**Response 023**

**Response to Ownerless Property Transfer Scheme (OPTS) Consultation paper**

**Q1. Do you agree that Highlands and Islands Enterprise is the appropriate body to provide advice to the KLTR on potentially suitable community groups? If not, who would you suggest and why?**

No. Whilst the team at Highlands and Islands Enterprise have substantial experience and resource, they do not have the necessary local relationships in place. National bodies are not best placed to understand the complexities and interdependencies of local community groups, or the long local narratives relating to property at a local level. Local authorities are better placed to provide the required local knowledge and advice.

Any proposals under the OPTS should align with the current processes in place through the Community Empowerment (Scotland) Act 2015. This would therefore benefit from the existing working relationships across Council Services including Planning, Communities, Business, Regeneration, Roads and Grounds Maintenance teams. The existing cross-Council working in relation to Community Asset Transfer (CAT) processes should be optimised.

Local authorities should be offered first refusal of ownerless assets within their administrative boundary to assess local needs in context of Local Development Plans. Where the assets are not required by the local authority, use should be made of existing approaches and processes like local authorities’ published lists of surplus property, local networks and community partnerships and Community Asset Transfer. However, it would not be for local authorities to sell property which was ownerless or the burden of upkeep and associated responsibilities would be seen to transfer to them

The sites in question often carry significant responsibilities and requirements for ongoing maintenance, potentially for an indefinite period of time. The proposal does not identify funding for the preparatory legal and technical work for the OPTS process or ongoing funding for community groups to develop and implement proposals. This leaves the Public and Local Authorities exposed to the risks associated with potentially dilapidating buildings.

It is noted that the OPTS process does not intend to place the KLTR in conflict with local decision making or effectively acting as a route of appeal. Local authorities do not have the time, statutory responsibility or resources to resolve competing interests over ownerless assets. They cannot be both the key administrator and the appeals body. Consideration should be given for the mechanism for appeal for example via an arm’s length, neutral advisory body to the process.

It would be beneficial if the KLTR recorded and published a list of ownerless property and any properties disclaimed across local authority areas. This would help to inform and support the OPTS process.

**Q2. Do you agree that a valuation and other reports undertaken by the KLTR are sufficiently independent to avoid duplication of cost for all involved in the OPTS? If not, why not?**

No, this method of valuation does not take account of the actual Market Value. The cost recovery value is defined as the total of the costs incurred by the KLTR in relation to the asset prior to the transfer date. To ensure compliance with our Best Value obligations, North Ayrshire Council would still require an independent valuation to be completed at Market Value to ensure that the Cost Recovery Valuer does not exceed the Market Value.

It is noted that where the criteria for the OPTS have been met a transfer may be made at nominal value, however the KLTR’s costs may in some cases exceed the market value of the property. North Ayrshire Council would therefore need to be satisfied as to both the market value and the costs incurred by the KLTR in order to ensure that proceeding with the acquisition accorded.

**Q3. Do you think three months for the local authority to decide whether or not it wishes to take ownership of an ownerless property is reasonable? If not, how long would you suggest and why?**

No, 5 months potentially would be more appropriate. The acquisition of land would have to be considered and approved by Cabinet and 3 months is insufficient to obtain the necessary permissions.

**Q4. Do you agree that the above process is reasonable and workable? If not, how would you improve the process?**

Yes, however sufficient scope and flexibility for review and amendment of any implemented process will be required.

**Q5. Do you agree that the property transfer value for OPTS should be at “nominal value” as described above? If not, what value do you think should apply and why?**

We agree that it would be beneficial for communities to have the opportunity to transfer land at a nominal value directly from KLTR.

A potential challenge is around the transfer value where there is not a Public Authority or Local Authority supportive and the mechanics of demonstrating best value. Further guidance would require to be issued to address these circumstances.

**Q6. Do you think the KLTR should place conditions on the transfer of OPTS property to ensure the intended benefits to local communities are delivered?**

Where property is transferred to a community body it may be appropriate to place conditions on the transfer to ensure that the intended benefits are delivered. The Scheme needs to be clear on the mechanisms for this for example using conditions similar to those already used in the Community Asset Transfer process or the planning system to regulate the use of a property. This could include entering into a clawback agreement whereby if the community group or a subsequent owner sells the property onward for a profit, then a share of that profit would be payable to the KLTR. This could be achieved by securing a standard security against the property. Such conditions are already used in other situations and should not deter a community group from acquiring a property for community benefit.

North Ayrshire Council would not expect conditions to be necessary where property is transferred to a local authority, given that there is democratic oversight of the local authority’s decisions. Once property has been transferred to a local authority it is to be expected that the property shall be used to benefit the local community. It is not envisaged that oversight by the KLTR of the local authority should be required to achieve this.

**Q7. Do you think a recognised public authority should retain a property to allow an appropriately constituted community body to raise the necessary funds, etc.? If so, should a timescale be set for raising the funds?**

It is noted that a mechanism to facilitate additional time for community organisations to raise funding would be beneficial as this has proved a challenge to date. However, the proposed solution of transferring ownership of the property to a recognised public authority (or indeed to a local authority) would create several challenges.

