a greenfield site with reasonable ground bearing strata including those associated with the treatment of contamination, demolitions, ground remediation, flood risk protection and utilities upgrades to ensure that the site and the building under development are legally compliant and meet all planning obligations. These costs will be reported to the Council's Cabinet for its consideration and approval.
- 4.1.8 Whilst not specifically required by the legislation, it is implied that a HRA in Scotland is self-financing, that is the budgeted income is sufficient to cover budgeted expenditure. The legislation permits a Council to transfer, any actual HRA surpluses to the General Fund. However, they are not permitted to budget for a transfer of funds from the General Fund to the HRA. The HRA is also not permitted to show a deficit at the end of the financial year. If this occurs, authorities are required to transfer funds from the General Fund to cover this deficit.
- 4.1.9 Since April 2010, no limits have been set on contributions from the General Fund to the HRA though any such contribution would require the consent of Scottish Ministers under paragraph 2(5) of schedule 15 to the 1987 Act. In theory therefore a subsidy is allowed with appropriate permissions. Subsidies from the General Services Fund should not be planned or budgeted; however, if they do occur and are approved by Cabinet/ Council, then permission must be sought from the Scottish Ministers.
- 4.1.10 The financial implications of any subsidy required from the General Services Fund to the HRA requires to be approved by the Cabinet/ Council. The decision sought from the Cabinet should clearly set out why the subsidy is required in order that they are fully aware of the financial implications of the decision they require to make.
- 4.1.11 As part of the ongoing remit of the Asset Management Plan, the Service Lead – Asset Management and Community Asset Transfer will discuss with services to determine if there is a continuing need for the Council to retain the asset. If a Council service expresses an interest in retaining the asset, a clear business case including recognition of the ongoing financial responsibilities will require to be developed to justify retention.
- 4.1.12 This exercise may therefore culminate in an alternative Council use being identified, disposal to a community organisation, the leasing of the property where the Council wishes to retain a long term interest, demolition of the property or the property's outright sale on the open market.

4.1.13 Formal approval to declare the asset surplus to requirements will be given by the Cabinet or Council. Requests for approval to declare land and buildings surplus to requirements will usually be sought in batches to limit the number of individual reports required.

#### 4.2 ***Criteria for Land and Buildings Disposals***

4.2.1 For the disposal of land and buildings which have been declared surplus to requirements up to the value of £100,000 and are to be marketed for disposal, the Director - Place will decide if the disposal should be on the open market or by public auction.

4.2.2 Formal approval from the Cabinet or Council will be sought to approve disposals and acquisitions of land and buildings which exceed £100,000, and disposals of land to community organisations, public sector organisations and Housing Associations.

#### 4.3 ***Methods of Disposal***

4.3.1 Where the Council approves the property's disposal for a capital receipt, the disposal will be carried out in accordance with the Council's Standing Orders Relating to Contracts.

4.3.2 The Service Lead – Asset Management and Community Asset Transfer, in conjunction with the Service Lead – Planning and Building Standards, will determine if there is a requirement for a planning brief or statement to be provided prior to marketing the property.

4.3.3 Methods of disposal are:

- (i) open market disposal;
- (ii) negotiation with a third party; and
- (iii) public auction.

#### 4.4 ***Open Market Disposal***

4.4.1 The Service Lead – Asset Management and Community Asset Transfer shall assess, on a case by case basis, the degree of advertising necessary to ensure that a proposed disposal of land and buildings will be subject to open competition, will satisfy the requirements of transparency and will achieve best value for the Council.

4.4.2 When appropriate, independent agents will be appointed to manage the advertisement and the disposal of the land or buildings, to report to the Council the value of the bids received and to recommend which they consider to be the best consideration, taking into account both financial and non-financial benefits.

#### 4.5 ***Negotiation with a Third Party***

4.5.1 In certain circumstances, the Council will decide to dispose of an asset by negotiation with a third party without prior advertisement.

