

Midlothian Council Asset Transfer FAQs

1. I am interested in applying for an asset transfer of Midlothian Council owned land/premises, what are the first steps?

Read the Scottish Government Guidelines (see link below)

Check the site details on the asset transfer map.

Submit an expression of interest.

Contact the Communities and Lifelong Learning team.

https://www.midlothian.gov.uk/info/200284/your_community/487/community_asset_transfer

2. Is Community Asset Transfer only for taking over ownership?

No, you can also apply to lease the asset, and you may find it reassuring to try leasing the asset first to make sure your proposal for its use works, before moving to ownership later.

3. How long will the process take?

Every case will be different, depending on the nature of the application and the level of expertise within the group making the application. However, we estimate that from the original expression of interest, detailed assessment through to actual transfer of an asset could take around 18 months

4. What type of organisation can apply for an asset transfer?

Your organisation needs to be a community transfer body. This means it must be community controlled. A community-controlled body does not have to be incorporated (see FAQ 5 below), but it does have to have a written constitution which makes clear that members of a community (of place, or of common interest) are in the majority of membership and have control of the Board. Scottish Government guidance says that a community transfer body constitution must include :

- A definition of the community to which the body relates
- Provision that membership of the body is open to any member of that community
- Provision that the majority of the members of the body is to consist of members of that community
- Provision that the members of the body who consist of members of that community have control of the body
- A statement of the body's aims and purposes, including the promotion of a benefit for that community
- Provision that any surplus funds or assets of the body are to be applied for the benefit of that community

If you want to buy (apply for full transfer of ownership) a property through asset transfer you must be incorporated as a company and have a membership of at least 20 members, and either be a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company). You must also have a constitution which includes arrangements for what happens to the body's assets if it is wound up, to make sure they are passed on to another community or charitable organisation. The Scottish Government guidance gives wording for what a constitution needs to say about winding up as follows;

“If on the winding-up of the Company any Property remains after satisfaction of its debts and liabilities, such Property shall be given or transferred:

- *to another community transfer body or Charity approved by not less than 75% of the Members and OSCR; or*
- *to a community body (as defined by section 34 of the Land Reform (Scotland) Act 2003) which is also a Charity approved by not less than 75% of the Members, the Scottish Ministers; and OSCR;”*

5. What does incorporation mean?

Incorporation means that the charity, as a legal entity, can enter into contracts in its own right and the charity trustees do not have the same liability if something goes wrong. There are a number of ways to do this. You could consider forming a ‘limited company’ as well as seeking charitable status.

What is a limited company?

A limited company is a membership organisation formed and registered under the provisions of the Companies Acts. It is incorporated and benefits from limited liability for its members.

It’s a structure that can be chosen by voluntary sector organisations that employ staff, regularly enter into contracts, manage investments, and/or own property and other assets, because limited liability helps to minimise the threat of personal liability for the directors.

It is regulated by Companies House and subject to the Companies Acts and other legislation. If a limited company is charitable then it will be subject to charity law and regulated by OSCR as well.

A limited company has guarantors rather than shareholders, so it is suitable for many voluntary organisations. The members agree to pay a fixed amount known as a guarantee (usually £1) towards the company’s debts if it goes into liquidation.

A limited company is a clear legal entity, separate from the persons involved in it – and can hold property, enter into leases and other contracts, employ people, etc., in its own name. It doesn’t matter if the directors change because it is the company and not the directors that hold title to land, enter into contracts, etc., but changes must be notified to Companies House.

A limited company is generally regarded by funding bodies and public agencies as a more ‘stable’ structure than a voluntary association. Although the company format does provide a very substantial level of protection against personal liability, the limit on liability does not extend to any liability which a person might incur in their capacity as director of the company, as distinct from their capacity as a member. There are a range of legal duties imposed on directors of a limited company which could still give rise to personal liability. Broadly speaking, it is extremely unlikely that a director would find themselves personally liable as a matter of practice, unless they acted in a manner which was negligent or improper.

Next, consider forming a Scottish Charitable Incorporated Organisation (SCIO)

What is a SCIO?

Many organisations are now investigating becoming a Scottish Charitable Incorporated Organisation (SCIO) rather than a charitable company limited by guarantee. This offers all of the same advantages of being a company limited by guarantee with the added benefit of only reporting to one regulator (OSCR).

