



# Disposal of Property Process

## Appendix 3

### National Park Authority Board Meeting

26 September 2022

Paper for information

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#### 1. Preliminary

- 1.1 If any land or buildings held by the National Park Authority are considered surplus to requirements, Executive and Board approval should be sought to dispose of the asset. Thereafter, the National Park Authority should obtain consent from the Scottish Government sponsor team to proceed with the disposal.
- 1.2 Prior to offering land and property for sale on the open market, the Scottish Government's Property Advice Division must be notified of the disposal at the earliest opportunity, and at least three months prior to the property being advertised on the open market, in order that the property can be internally advertised in a process known as The Trawl.
- 1.3 Proceeds from the disposal of assets may be retained by the National Park Authority subject to the disposal being included in the approved budget.

- 1.4 Before going to the open market professional advice should be obtained on whether or not there is any potential for development which would maximise sale proceeds and identify particularly sensitive planning issues.

## 2. Overarching Statutory Requirement

- 2.1. National Parks (Scotland) Act 2000 Schedule 2 Paragraph 6: - *An authority must not, without the consent of the Scottish Ministers, dispose of land for a consideration less than the best that could reasonably be expected to be obtained on the open market*
- 2.2. In this context “land” includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land - Interpretation Act 1978 Schedule 1.

## 3. The Trawl

- 3.1. The Trawl takes at least one month to undertake and must be completed before putting the property on the open market or entering into a commitment to sell elsewhere. An Internal Advertisement form must be completed and submitted to [PropertyandConstruction@gov.scot](mailto:PropertyandConstruction@gov.scot) to initiate The Trawl. Once the Internal Advertisement form is submitted it will take around 48 hours to reach the mailing list. Scottish Government has advised that it is unlikely that we shall receive any notes of interest as a result of The Trawl.

### 3.2. Internal Advertisement Requirements

- 3.2.1. Define extent of property to be sold.
- 3.2.2. Collate available information required for sale including:
  - plan showing extent of ground to be sold;
  - floor plan of building;
  - energy performance certificate
  - planning consent for alternative use
  - titles
  - asbestos report
  - site investigation report
  - building survey report
- 3.2.3. Where the building has development potential, the National Park Authority should provide all available information to a potential purchaser to satisfy themselves on the development potential.
- 3.2.4. Ensure the property is fully ready for sale both physically and with regard to paperwork. An information pack should be available for potential purchasers.

- 3.2.5. Have an agreed planned date for advertising on the open market, which must be at least one month from the date of submission of the Internal Advertisement form to Scottish Government.

When steps 1-4 above are complete, the Internal Advertisement form should be completed and submitted to [PropertyandConstruction@gov.scot](mailto:PropertyandConstruction@gov.scot).

### 3.3. The Procedure

- 3.3.1. If a buyer is found as a result of The Trawl there is a procedure to follow.
- 3.3.2. The purchaser must satisfy themselves on the extent of the property being transferred and all the rights and obligations that will transfer with it. A reasonable time should be allowed to allow this to happen.
- 3.3.3. The parties then agree the time scale within which the transfer is to take place.
- 3.3.4. The parties should agree a valuation date and a valuer should be appointed to provide a valuation as at that date.
- 3.3.5. The parties must appoint the valuer jointly and share the costs equally. The valuer must be independent of either party.
- 3.3.6. After appointment, the valuer will agree a process and timetable with the parties.
- 3.3.7. The parties can prepare a joint statement of agreed facts. The statement should cover for example title matters, the extent of the property, the planning status of the property and include a plan. The benefits of the joint statement are that it should save the valuer time and keep any fees to a minimum.
- 3.3.8. Alternatively both parties can prepare their own submissions to the valuer. Submissions may include items on which both parties agree as well as those on which there is disagreement. Where there are individual submissions both parties must be given the opportunity to respond to the points made by the other party by way of counter submissions. Individual submissions are not encouraged
- 3.3.9. The third option is a combination of 3.3.6 and 3.3.7. This is not generally regarded as ideal.

3.3.10. Rather than making written submissions both parties can meet with the valuer.

3.3.11. In complex cases the valuer may appoint additional experts with the agreement of both parties, and with the fees being shared between them.