- 4.5.2 In order to justify a private disposal, the proposal must meet one, or more of the following criteria:
- (i) the proposed disposal is to a purchaser who owns or controls an adjoining property or piece of land;
  - (ii) the proposed disposal is to a third party who, whilst not an adjoining landowner, would bring additional social, environmental, health or economic benefit: an example would be a sale to an existing major employer who could otherwise leave the area or a sale to a new major employer who would move into the area or organisations who wish to invest in upgrading existing facilities or building new facilities; and/ or
  - (iii) to enable the purchase of another site, which the Council considers necessary to meet its priorities and objectives.

#### 4.6 **Public Auction**

- 4.6.1 The Service Lead – Asset Management and Community Asset Transfer shall assess, on a case by case basis, whether it is appropriate to market a property by public auction. In such cases, the Director – Place, in consultation with the Service Lead – Asset Management and Community Asset Transfer, will set a reserve price at a level that ensures the Council's interests are protected.
- 4.6.2 Formal approval from the Cabinet or Council will be sought to approve disposals and acquisitions of land and buildings by public auction where the reserve price exceeds £100,000 prior to the auction date.

### 5. **Community Asset Transfer**

- 5.1 Part 5 of the Community Empowerment (Scotland) Act was passed on 7 June 2015 and the part relating to the community asset transfer requests came into force on 23 January 2017. The disposal of assets from local authorities and other public sector organisations is legally recognised as an important means of supporting communities to own assets. The Scottish Government hopes the Act will increase the flow of assets into community ownership and aims to facilitate this by encouraging and supporting local authorities and community organisations both to gain a wider appreciation of the benefits and risks associated with asset transfers.
- 5.2 Community ownership of assets can make an important contribution to the range of innovative, 'bottom up' solutions which community organisations can develop to address local needs. These solutions can meet the needs of local people and also contribute to the delivery of both the Council's Single Outcome Agreement and national government outcomes. The Council does, however, recognise that the community ownership of land and buildings assets is a major commitment for eligible bodies.
- 5.3 The process for any Community Asset Transfer is set out in the Council's Community Asset Transfer Process. This process is in accordance with Part 5 of the Community Empowerment (Scotland) Act 2015. It should be noted that this process is different from the acquisitions and disposal process as it provides communities with the right to make requests for ownership, lease management or use of publicly owned buildings

and land, including common good properties, which are still in operational use by the Council. Applications under Part 5 of the Community Empowerment (Scotland) Act 2015 are determined under the Community Asset Transfer Process and in accordance with the requirements of the Act and the associated Scottish Government Guidance.

- 5.4 It is recognised that in small rural communities the requirements to form Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Company (Bencom) in accordance with Part 5 of the Community Empowerment (Scotland) Act 2015 which requires a minimum 20 person board can be a potential obstacle with regard to the ownership of land and property assets being transferred to these communities.
- 5.5 In these circumstances, if an application for the transfer of ownership would not meet the requirements of Part 5 of the Community Empowerment (Scotland) Act 2015, it would be open to the Council to consider the transfer of an asset to a community group for less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 if the disposal is considered reasonable, demonstrates the following purposes of promotion or improvement of:
- 5.5.1 Economic development or regeneration;
  - 5.5.2 Health;
  - 5.5.3 Social wellbeing; and/ or
  - 5.5.4 Environmental wellbeing.

## **6. Common Good**

- 6.1 Where a disposal involves Common Good property, the same considerations of the acquisitions and disposals policy generally apply. Any potential sale of Common Good property would be subject to the statutory restrictions explained in paragraph 2.6 above.
- 6.2 It is necessary to consider advice from Legal Services as to whether an application to the Court is required to dispose of the property. The Service Lead – Asset Management and Community Asset Transfer will determine, following consultation with Legal Services, if the matter is to be referred to the Court for authority to dispose of the asset.
- 6.3 Formal approval will be sought from the Cabinet or Council to approve the acquisition and disposal of all Common Good assets regardless of its value.
- 6.4 Where there is a disposal of the Common Good asset the proceeds will be treated as receipts to the relevant Common Good account.