There are two kinds of SCIO. These are a one tier SCIO where there are trustees who appoint new trustees and do not have to account to a membership, and a two tier SCIO where trustees are elected by the membership to have decision-making powers and are accountable to the members. To satisfy the requirement to be a “community controlled body, if you choose to be a SCIO, you will need to be a two tier SCIO with a membership of at least 20 members.

You could alternatively consider forming a Community Benefit society (BenCom)

What is a BenCom?

A BenCom is a society registered with the Financial Conduct Authority, owned by the members. The society is established for the benefit of the community and not of its members, who do not need to be (though they can be) consumers or workers. Each member has one vote at the AGM, even if they have more than one share.

Unlike with a company, the shares are not transferable and can only ever be refunded at par (usually £1). The share can never be worth more than what was paid for them. A BenCom must be established with a social or environmental objective, have a non-profit constitution and an asset lock.

An asset lock is a constitutional device that prevents the distribution of residual assets to members. The purpose of an asset lock is to ensure that the public benefit or community benefit of any retained surplus or residual value is cannot be appropriated for private benefit of members. Asset locks are a defining feature of community shares, because they remove the scope for members to make gains resulting from the dissolution, disposal or conversion of the society into a company

Advantages

- A BenCom must have a non-profit aim as its main objective, and aims should be consistent with the 6 Co-operative principles.
 - Open and Voluntary Membership.
 - Democratic Member Control.
 - Members' Economic Participation.
 - Autonomy and Independence.
 - Education, Training, and Information.
 - Cooperation among Cooperatives.
 - Concern for Community.

A BenCom has advantages

- Limited liability like a company
- High audit threshold (£ 90,000 income in a year), so less likely to need a registered auditor

- Exemption from the Financial Services and Markets Act 2000, so can advertise for loan or share investment from the public (e.g. as in a Community Share Offer)
- Investment tax reliefs may be available and favourable tax treatment of interest payments
- May be eligible for some VAT exemptions such as those available for providers of education and culture
- Discretionary Rates Relief is available (up 80% rates reduction, at the discretion of the rating valuation body)

It also has disadvantages

- BenComs are not listed at Companies House. This can create problems for credit reference agencies and it is often not possible to get a decent credit rating.
- More expensive to create than a limited company
- If income is more than £90,000 in the previous year, then the accounts must be signed off by a “reporting accountant” who must be a registered auditor.

5. What is meant by membership of the organisation?

There cannot be an assumption that a paid service user is necessarily a member of the organisation, this would need to be made clear on the application form and members need to understand their responsibilities and be made aware of the organisation’s constitution. Also, need to consider wider access to membership and appropriate application process. The number of members should be included in your application to demonstrate the strength of your organisation.

6. What constitutes adequate consultation?

The assessment group are looking for evidence that a wide population of the community has been consulted on the process. This could be through use of electronic survey questionnaires, street surveys with local residents, presentations at community council meetings, open days, use of social media.

7. What parks are covered by a Fields in Trust agreement and what does this mean?

Fields in Trust champions and supports parks and green spaces by protecting them for people to enjoy in perpetuity. This means that if you apply for CAT of an asset in a park protected by Fields in Trust we will need to ask their permission, and you may have to pay legal fees for all parties involved.

The following parks in Midlothian are covered by a Fields in Trust agreement:

- Arniston Park
- Bonnyrigg King George V Park
- Cowden Park
- Danderhall Park.
- Ironmills Park
- Loanhead King George V Park
- Loanhead Memorial Park
- Mayfield Park
- Newtongrange Park
- Penicuik Playing Fields
- Poltonhall Sports Complex
- Rosewell Park

St Clair Park, Roslin
Vogrie Country Park

8. Who covers the legal costs relating to asset transactions?

Community Transfer Bodies are expected to cover all their costs during the process, this will include all costs including the council's legal costs, which will be kept to the minimum at a capped fee of £1,000

9. What demographic information/data is available to support my application?

The Midlothian Profile:

https://www.midlothian.gov.uk/info/200284/your_community/214/community_planning_in_midlothian

The Midlothian Profile is a compilation of statistical and other research information that has been previously published by a range of statutory and voluntary sector agencies. It also states the sources of the information so that you can check if more up to date data has been published.

