

# Vacant National Park Authority Asset in Luss

## Agenda Item 8

### National Park Authority Board Meeting

12 September 2022

Paper for decision

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### 1. Purpose

1.1. The purpose of this paper is to:

1.1.1. Provide an update to Members following the decision by Members, on 14th March 2022, approving that officers begin a process to instigate the disposal of the vacant Luss Visitor Centre; and

1.1.2. Seek approval from Members of the next recommended course of action.

### 2. Recommendation

2.1. It is recommended that Members:

2.1.1. Approve that officers proceed with the process to dispose of the vacant asset in Luss (being the former visitor centre and associated land) as included in Title Number DMB76038 (see **Appendix 1**); and

2.1.2. Approve that the decision to dispose on the open market or to another public body is delegated to the Chief Executive as Accountable Officer, provided all required Scottish Government approvals are in place.

- 2.1.3. There are statutory and Scottish Government processes for each route to disposal, that shall be followed. If the National Park Authority receives an Asset Transfer Request, the Board will be updated in advance of validation.

### **3. Contribution to National Park Partnership Plan and/or Our 5-year Plan**

- 3.1. The disposal of the vacant asset at Luss has the potential to support the priorities set out in our National Park Partnership Plan and Our 5-Year Plan. The following are particularly relevant:

#### NPPP Outcome 13: Community Empowerment

The Park's communities are supported to influence and deliver actions that improve their quality of life and place.

#### Our 5-Year Plan - Priority 2: Visitor Infrastructure

We will invest strategically and create a multiple year capital investment plan for our visitor sites and facilities to improve the quality of the visitor experience, create economic and public benefits, and ensure efficiencies in the costs of operating and maintaining our assets.

#### Our 5-Year Plan - Our Enablers: Finance

We will prioritise our budgets, pursue opportunities for reducing costs, evidence best value, maximise and leverage alternative sources of funding to help us deliver our strategic priorities.

### **4. Background**

- 4.1. The National Park Authority owns a former visitor centre in Luss (the "Property"), along with a large, grassed area referred to as the picnic area, and an "island" of land in the adjacent Argyll and Bute Council car park (the "Land"), both the Property and Land shown outlined in red on the plan forming **Appendix 1**.
- 4.2. The Land and Property were transferred to the National Park Authority via a Property Transfer Order by Argyll and Bute Council in 2004. Other assets managed by the National Park Authority in Luss comprise a public toilet block adjacent to the Argyll and Bute Council car park and Luss Pier, including the vacant shop.
- 4.3. The Property last operated as a café/visitor centre and has been vacant since 2018. It last functioned as a National Park Authority Visitor Centre in 2009/10. Public toilets were provided by the National Park Authority at the Property until 2014. Thereafter the public toilets were cleaned and maintained by the National Park Authority and stocked by the tenant. Costs and service levels relating to the provision of toilet facilities at the Property were an ongoing issue. Alternative toilet provision is available in Luss, via a separate, nearby, public toilet block which is managed by the National Park Authority.

- 4.4. The Property is classified as Use Class 10 of the Use Classes Order which means it is a 'non-residential institution' in terms of planning status. Any change of use would require planning permission.
- 4.5. In 2021, the National Park Authority constructed a dedicated car park with EV charging points and a bin store to serve the Property in preparation of its marketing.
- 4.6. The Land is maintained by the National Park Authority. The Land is mostly laid to grass and in the Local Development Plan is partly identified as Open Space, i.e. land used for informal recreation, which means new development is generally not supported.
- 4.7. In 2021, a marketing process was carried out, with input from the Community Council, to find a tenant for the Property, with the aim of securing a regular rental income along with an improved visitor experience and benefits for the community. This was initially successful, with Luss Estates Company being identified as the preferred bidder. Negotiations took place with the preferred bidder over the terms of the lease during the following months, however in February 2022, the preferred bidder withdrew from the process, citing uncertainty over the economic climate.
- 4.8. Following the withdrawal of the preferred bidder, the situation was reviewed by officers and the following three options were identified for the Property and the Land and were presented to Members in the Board's March meeting:
- a) Disposal;
  - b) Operational use by the National Park Authority (and re-purposing of the Property); and
  - c) Re-market the Property for a new tenant.
- 4.9. Considering the commercially sensitive information included in the March Board report, this item was considered in a publicly excluded part of the meeting. Further background information regarding each of these three options is however included in **Appendix 2**.
- 4.10. Disposal of the vacant asset (by asset transfer to an eligible community organisation or sale on the open market) was considered by officers, on balance, to be the preferred option.
- 4.11. On 14 March 2022, Members approved that officers begin a process to instigate the disposal of the vacant Property and Land, noting that a detailed review of the requirements and process would be undertaken.