#### **4. Going to the Market**

4.1. If the property cannot be disposed of via The Trawl it should be disposed of at Market Value and we should either:

- a) obtain the best possible price on the open market, or
- b) dispose of the property at less than Market Value to deliver wider public benefits consistent with the principles of Best Value. This includes disposing of assets to community bodies where appropriate.

4.2. Prior to any disposal we must have a professional valuation.

#### **5. Open Market**

5.1. A marketing agent should be appointed. Scottish Government Property Division can advise on an appropriate firm. A pre-sale valuation must be obtained to establish a guide price.

5.2. If only part of the overall property is to be sold, boundaries, access rights etc. must be established to safeguard the value of the retained property and maximise the value of the property to be sold.

5.3. Consideration should be given to any appropriate pre-sale investment that would improve the property for sale and increase the sale proceeds.

5.4. If there is doubt about the planning use which would achieve the best price a Planning Gain Sharing Agreement or Overage<sup>i</sup> should be considered. If such an agreement is considered it should cover the whole, or at least a substantial part, of any increase in value attributable to the grant of planning permission for an alternative use during a specified period of time after the sale. The disadvantage of this approach is that a purchaser may not be prepared to pay as high an initial price as in a straightforward sale. There may also be difficulties in monitoring and enforcing the arrangement.

5.5. With regard to the valuer, a brief must be prepared in consultation with Property Division and the external solicitors and a detailed plan showing boundaries, access, servitudes and services crossing the site must be provided.

- 5.6. It must be made clear to the valuer in the brief that the valuer is to consider potential alternative uses or development values, and to consider whether or not there are likely to be bids from “special purchasers” such as neighbours. A special interest such as that of a neighbouring owner may increase any potential bid for the property.
- 5.7. The marketing agent is normally expected to:
- draft the marketing particulars;
  - prepare the advertisements;
  - handle all contact with potential purchasers including telephone enquiries, meetings, and correspondence;
  - arrange for the buildings and land to be inspected by or on behalf of potential purchasers;
  - agree closing dates;
  - receive, open, and assess offers. Arrangements can be made for offers to be opened in front of our representative if that is required however that is unusual.
  - make written recommendations as to which offer to accept.
- 5.8. Once the property is on the market all enquiries from prospective purchasers or their agents must be directed to the marketing agent handling the sale. If inquiries are made to us before the property is put on the market we must not offer any advice on price or closing dates.

## **6. Disposal at Less than Market Value**

- 6.1. Before disposing of property at less than Market Value, we must obtain the consent of the Scottish Ministers.
- 6.2. A market valuation is needed as part of the process of considering the wider public benefits alongside any financial implications.
- 6.3. Where a property is sold at less than Market Value, the extent to which the price is less than the Market Value constitutes a gift.
- 6.4. For the purposes of the Scottish Public Finance Manual (“SPFM”) a “gift” means something voluntarily given or donated without the expectation of receiving anything in return and generally without preconditions and can be defined as e.g.:

- the extent to which the price obtained when assets are sold or transferred (including the sale or assignment of leases) is less than the Market Value, and
  - other transactions which are virtually indistinguishable from gifts such as the loan of an asset for its expected useful life.
- 6.5. The prior approval of the relevant Scottish Government Finance Business Partner (or equivalent) is required for the making of any gift not covered by a specific delegated authority. The arrangements for bodies sponsored by the Scottish Government making gifts within specified limits should be addressed in the framework documents. Our Framework Agreement is not yet complete therefore we should refer to our most recent Financial Memorandum. Any proposals to make gifts in excess of these limits should be submitted for approval to the relevant Scottish Government Finance Business Partner (or equivalent).
- 6.6. When the price offered in an asset transfer request is less than the Market Value of the property the discount will be treated as a gift.
- 6.7. We need to consider whether the proposed benefits to be delivered by the community transfer body justify the proposed discount. This is based solely on the analysis of the information included in the request.
- 6.8. The benefits to be delivered by the community transfer body would be expected to be proportionate to the value of the asset and the level of discount, with an appropriate level of information to support the application. Any decision to transfer an asset must represent good use of public resources and be supported by analysis that demonstrates clearly that the transaction represents value for money.
- 6.9. Scottish Government will assist with examining any affordability issues, accounting and reporting requirements where a disposal may constitute a gift, and any potential Subsidy Control implications.
- 6.10. Making gifts of goods with a current market value in excess of £50 may have VAT implications. Advice should be sought on a case-by-case basis from the Scottish Government's VAT Advisory Team.
- 6.11. Gifts made should be reported in notes to the annual accounts. Individual gifts of more than £250,000 should be noted separately.