## Checklist for Disposals

- Surplus to requirements
  - has the land/ property been declared surplus to requirements in line with the relevant policy? Y/N
- Title Issues:
  - Has a recent or refreshed title report been completed by Legal Services? Y/N
  - Have any issues raised by Legal Services in the title report been addressed by Estates, for example, if further deeds are needed or a legal report obtained? Y/N/NA
  - Has the extent of the disposal been plotted with reference to the title? Y/N
  - Are Legal Services satisfied that the disposal does not trigger any rights under the School Sites Act 1841? Y/N
- Common Good
  - Is the land/ property common good? Y/N
  - If yes, have Legal Services been consulted about the disposal? Y/N
  - Is the land/ property alienable? Y/N
  - Is a sheriff court petition required? Y/N
  - Has a common good consultation been carried out? Y/N
- Owning account
  - Is the land/ property in the HRA? Y/N
  - If yes, has the HRA disposal procedure for general consent been followed? Y/N
  - [HRA++Consent+Reforms+-+General+Consent+Guidance+-+February+2016.pdf \(www.gov.scot\)](#)
  - If advice is required from Finance or Legal Services, has this been obtained and followed? Y/N/NA
- Open Space
  - Is the land open space? Y/N
  - If yes, have the open space statutory requirements (notice of disposal and consideration of any objections) been fulfilled? Y/N
  - [Town and Country Planning \(Scotland\) Act 1959 \(legislation.gov.uk\) s.24 and s.27](#)
  - If advice is required from Legal Services, has this been obtained and followed? Y/N/NA

- Valuation

- Have Estates undertaken a valuation of the land/ property in line with the relevant policy? Y/N

- If the land/ property is being sold for less than market value, has the legislation and statutory guidance for disposals for less than market been adhered to? Y/N

[The Disposal of Land by Local Authorities \(Scotland\) Regulations 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

[Disposal of Land by Local Authorities \(Scotland\) Regulations: General Guidance - gov.scot \(www.gov.scot\)](http://www.gov.scot)

- If advice is required from Finance or Legal Services, has this been obtained and followed? Y/N/NA

- Conditions

- Are there any special conditions recommended for the disposal, such as clawback, economic development burdens? Y/N

- If yes, have the conditions been discussed with Legal Services? Y/N

## **Provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and Procedure**

1. Unless the value of the land (best consideration for the disposal) is less than £10,000 (the 'threshold amount'), or the difference between the best consideration that can reasonably be obtained and proposed consideration (the 'marginal amount') is 25% or less of the best consideration that can reasonably be obtained, then the local authority must follow the 'procedure' set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010 which requires that the local authority must:
  - a) appraise and compare the costs and other dis-benefits and benefits of the proposal; and
  - b) determine that the 'circumstances' set out in Regulation 4 are met.
2. The 'circumstances' in which a local authority may dispose of land for a consideration less than the best that can be reasonably be obtained are that:
  - a) the local authority is satisfied that the disposal for that consideration is reasonable; and
  - b) the disposal is likely to contribute to any of the 'purposes' set out within the Regulations (in respect of the whole or any part of the area of the local authority or any persons resident or present in its area).
3. These 'purposes', which the local authority must consider, include the promotion or improvement of following types of benefit:
  - a) economic development;
  - b) regeneration;
  - c) public health;
  - d) social wellbeing; and
  - e) environmental wellbeing.
4. Officers in the Council Directorate seeking the transfer at less than market value shall, with the assistance of the Service Lead - Asset Management and Community Asset Transfer, arrange for a business justification/ evaluation to be prepared that demonstrates how the proposal meets the requirements of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the Community Empowerment (Scotland) Act 2015 (if applicable) having regard to the following:
  - a) the business justification/ evaluation will need to take account of whether/ not the proposed 'benefits' to be delivered by the proposal justify the proposed level of discount sought;
  - b) the business justification/ evaluation will need to include an assessment of the proposed disposal taking into account all relevant factors, all available options and all relevant information, and demonstrates that an evaluation, supported by evidence, makes clear how the decision has been reached; and



- c) the benefits of such a proposal should be proportionate to the value of the asset and the level of discount being proposed, with an appropriate level of information to support the business justification/ evaluation.