It was acknowledged by officers and Members that the preferred route for disposal of the vacant asset would be to an eligible community organisation, provided that it could satisfy the various legislative requirements and demonstrate a viable enterprise to bring benefits to their community and visitors.

## 5. Considerations

- 5.1. Since the Board meeting on 14th March 2022, officers have:
  - 5.1.1. clarified the process for disposal of an asset, as set out in the Scottish Public Finance Manual, and engaged with Scottish Government sponsor team to confirm next steps;
  - 5.1.2. started investigating the process and marketing costs with property agents to obtain quotes and route to market which offers Best Value;
  - 5.1.3. discussed the proposal with the adjacent landowner, Argyll and Bute Council (“ABC”), to establish whether ABC may be interested in all or part of the Land and Property, especially the land which lies adjacent to and within ABC’s car park;
  - 5.1.4. explored the interest of local community groups and engaged with the Luss & Arden Community Council and Luss and Arden Community Development Trust (the “Trust”); and
  - 5.1.5. sought advice and guidance from the Community Ownership Support Service (“COSS”) and the Scottish Government Community Empowerment Team.
- 5.2. An Asset Transfer Request, under the Community Empowerment (Scotland) Act 2015 (the “Act”) for the Property and Land, was received from the Trust on 13th June 2022.
  - 5.2.1. Members should be aware that Part 5 of the Act introduced a right for eligible community bodies to make requests to a range of public authorities, for land or buildings they could make better use of. Such bodies can request transfer of ownership, lease, or any other rights they wish. Public authorities are expected to support community bodies in this endeavour and must transparently assess a request against a specified list of criteria laid out in the Act and agree to the request unless there are reasonable grounds for refusal. If a request is refused, a community group will have a right to appeal or to ask for a review of that decision.
  - 5.2.2. Scottish Government: Asset Transfer Guidance for Authorities further clarifies the process to be followed and Part 4 of this guidance is included at **Appendix 4**. There is a lot of advice and support available to community organisations, and officers have advised the Trust to obtain support from organisations such as COSS and the Scottish Land Fund.
  - 5.2.3. In this case, officers were unable to validate the Asset Transfer Request, due to the Trust not satisfying the legal requirements for community organisations seeking ownership. The Trust has been provided with detailed feedback and advice, including where specialist support is available.

The Trust has advised it is preparing to update its governance arrangements and is currently considering whether it will submit a further request.