## **7. Community Empowerment**

- 7.1. Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to the National Park Authority.

- 7.2. An asset transfer request can be made in relation to any land which the National Park Authority owns or leases, including buildings and any other structures on the land, such as a bridge, wall or pier. The community transfer body can ask to buy or lease the land, or to have other rights to it e.g. to occupy or use the land for a particular purpose.
- 7.3. A "community transfer body" can be either a community controlled body or a body designated by the Scottish Ministers.
- 7.4. A community controlled body does not have to be incorporated, but it must have a written constitution, incorporating certain provisions.
- 7.5. A community controlled body which wants to make an asset transfer request for *ownership* must be incorporated as:
- a company, or
  - a SCIO (Scottish Charitable Incorporated Organisation), or
  - a BenCom (Community Benefit Company),
- with a minimum of 20 members and provision for transfer of its assets on winding up.
- 7.6. A community transfer body does not have to be incorporated in order to make an asset transfer request for *lease* or *other rights*.
- 7.7. If a request is received the National Park Authority must acknowledge the request, notify others who may be interested, and allow them to make representations.
- 7.8. If the request does not contain all the required information<sup>ii</sup> to be validated we must send the community transfer body a notice informing them of what is missing.
- 7.9. Prior to disposing of property at less than Market Value, the National Park Authority must obtain the consent of the Scottish Ministers. The Community Empowerment (Scotland) Act 2015 does not over-ride or alter our obligations under the National Parks (Scotland) Act 2000. If the National Park Authority considers it should agree to an asset transfer request, a case must be prepared to seek permission from the Scottish Ministers for the transfer at less than Market Value. Permission must be obtained before validating a request.
- 7.10. The National Park Authority has been advised to take our time to consider whether we can validate any request that we may receive. We should not be rushed or pressured into validating a request. There is no time limit for validation. Until the application is validated, we can continue to follow the process in the SPFM.

7.11. Once the request is validated, the National Park Authority cannot transfer the property to anyone else until the request to transfer process is complete, including any appeals. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else before the asset transfer request was made. In that event, an asset transfer request can still be made, but it will not prevent negotiations or proceedings continuing with, or bids being made by, any other person.

**See flowchart and end note below:**

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<sup>i</sup> Overage is a **future payment to be made to the seller of land, by the buyer of land**. The payment is usually conditional on the occurrence of a specific event and is usually linked to the enhancement of value of the land, whereby the seller and purchaser each share in the enhanced value.

<sup>ii</sup> **Community Empowerment (Scotland) Act 2015 and The Asset Transfer Request (Procedure) (Scotland) Regulations 2016.**

According to Regulation 4(3) the National Park Authority can validate an asset transfer request when we have **all** the following information and documentation specified in regulations 3(1) and 3(2) and in section 79(4)(a) to (g) of the Act which is as follows: -

1. the request in writing and stating that it is an asset transfer request made under Part 5 of the Act - Regulation 3(1)
2. the request in writing and containing the name of the community transfer body and the contact address - Regulation 3(1)
3. the request **must** describe how the community transfer body proposes that the land to which the request relates is to be used - Regulation 3(2)
4. the request **must** outline how it is proposed that —
  - (i) the transfer of ownership of the land, is to be funded; and
  - (ii) the proposed use of the land is to be funded - Regulation 3(2)
5. the request **must** describe the level and nature of support for the asset transfer request from the community to which the community transfer body relates - Regulation 3(2)
6. if the request is made by a body which is not a community-controlled body, explain the basis on which the body is a community transfer body - Regulation 3(2)



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7. The request **must** be accompanied by a copy of the constitution of the community transfer body - Regulation 3(2)

8. The request **must** specify the land to which the request relates - section 79(4)(a)

9. The request **must** specify whether it is for ownership, lease or other rights - section 79(4)(b)

10. The request **must** specify the reasons for making the request - section 79(4)(c)

11. The request **must** specify the benefits which the community transfer body considers will arise if the authority were to agree to the request - section 79(4)(d)

12. The request **must** specify the price that the community transfer body would be prepared to pay for the transfer of ownership of the land - section 79(4)(e)

Section 79(4)(f) and (g) relate to leasing land or acquiring other rights.