The proposal to transfer property to a different recognised public authority would result in additional legal costs associated with the transfer. The receiving authority would acquire liability for any costs associated with the property while the community body is raising funds. It is not clear from the consultation paper how these costs would be financed given the restricted resources available to the KLTR and the constraints on public authority budgets. Some form of indemnity or funding would be required to cover any costs associated with the property during this time. If the community body failed to raise the required funds or if the proposal fell through for any other reason, then the public authority may continue to be responsible for any liabilities associated with the property. It may not be possible for the public authority to identify another interested purchaser. A mechanism whereby the public authority could transfer the property back to the KLTR would be required to address this.

Given the cost implications of each transfer of property North Ayrshire Council considers that a more appropriate solution to the disclaimer time limit would be for a legislative amendment to extend the time limit for the KLTR disclaiming property in certain circumstances. The KLTR is the only body we are aware of with the power to disclaim an interest in property and it would therefore seem appropriate that the KLTR be given additional powers to enable it to carry out the function of holding property for long enough to facilitate the OPTS.

**Q8. Do you think the OPTS should apply to all properties as described or should it be restricted to certain types of properties? If the latter, which types?**

Yes – all types of land and properties should apply. Working through Local Authorities means that a strategic and partnership approach can support the best outcome for local communities. The inclusion of an ownerless town centre property, for example, can be incorporated into Strategic Housing Investment Plans while still offering Housing Associations the opportunities to take ownership for conversion to social housing. Each opportunity to bring back an ownerless asset into purposeful community use is individual and needs to be taken forward within a consistent local approach, bringing together local partnerships to find the right solution.

**Q9. Do you agree that the above proposals provide an opportunity for ensuring community interests are considered as early as possible? If not, why not?**

Working through Local Authorities is the best way of ensuring that communities are made aware of the opportunities regarding local ownerless assets. This utilises the existing networks for communication, such as Community Councils, Locality Partnerships, community organisations and local social media.

**Q10. Do you agree that the above criteria should apply to the OPTS? If not, what criteria do you think should or should not apply and why?**

Yes, however it would also be beneficial to consider the nature of the community organisation for example: when it was established; if it is constituted; its level of membership; and its purpose and main objectives to ensure that it aligns with the purpose of the redevelopment of the property. It would also be beneficial to establish the extent of interest in the asset such as the proportion of the asset that the organisation wish to acquire. Consideration should also be given to whether or not there are any other organisations interested in ownership or affected by its ownership. The extent and nature of the support for the request from the local community should be considered. Restrictions on or the impact of development of the asset should also be considered for example for any environmental or biodiversity implications.

**Q11. Do you agree that the OPTS should ensure the wider public interest is considered before private interest? If not, why not?**

Advice should be taken from the local authority on competing private and public interests. Local authorities are best placed to advise on resolving the issue of ownerless assets within their area boundary that can best contribute to improving social, environmental and economic wellbeing locally. This depends on an assessment of local needs in context of community planning, locality planning, local place plans and the Local Development Plan. Resolving competing interests in assets is difficult and time-consuming and clear processes, with a right of appeal need to be put in place, along with timescales and funding for the full cost-recovery of officer time for this new area of responsibility.

**Q12. Do you think the public interest is defined reasonably for the purposes of the OPTS? If not, how should it be defined?**

The current proposals do not contain a definition of public interest. Given the KLTR’s desire to take a high level approach, The North Ayrshire Council would expect there to be limited and clearly defined circumstances in which the KLTR would substitute its own view of the public interest for that of the relevant local authority. The KLTR should only substitute its own view of what is in the public interest in very limited circumstances. It may be preferable for the KLTR to publicise guidelines of what would notbe considered to be in the public interest, given the emphasis on the importance of local knowledge.

The criteria used by the KLTR in assessing whether a proposal is in the public interest should be sufficiently clear to allow local authorities to anticipate with reasonable certainty whether their assessment of the public interest for their local area in any given case will be accepted by the KLTR.

Consideration must also be given to the approach to be taken in circumstances where only part of a title could be utilised in the public interest. It is our understanding that the KLTR’s default position is that a title should only be transferred in its entirety. North Ayrshire Council has experienced situations in the past where land could not be utilised in the public interest because it formed part of a wider title which was associated with significant liabilities which the local authority could not take on. Due to KLTR’s policies, this resulted in the entire expanse of land remaining ownerless and the potential public benefit was wasted. To truly facilitate the transfer of land in the public interest it is submitted that a more flexible approach requires to be taken by the KLTR to disposing of part of a larger title.

**Q13: Do you agree that the KLTR should take a high-level approach to sustainable development issues, as above, in order to allow further scrutiny and transparency at local level? If not, why not?**

Agree. The KLTR’s role in sustainable development should be high level and the local authority process will scrutinise economic, social and environmental benefits for the longer term. This will be aligned to Scottish Government’s sustainable development goals as Planning, Regeneration, Connected Communities and Business Support and Development teams are all working within that overarching context.

**Q14: Do you consider there are specific circumstances in which the KLTR should never deal with dissolved company property when a company remains within its 6-year restoration window?**

As there is no intention of passing on the risk under s1034 of the Companies Act to the disponee, The North Ayrshire Council considers that this would be a matter for the KLTR.

**Q15. In addition to the above, do think any other financial controls or safeguards are required? If so, please describe how and why.**

Information about the KLTR’s fees should be provided upfront to enable the local authority to assess whether the price to be paid is equal to or less than the market value of the property, to allow compliance with Best Value obligations.

The aspiration of KLTR to have a ‘light touch’ approach around monitoring is understood however a lack of ‘penalty’ in some areas of the Community Empowerment Act has led to poor outcomes for communities and local authorities alike. The use of clawback conditions or similar could offer a good approach to ensure successful delivery.

**Q16. Do you think the KLTR’s approach to liability and risk is acceptable? If not, how could this be improved?**

The liability and potential risks of the individual properties requires to be fully understood alongside any revenue obligations to inform the decision making process. Acquiring property even if at a low or nil cost can immediately present significant liability and direct costs in terms of making safe or other actions. It is noted that long term unoccupied land and properties in disrepair present an uninsured risk to the responsible party.

**Q17. Are there any other ways you think the OPTS may be monitored? If so, in what way?**

The monitoring role for local authorities and communities to raise concerns should be addressed by the working group and contribute to KLTR’s monitoring. There may be a need to think about how concerns are raised directly with KLTR, in the event of a stakeholder working group failing to be representative of local views.

**Q18. Do you agree that penalties for non-delivery of aspirations are unnecessary, as above, and that local accountability should be sufficient to ensure delivery of agreed aspirations?**

Local government enforcement resources are stretched at present. If local accountability is the only means of ensuring delivery, these need to be financially supported to a proportionate level.

**Q19. Which of the further measures above do you think should be applied to the OPTS?**

Adding further measures may prove limiting and disincentivise the process, reducing the potential to achieve the overall objective of bringing ownerless assets back into productive roles in communities. The interest in Community Asset Transfer has demonstrated an appetite for a wide variety of assets. The scale of the projects varies, so setting an arbitrary cap on value would be counterproductive. The key for community ownership is securing sufficient capital funding, without annual spending restrictions, which makes aligning the multiple funding packages required for larger projects challenging.

**Q20. Do you think properties within the 6-year restoration window should be excluded from OPTS or do you agree that a criteria-based policy approach, as described above, is the best way of addressing this?**

A balance requires to be achieved between frustrating the overall objective and managing risk, so support and monitoring mechanisms need to be in place to do that, rather than a blanket exclusion.

**Q21. Are there any other measures you think should be taken to safeguard those involved in the OPTS process?**

The checks and balances within a healthy democracy mean that a fair and transparent right of appeal process should be put in place. Local authorities do not have the time, statutory responsibility or resources to resolve competing interests over ownerless assets. They cannot be both the key administrator and the appeals body. Careful consideration needs to be given to the timescales for the processes so that assets do not lie neglected or to hold up the use of time-critical funding. Public consultation should form an obligatory part of the initial decision by a local authority or community group to take on ownership of an asset and the appeals process.

**Q22. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?**

No

**Q23. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?**

No

**Q24. Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?**

No

**Q25. Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?**

No

**Q26. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?**

No

**Q27. Are you aware of any potentially unacceptable costs and burdens that you think may arise as a result of the proposals within this consultation?**

Where property is to be transferred on a costs recovery basis, we are concerned that it may not be possible for a local authority to accurately anticipate at the outset of a transaction what these costs are likely to be. Without this information upfront it would be impossible to assess whether proceeding with the acquisition adheres to Best Value obligations, as the costs may exceed the value of the property, particularly if there are significant liabilities associated with the property and/or a significant level of professional input is required. This risk may be mitigated by the KLTR confirming a fixed fee for a transaction at the outset of the process.

There could be significant resource implications for local authorities in meeting their proposed obligations under the Scheme. While local authorities are not obliged to acquire land in their area, they are required to consider community proposals for land use and reach a decision as to whether to support any of the proposals. This function could result in a significant administrative and potentially financial burden. Resources would require to be invested in developing robust decision-making procedures to limit a local authority’s potential exposure to judicial review proceedings if a community body disagrees with the decision made.

Before a property can be considered for the OPTS it is necessary for the notifying person to gather and provide evidence that a property is ownerless. There can be significant costs associated with collating this evidence. Based on our understand of the proposals, a local authority or community body may invest resources in collating such evidence with a view to acquiring property through the OPTS only for the property to be acquired by another public body, or for their proposal to be refused by the KLTR as not meeting the relevant criteria. Consideration should be given to how these risks can be minimised, for example by facilitating early communication between the notifying party and the public bodies who will be given the first right of refusal, and by developing an advance authorisation process to reduce the risk of outlays being incurred only for a proposal to be rejected by the KLTR.

**Q28. Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?**

No