- 5.2.4. In relation to planning status, it is noted that the Property falls under Use Class 10 of the Use Classes Order as a 'non-residential institution'. This means any change of use would require planning permission and this may have some impact on the interest. The Land is partly identified as Open Space – land used for informal recreation – in the Local Development Plan which therefore means new development is generally not supported.
- 5.2.5. The Property and Land were transferred to the National Park Authority from Argyll and Bute Council in 2004. Formal access and wayleave rights across the adjacent land – the Council's car park – to the public road were not included in the title. Council officers have indicated that these rights will be formally granted in favour of the National Park Authority, but the necessary legal documents (Deeds of Servitude) will require to be negotiated and signed. This requires to be concluded to maximise the opportunities for disposal of the Property and Land, though timescales from the Council have not been confirmed.
- 5.2.6. Given the planning status of the Land, as described at 4.2 above, the Land would ideally be transferred to ABC as adjoining landowner, rather than disposed of on the open market
- 5.2.7. Asset Disposal Process
- 5.3. The process note attached at **Appendix 3**, sets out the various requirements that the National Park Authority will need to comply with, when disposing of an asset as set out in the National Parks (Scotland) Act 2000, Scottish Public Finance Manual and the Community Empowerment (Scotland) Act 2015.
- 5.4. The key steps in the disposal process, will be as follows:
  - 5.4.1. National Park Authority to obtain consent from the Scottish Government sponsor team to proceed with the disposal.
  - 5.4.2. National Park Authority to prepare a Property Pack for submission to the Property Division of Scottish Government. The National Park Authority is obliged to take reasonable steps to maximise the value of the asset, to the greatest extent possible. For example, it will be beneficial to formalise access and wayleave rights as soon as possible, to provide confidence for any interested parties as well as maximising the value.
  - 5.4.3. Scottish Government Property Division to advertise the asset to other public authorities for a period of four (4) weeks, to establish whether any public authorities wish to purchase the property.

- 5.4.4. If no public authorities come forward, the National Park Authority may advertise the asset on the open market.
- 5.5. During the disposal process referred to in paragraph 6.2 above, if the National Park Authority receives and validates an Asset Transfer Request from a community transfer body, the Act provides that an authority will not be able to sell, lease or otherwise dispose of the asset it relates to, to anyone other than the community transfer body that made the request, until that process is completed. This means that the disposal process will effectively be put 'on hold' until the Asset Transfer Request has been decided and any reviews/appeals have taken place. Members should be aware, that National Park Authority may be obliged to consider leasing the Property and Land to an eligible community transfer body, in event that a valid and sufficient Asset Transfer Request is made. In that event the National Park Authority would remain the owner of the Property and Land.

## **6. Financial Position**

- 6.1. Within the draft Annual Accounts at 31st March 2022, to be presented to the Board on 12th September 2022, the Property has been re-classified as a surplus asset based on the Board decision of 14th March 2022 to begin the process to instigate the disposal of the Property.
- 6.2. The asset is no longer considered a specialised operational asset and the valuation basis changed from depreciated replacement cost to market value, resulting in a reduction in the carrying value of the asset in our Accounts.

## **7. Next Steps**

- 7.1. If Members approve the recommendation as set out above, the next step will be for the National Park Authority to confirm sponsor team approval to dispose of the asset. The process for asset disposal as set out in **Appendix 3** will then be followed. Simultaneously, officers will continue to liaise with the Trust, to ensure it is clear on the disposal process and timelines as well as to continue to signpost them to sources of community empowerment support and advice to inform their own consideration of a community led interest.

## **8. Appendices**

**Appendix 1** - Title Number DMB76038 – Title Plan

**Appendix 2** – Background information regarding options for Property and Land

**Appendix 3** – NPA Process Note - Disposal of asset

**Appendix 4** – Scottish Government: Guidance for Relevant Authorities – Part 4 – Summary of Asset Transfer under Community Empowerment (Scotland) Act 2015.

[\(https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/pages/4/\)](https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/pages/4/)