The Scottish Index of Multiple Deprivation 2016 provides information at datazone and postcode level:

<https://simd.scot/2016/#/simd2016/BTTTTT/9/-4.0000/55.9000/>

Data is also available in Neighbourhood Profiles:

https://www.midlothian.gov.uk/downloads/download/33/neighbourhood_profiles

10. Can I apply for funding before a decision has been made?

A CTB who applies for funding before a decision has been made does so at their own risk and must take into consideration the timescales for a decision being made. The CAT process will not be determined by the timetable of external funders. Applicants should be aware that funders will set deadlines for commencement and completion of grant aid

11. Can I appeal the decision before it is presented to the CAT Committee?

No appeals will be considered before the recommendations have gone to the CAT Committee. If a CTB is not happy with the decision then they can follow the appeal process.

12. Planning consent

Agreement to an asset transfer does not imply agreement to planning permission.

If a CTB has a proposal for a property which may involve a change of use or redevelopment then it should contact the Council's planning service for advice as to whether or not planning permission will be required:

Planning Helpdesk

Email: development.management@midlothian.gov.uk

Telephone: 0131 271 3302

Fairfield House

8 Lothian Road

Dalkeith

EH22 3AA

In the event that planning permission is required then any decision to transfer the asset would be subject to the grant of the permission.

13. What happens if I am applying for a site that has public rights of access e.g. a park?

The council will seek to protect public rights of access.

14. What does it mean if a site has been identified on the Strategic Housing Investment Plan (SHIP)?

If a site is identified on the SHIP:

https://www.midlothian.gov.uk/downloads/download/597/strategic_housing_investment_plans_ship

Then it has been identified for future housing development. In this case we would suggest you contact: 0131 271 3713 to make an initial enquiry.

15. If I apply for an asset transfer of a building what can I expect to be included.

Moveable assets including equipment and furniture will not be included unless negotiated.

16. If I am applying for a building how do I arrange access?

Access to premises must be agreed by Midlothian Council to comply with health and safety and security. A mutually agreeable time will be arranged to assist with access to the building. Initial contact should be made by contacting Communities and Lifelong Learning, 0131 271 3713.

17. What information is available about the assets?

The council will provide condition reports if they are available, running cost information, maintenance logs, income from lets etc. This can all be requested by contacting Communities and Lifelong Learning.

18. What happens if there is more than one applicant?

If there is more than one community transfer body interested in the same land, you should try to work together to agree a single request. However, sometimes that is not practical. A community transfer body can put in an asset transfer request for any land, at any time, even if there is already a request in place from another body. You do not have to wait until an earlier request has been completed before submitting yours. All requests must be processed in accordance with the timescales in the legislation.

19. What happens if there are existing user groups in the building?

The community transfer body putting in the asset transfer request is expected to consult and work with the other users of the building to ensure they are fully aware of the proposal and how it will impact them.

20. How is my application scored?

The application will be scored on how well the organisation's proposal meets the Single Midlothian Plan objectives and the value of the site in its current use, alternative use and the proposed use. The level of community benefits and the sustainability of the project will also be taken into consideration.

The Single Midlothian Plan is available here:

https://www.midlothian.gov.uk/info/200284/your_community/214/community_planning_in_midlothian/2

21. Is a Community Transfer Body expected to implement the Council Fees and Charges Policy if it is successful in its asset transfer?

No, but a CTB would be expected to benchmark their charges policy against other similar organisations.

22. Am I guaranteed the transfer (ownership or lease) at a nominal value?

No, this will be negotiated as part of the assessment as the Council has a legal duty to achieve best value. These statutory duties are:

- to make arrangements to secure continuous improvement in performance (while maintaining an appropriate balance between quality and cost)
- to have regard to economy, efficiency, effectiveness, the equal opportunities requirements and to contribute to the achievement of sustainable development;
- to achieve break-even in trading accounts
- to observe proper accounting practices
- to make arrangements for the reporting to the public of the outcome of the performance of functions.
- making the best use of public resources, including employees, contractual agreements, ICT, land and property and financial resources - keeping a considered and appropriate balance between cost, quality and price;

These are considerations the Council must take account of alongside the community asset transfer legislation. Therefore, the business case you make needs to show why there is enough public benefit to a community to justify transferring a publicly owned asset at less than market value, whether this is through a lower cost lease, or lower than market price transfer of ownership.

23. What support is available to support me through the process?

- Independent Advice is available from Midlothian Voluntary Action:
<http://www.mvacvs.org/>
- Check out the Scottish Government guidance:
<http://www.gov.scot/Publications/2017/01/2888/downloads>
- Contact the Communities and Lifelong Learning team, 0131 271 3713