Officer's ID / Date

4780  
12/3/2014

TITLE NUMBER

**DMB76038**



ORDNANCE SURVEY  
NATIONAL GRID REFERENCE

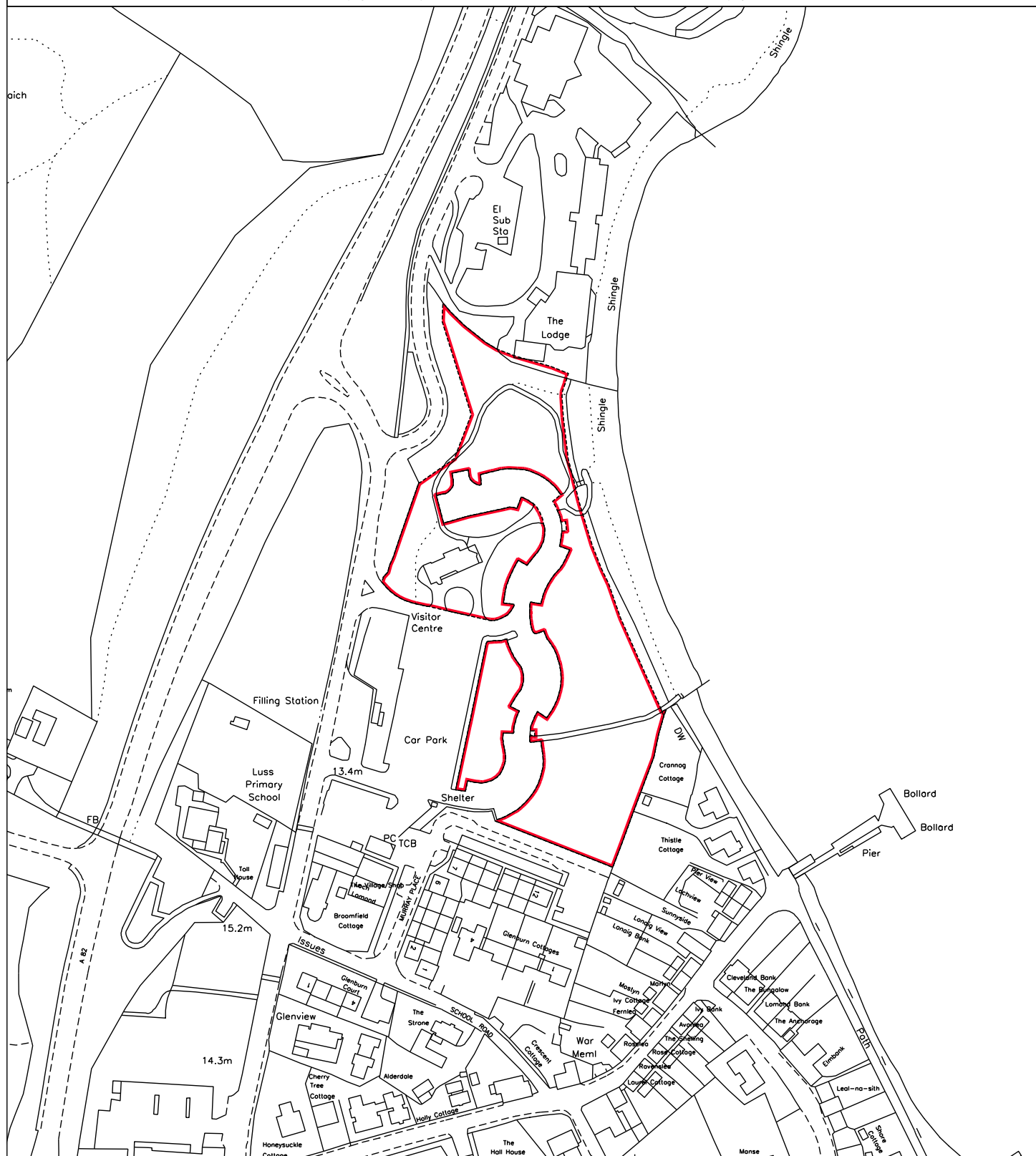
140m

**NS3592 NS3692 NS3593 NS3693**

### Survey Scale

1/2500

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# Options for Property and Land

## Appendix 2

### National Park Authority Board Meeting

12 September 2022

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#### 1. Background

In March 2022 the Board approved the officer recommendation to begin a process to instigate the disposal of the vacant Luss asset (the former visitor centre and associated land) based on an assessment of options, as summarised below.

#### 2. Disposal

The Property and Land, which the National Park Authority inherited, was assessed by officers as unsuitable for current operational needs and despite significant resource being deployed to secure positive uses that benefit Luss and a return from the asset for the Authority, for over four years this has not been achieved for a variety of reasons. Prior to this, following the closure of the National Park Visitor Centre in 2009 a commercial tenant leased the building until 2018 when the lease was ended by the Park Authority following a legal process. The tenancy management proved increasingly challenging during this period taking up significant staff time and organisational resources.



Throughout the National Park Authority's ownership and management of the Property and Land there has been strong interest from the community in its use and management in respect of benefit and value to Luss.

Officers assessed the benefits that disposal of the asset would have on reallocation of resources to priority work, such as the Climate and Nature work programmes, and the programme of work across the National Park Authority's estate. In particular, disposal would result in savings in terms of staff time and budget from the responsibilities and duties due to ownership of the building and associated land. It was acknowledged that it was not an asset developed by the Authority in response to current needs and organisational requirements and had been drawing on resources for a number of years with no real return or benefit.

The lease marketing process in 2021, which was carried out with significant input from the Community Council, demonstrated the likely rental income could be up to £20,000-£30,000 p.a. This provides a low financial return overall, when it is compared against revenue budget and operating costs.

Officers also considered the potential socio-economic and environmental benefits that disposal could offer the area, the local community and visitors. National policies and examples of best practice supported this view, including:

- Community Wealth Building: aiming to retain wealth and opportunity for the benefit of local people), and
- Community Empowerment: a process where people work together to make change happen in their communities by having more power and influence over what matters to them

Officers therefore concluded that disposal was the preferred option, and Members approved the recommendation to begin a process to instigate the disposal.

### **3. National Park Authority Operational Use (including re-purposing the Property)**

Some short and longer-term operational needs were identified which, with some necessary adjustments and associated costs, the Property could have potentially accommodated.

The only Luss-specific locational need identified was for welfare facilities for the new Luss Warden roles which are being delivered in partnership with Luss

Estates and Argyll and Bute Council. This would only have required a small part of the building and a more suitable facility was available to support this. Notwithstanding the various operational needs for additional office, welfare and storage spaces, it was not considered that the Property is of suitable design or location to justify the costs of reconfiguration for operational use and ongoing running costs.

A number of other purposes for the Property were considered by officers, including ideas such as a larger public toilet, a venue at which to host pop-up events and a mixed income generating option.

These ideas would require further staff resource and considerable budget to deliver. It was concluded by officers that, on balance, resources could be better used in relation to existing National Park Authority priorities and assets.

#### **4. Re-market the Property for a New Tenant**

This option was considered to be the most resource intensive and came with significant uncertainties given our unsuccessful experiences of securing and maintaining a suitable tenant over the last 10 years. Whilst the National Park Authority manages property and this inevitably includes some tenancy management, commercial property letting and management is not the organisation's main focus.

Based on advice from our property agent, in order to appeal to the widest range of tenants the Land was not included in the marketing for a sub-lease. This is because maintenance of the Land may be a burden and not attractive to a potential tenant. This re-marketing of the Property option is unlikely to cover the Land.

The prospect of investing more resources and staff time on a further tender process was weighed against the difficulties that had been experienced by the National Park Authority in relation to this asset over the years. It was concluded that the resources required to re-market the Property, would be better allocated to managing other assets.

The lease marketing process demonstrated the potential rental income could be up to £22,000 - £30,000 p.a, which is a low financial return overall when compared against the National Park Authority's revenue budget and operating costs. The only benefits of this option were that the process and materials for marketing were in place if it were agreed to try and find a new tenant.

The commercial property market has been unsettled and challenging for the previous couple of years but was predicted to stabilise around Easter 2022. An

updated statement from our property agents on the current market situation is as follows:-*'The market has been unsettled over the Covid period and it would appear we are entering into another uncertain period due to the potential stark economic climate caused by cost inflation. Rising fuel and food costs may lead to a noticeable decline in spendable income. Generally, the property market is more receptive to outright purchase by owner occupiers and investors rather than long leaseholds at the present time. All things being equal, we would anticipate good interest from occupier investors in the asset at Luss.'*

# Disposal of Property Process

## Appendix 3

### National Park Authority Board Meeting

12 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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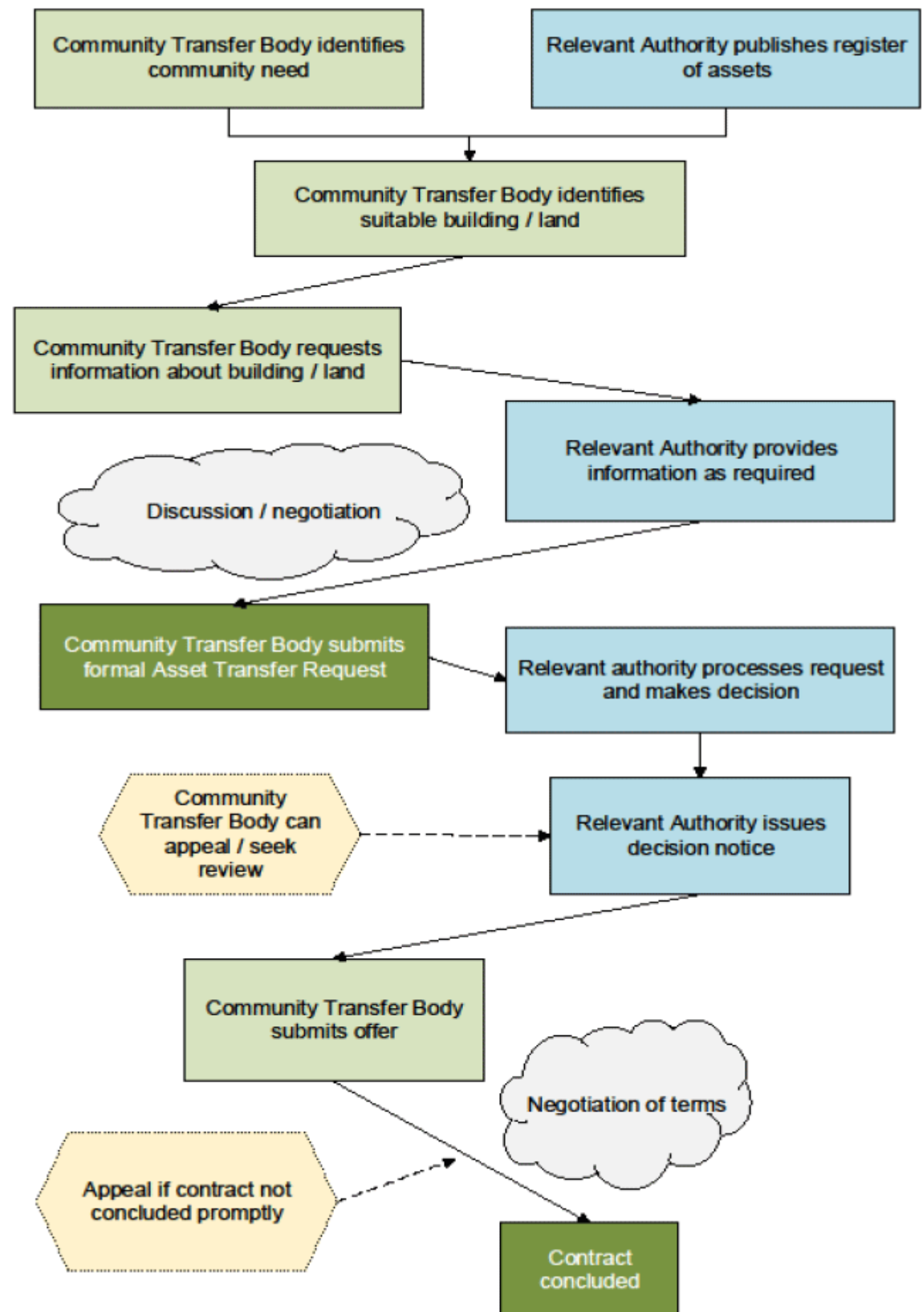
<sup>i</sup> Overage is a **future payment to be made to the seller of land, by the buyer of land**. The payment is usually conditional on the occurrence of a specific event and is usually linked to the enhancement of value of the land, whereby the seller and purchaser each share in the enhanced value.

<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)

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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)
  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.





# Scottish Government Guidance for Relevant Authorities - Part 4 - Summary of Asset Transfer under Community Empowerment Act

## Appendix 4

### National Park Authority Board Meeting

12 September 2022

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<https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/pages/4/>

#### 4. Summary of asset transfer under the Community Empowerment Act

- 4.1. Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to a relevant authority. [Chapter 5](#) of this guidance explains the requirements for being a community transfer body. A list of relevant authorities is in [chapter 6](#).
- 4.2. A request can be made in relation to any land which is owned or leased by the relevant authority. (In law, "land" includes buildings and any other structure on the land, such as a bridge, wall or pier.) [Chapter 7](#) explains the information that relevant authorities have to publish or provide on request about their property.
- 4.3. The community transfer body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose.
- 4.4. [Chapter 8](#) sets out the information that a community transfer body must include in its request. This includes the reason for making the request, the benefits of the proposals, and the price they are prepared to pay. [Chapters 11](#) and [12](#) give guidance on valuation of the property and deciding on a price.

- 4.5. There is a process for the relevant authority to acknowledge the request, notify others who may be interested, and allow them to make representations. This is explained in [chapter 9](#).
- 4.6. Where an asset transfer request has been considered and refused (including any review or appeal), the relevant authority does not have to accept another similar request for the same property if it is made within two years of the first. The relevant authority can accept a repeat request if it wishes, for example if it is from a genuinely different group or the proposal has been improved. More guidance on this point is provided from paragraph 9.5.
- 4.7. Once an asset transfer request has been made, the relevant authority is not allowed to transfer the property to anyone else until that request process has been completed, 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. This is explained in more detail from paragraph 9.22.
- 4.8. In deciding whether to agree to or refuse the request, the relevant authority must consider the following things:
- the reasons for the request,
  - any other information provided in support of the request
  - whether agreeing to the request would be likely to promote or improve
  - economic development
  - regeneration
  - public health
  - social wellbeing
  - environmental wellbeing, or
  - whether agreeing to the request would be likely to reduce socio-economic inequalities
  - any other benefits that might arise if the request were agreed to
  - how the request relates to the relevant authority's duties under Equalities legislation
  - any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request
- 4.9. The relevant authority must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the authority itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the authority, and any other matters they consider relevant. More detail is provided in [chapter 10](#).
- 4.10. [Chapters 11](#) to [14](#) provide some advice on how to obtain a valuation of the property, how to assess non-financial benefits, and on using conditions to protect any discount given, if required.
- 4.11. When the relevant authority has made its decision, it must issue a "decision notice" setting out its reasons for agreeing or refusing. Details of what must be included in a decision notice are given in [chapter 15](#).

4.12. If the relevant authority agrees to the request, there is a process to negotiate the final contract, which is explained in [chapter 16](#). This can allow time for the community body to confirm funding before the final transfer takes place.

4.13. There are various options for review or appeal if:

- the request is refused,
- no decision is given within the time allowed, or
- the community transfer body does not agree with conditions imposed by the relevant authority.

Details of the review and appeal processes are set out in [chapters 17](#) to [20](#).

4.14. At the end of each financial year, each relevant authority must publish a report on the number of requests it has received and the number which have been agreed, refused, appealed etc. It must also report on action it has taken to promote the use of asset transfer requests and to support community transfer bodies to make requests. Guidance is provided in [chapter 21](#).

Summary of Asset Transfer process below:



