



Ownerless Property Transfer Scheme (OPTS)

Guidance for
prospective applicants

Foreword

As Chief Executive of The King's and Lord Treasurer's Remembrancer (KLTR), I am delighted that the Ownerless Property Transfer Scheme (OPTS) is now open for applications from those who can bring ownerless properties back into productive use. Offering properties at a nominal value to eligible bodies who make a convincing case for sustainable property that is in the public interest, the Scheme is a bold and innovative addition to the existing community ownership landscape in Scotland, helping to further Scottish Government aims.

Where they might once have been a blight on the lives of those living locally, properties transferred under the OPTS will now be used for economically, socially and environmentally sustainable purposes, benefitting the public and local communities for generations to come. The OPTS process promotes inclusivity and is accessible to all who can demonstrate that their proposed use of OPTS property is sustainable, in the public interest and will be successful in realising local aspirations in the longer term.

As well as providing invaluable opportunities for public and community ownership, the OPTS's collaborative nature will help forge new and fruitful relationships between public bodies, local authorities and third sector organisations. As public bodies and representative groups continue to work together, new discussions on the best use of land and buildings for the public interest will spark further collaborations and long-term engagement on the needs of local people.

Designed in collaboration with stakeholders and partners from the fields of land reform, land management, local government and community empowerment, the OPTS heralds a new phase in the work of the KLTR and a decisive new approach to

ownerless property. As the Scheme grows and develops, KLTR officials will continue to drive forward the conversation, forming new networks and seeking to address the challenges that lead to property becoming ownerless. We will keep this guidance under review and will issue any further guidance as necessary in light of experience gained.

Thank you for your interest in the Scheme and I look forward to seeing the OPTS help transform local communities across Scotland in a wide variety of ways.

Robert Sandeman

Robert Sandeman
Chief Executive Officer

1 March 2024



"I am delighted that the Ownerless Property Transfer Scheme (OPTS) is now open for applications from those who can bring ownerless properties back into productive use"



1	Introduction	4	5	Transferring OPTS property	19
2	The OPTS process	5	5.1	Concluding the transfer	19
	2.1 Initial information required	5	5.2	Transfer value	19
	2.2 Overview of the OPTS process	6	5.3	Conditions of transfer - clawback provisions	19
	2.3 The OPTS "fast-track" process	7	6	Disclaimers and deadlines	21
	2.4 Assessing your application	8	7	Other options for applicants	22
	2.5 Public interest	9	7.1	Vesting order	22
	2.6 Sustainable development	10	7.2	Prescriptive claim	22
	2.7 Valuation	11	7.3	Purchase at auction	22
	2.8 Excluded property	11	7.4	Compulsory purchase	22
	2.9 Can part of the property be transferred?	12	7.5	Other options for property acquisition (See Annex B – other community acquisition vehicles)	22
	2.10 Standard securities and burdens	12	8	Financial issues: Subsidy Control, SPFM and Audit Scotland	23
	2.11 Withdrawal from the OPTS process	12	8.1	Subsidy Control	23
3	Additional Guidance for Public Bodies and Local Authorities	13	8.2	Audit Scotland	23
	3.1 Key steps following OPTS notification	13	9	Dissolved Companies and Restoration	24
	3.2 Supporting community groups interested in acquiring OPTS property	13	10	Liability and risk	24
	3.3 Can a public body or local authority dispose of OPTS property following transfer from the KLTR?	14	11	Fraud measures	25
	3.4 How else can public bodies and local authorities help with the OPTS process?	14	12	OPTS Advisory Panel	25
	3.5 Should public bodies and local authorities inform the KLTR of ownerless properties in their area?	14	13	Complaints Procedure	26
	3.6 OPTS holding agents	14	14	Privacy Notice	26
4	Additional Guidance for Community Bodies	15	Annex A	– OPTS process Flowchart	27
	4.1 Key steps following OPTS notification	15	Annex B	– Annex B - OPTS and other community acquisition vehicles	29
	4.2 What types of community organisations can apply?	16			
	4.3 Defining your community	17			
	4.4 Demonstrating community support	18			

1. Introduction

This guidance is for public bodies, local authorities and appropriately constituted community bodies (the “applicant”) who have an interest in acquiring property through the KLTR’s Ownerless Property Transfer Scheme (OPTS). The Scheme applies to ownerless property up to a maximum value of £500,000¹ that does not fall into an excluded category (see section 2.8 below).

The KLTR is the Crown’s representative in Scotland with authority to deal with ownerless property, referred to as “*bona vacantia*” (BV). The KLTR’s role is based on the common law principle that ownerless property may be dealt with by the Crown. If an asset becomes ownerless, the Crown can choose to deal with it if it wishes to – but it is not obliged to and may disclaim a property, the effect of which is to remove the Crown’s interest.

We encounter a wide range of BV property, normally through referrals by Scottish public bodies, local authorities, representative bodies (e.g. community groups) and individuals interested in acquiring it or, where the property was last owned by a dissolved UK-registered company, by a person connected with that company who is seeking to reacquire it. The main type of properties referred to us are those last owned by dissolved companies.

Not all abandoned, neglected or detrimental land or property (ANDL) is BV and not all BV property is ANDL. Applicants will need to provide evidence that the property they are interested in is BV (for more details, see section 2.1). Established legislative routes to community ownership of abandoned and/or neglected land may be more appropriate for ANDL properties that are not ownerless. These are not the responsibility of the KLTR and the Scottish Government’s Community Land Team should be

able to assist - see Community right to buy abandoned, neglected or detrimental land: full guidance - [gov.scot](http://www.gov.scot) (www.gov.scot).

The OPTS process is the responsibility of the KLTR, supported by the KLTR department, and involves considering options for ownerless property in the public interest. In undertaking the OPTS process, the KLTR does not take possession, control or occupation of a BV property. The KLTR does not retain keys for BV properties and cannot facilitate entry to buildings or authorise any tests to be carried out, such as environmental and contamination surveys.

This guidance is intended to assist those involved in the OPTS process. Those considering making an application under the OPTS should seek their own independent legal advice and undertake their own due diligence. A number of organisations provide advice and support to community groups acquiring property and their details can be found on the KLTR website.

This guidance is subject to review from time to time. If you are unsure whether you have the latest version available, or if you have any comments on the guidance itself, please contact the OPTS Casework Team by e-mailing opts@kltr.gov.uk.



Community garden
Photo: Shutterstock

¹ This figure has been agreed with the Scottish Government

2. The OPTS process – all applicants

This section provides guidance on the OPTS process and is therefore relevant for all applicants – public bodies, local authorities and appropriately constituted community bodies. Please also see the flowcharts at Annex A. Additional guidance is provided at sections 3 (for public bodies and local authorities) and 4 (for communities).

2.1 Overview of the OPTS process

The OPTS process flowchart at Annex A can be summarised in 5 easy steps:

1. Establishing BV (ownerless) status;
2. “Trawl” advertising BV property to public bodies, the relevant local authority and the community co-ordinator (unless a “fast-track” application is received – see section 2.3 below);
3. Assessment of application by the OPTS Team;
 - 3a. If required, assessment of application by the OPTS Advisory Panel;
4. KLTR decision letter issued; and
5. If successful, OPTS property is conveyed to applicant.

Some property information, such as the title number, date of registration and a plan or the title area, can be viewed free of charge on the Registers of Scotland’s (RoS) Land Information System called [ScotLiS](#). You can search by postcode or title number. Charges apply to other information and documents, such as a title report, ownership details, extracts from the

Register, etc. Property not yet entered in the Land Register should be available from the Register of Sasines, also maintained by RoS.

1. Establishing *Bona Vacantia* status

The KLTR’s legal team will consider the documents provided and will need to be satisfied that the property is ownerless before it is considered suitable for OPTS. Your application may be rejected if the KLTR cannot be satisfied that the property is ownerless and KLTR staff may carry out further investigations to establish the ownership status (this can be more complex for titles in the Register of Sasines and for larger titles).

2. The Trawl

Once the property is confirmed as *bona vacantia*, and provided it is not excluded from OPTS (see section 2.8 below), the property will be offered to public bodies through the Scottish Government’s public bodies “crawl” process. This will normally be the case irrespective of who notifies the KLTR of the property, unless there is good reason not to crawl the property, such as a “fast-track” application (see next section) where it is clear that the relevant public bodies have already confirmed they do not wish to take ownership of the property. The crawl process is a recognised vehicle in the Scottish Public Finance Manual for advertising surplus public sector property for sale. Simultaneously, the KLTR will also offer OPTS property to the local authority for the area in which the property is situated and to the community sector. This is to ensure that all three key stakeholders become aware of the property at the same time.

OPTS is a public interest scheme and public bodies have first right of refusal to OPTS properties as they

have the widest geographical cover in determining public interest issues. The crawl process allows public bodies up to 1 month to intimate if they wish to acquire the property. If they do, the KLTR will inform the local authority and the community sector of that fact and, if the OPTS criteria is met, the property will be transferred to the interested public body.

If no public bodies wish to take ownership, the property is then offered to the relevant local authority, which has up to 3 months to respond on whether they wish to take ownership and, if not, a further 3 months to respond if they wish to support a community proposal. This 6-month period allows local authorities to undertake their governing process and communities to consider the property and take early action to ensure they engage with the OPTS process in anticipation that the property may then be offered to them. Where property straddles more than one local authority area, all relevant local authorities will be notified.

As OPTS is designed to encourage local collaborative working between key stakeholders, in responding to the KLTR, the local authority should copy its response to any interested local community group and the community will be given a further 2 months from the date the local authority submits its comments in which to respond to the KLTR. By this time, the KLTR will have expected the local authority to have discussed its position with the local community to ensure that the best possible public interest proposals are taken forward to benefit the community.

The KLTR will not engage in local debates and would expect any competing proposals to be resolved locally wherever possible. However, the KLTR recognises that, at times, competing interests may not be easily resolved but applications supported by both the local authority and the community, irrespective of the intended owner, will stand a better chance of success.

Where a community body commences the process by applying to acquire an OPTS property, it should already have discussed its proposals with the local authority. Where a community submits its application following notification of an OPTS property, it has the time it takes the local authority to respond to the KLTR on whether it will support the community, plus 2 months, to submit its application. This timescale may be extended if the local authority responds early. Any extension is at the discretion of the KLTR. Community applications which secure support from the local authority will have a greater chance of success, however, if a local authority fails to respond, it will be assumed that there is no objection to the community body's proposals for acquiring the property. Where there is a response from public bodies and/or the relevant local authority, the KLTR will take into account all available information at the point of determining the OPTS decision.

3. Assessment of application

In making a decision, the KLTR will also consider the application and proposals against the OPTS criteria contained in section 2.4 below. During this period, the KLTR may ask for further information in relation to the proposal from any other party, particularly other key stakeholders. Advice may also be sought from the KLTR's OPTS Advisory Panel.

4. KLTR decision letter issued

Once the KLTR's decision has been reached, it will be intimated as soon as reasonably practicable. Timing will vary, depending on the complexity involved in each case.

5. OPTS property conveyed

The property will then be transferred to the successful party at cost-recovery value, that is, the KLTR's external costs only (for example, conveyancing, external legal

advice and any other professional costs, such as environmental investigations). Public bodies and local authorities will have three months from the date of the decision letter to conclude the transfer as funds are more likely to be available: community bodies will have 8 months from the date of the decision letter to raise the funds and complete the conveyancing (see section 5 for more information).

Other parties involved in the OPTS process will be informed of the outcome.

Where none of the above key stakeholders wish to take ownership of the property, the KLTR will consider other options out with the OPTS process. This may include auctioning, disclaiming or offering the property to any third-party prospective purchaser.

2.2 Applying for OPTS property

The OPTS Application Form must be used for all OPTS applications to purchase ownerless property. Failure to use the correct form may result in your application being rejected. (If you are simply notifying the KLTR of property you think may be ownerless but you do not wish to acquire the property through OPTS, or if you wish to acquire the property on a personal basis, no OPTS application form is required and you should refer to KLTR [Policy BV5](#).)

To satisfy the KLTR that the property to which your application relates is ownerless and suitable for the OPTS process, you should submit the following information with your OPTS Application Form:

1. Details of the applicant and their status: e.g. public body, local authority, community body, registered company (including company registration number) or company not yet registered, private individual(s), etc.;

2. If you are a community body, your governing documents (e.g. your Memorandum and Articles of Association) and, where appropriate, your company registration number;
3. Evidence that the property is *bona vacantia*, such as, a legal report relating to the ownerless property, copy of the title deeds to the property or such other extract from the Land Register or the Register of Sasines to identify the last registered owner and, if the owner is a dissolved company, evidence from Companies House that the company is dissolved;
4. A map/plan clearly showing the extent of the property (this should be taxative and not demonstrative);
5. A written description of the property, including:
 - a. its current use and, if relevant, by whom;
 - b. the size;
 - c. the proposed use;
 - d. if the property is presently used as access to any adjacent property;
 - e. if the property is amenity/common ground in a residential development; and
 - f. Any other information you consider relevant, such as other interested parties, existing standard securities, planning consent, etc.

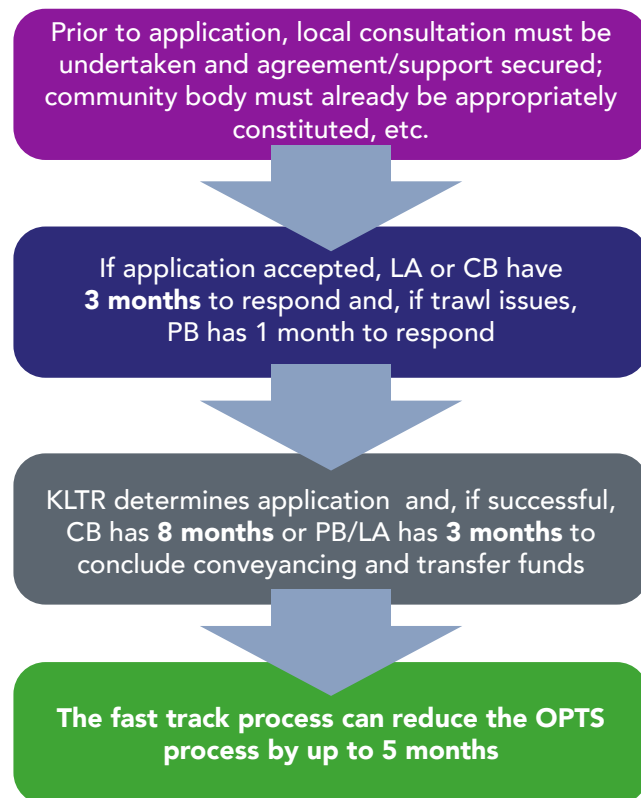
The applicant is responsible for undertaking their own due diligence on the property and should be clear on what may be purchased, the condition of the property and any potential liabilities. This includes, but is not limited to, legal liability and tax implications. It is recommended that independent legal advice is sought in any property transfer process. A list of organisations that may also be able to assist you is available on the KLTR's website

If the KLTR is satisfied on these points, the application will be considered for OPTS suitability and assessed on the basis of the criteria in section 2.4 below.

2.3 The OPTS “fast-track” process

In addition to the standard process, there is also a fast-track OPTS process which is available for a public body, local authority or appropriately constituted community body wishing to acquire ownerless property where the proposals have already been agreed locally. Any local disputes must normally be resolved but the KLTR recognises that not all of the community may support the proposals.

The process is as follows:



To use the fast-track process, the applicant must tick the box in the application form to indicate that they wish this process to apply. The fast-track process will be triggered if the KLTR agrees that the additional conditions below are met.

The application must demonstrate clear proposals for the proposed use of the property, with no competing interests.

Where the applicant is a **public body (PB)**, they should already have discussed their proposals with other relevant public bodies, therefore, the trawl should not be necessary. As proposals will already have been agreed, the local authority and the community will have 3 months to respond to the application. Any relevant public body already engaged in the process will also be invited to comment.

Where the **local authority (LA)** is the applicant, there is no need to provide 6 months for them to consider the application, so this could reduce the OPTS process significantly. Relevant community bodies (and any relevant public body) will be given 3 months to respond.

Where the **community (CB)** is the applicant, the application must be submitted by an appropriately constituted community body. It is expected that the community body will already have considered funding issues and may already have funds in place. The local authority (and any relevant public body) will be given 3 months to respond with any further comments or support.

You must provide evidence of community consultation and support for your proposal: see section 4.4. This allows those who object to the proposals, or show no interest, to be taken into account.

The OPTS fast-track process can reduce the time the process takes where plans are already well advanced and collaboration with others in the area has already taken place.

The application may then be submitted to the OPTS Panel for consideration and, in reaching his decision, the KLTR will take into account all available information before informing the applicant of the decision.

If an application from a community body is successful, the applicant will have 8 months to raise the necessary funds and conclude the transfer.

If an application from a public body or local authority is successful, the applicant will have 3 months to conclude the transfer as funds should already be available.

Any other parties involved in the OPTS process will be informed of the outcome.

2.4 Assessing your application – OPTS criteria

If the evidence you have provided satisfies the KLTR that the property is *bona vacantia* and your application form is complete, your application will be considered by the OPTS Casework Team against the following criteria:

1. The intended owner: the legal entity to receive the OPTS property, e.g. public body, local authority, community body, registered company or company not yet registered, private individual(s), etc. If the community is to purchase the property and the community organisation is still being created, your application should indicate when this is expected to be complete. This must be at least 2 months prior to receiving the property to allow the KLTR time to consider the organisation's governing documents.

2. Public interest/benefit (section 2.5 below): Does the application demonstrate that the acquisition and planned use of the property will be in the public interest, and that the proposals will benefit the local community? If the applicant is a community body, is there confirmation that the relevant local authority is satisfied that the reasons for transferring ownership of the property are in the public interest, e.g. benefits to the local and wider communities? If the applicant is a public body or local authority, is there good reason why they are satisfied that the transfer and intended use are in the public interest? Do the benefits outweigh any disbenefits?

3. Definition of community (section 4.3 below): How will the community be defined? (by postcode unit, settlement, local authority area or in another way). Is the community definition inclusive or exclusive and is community body membership open to all members of the local community?

4. Community interest and support (section 4.4 below): Does the application demonstrate community interest and appropriate support from the local community for the project? How has community support been demonstrated/achieved?

5. Sustainable development (section 2.6 below): Does the application clearly demonstrate the economic, social and environmental benefits of the proposed use in the longer term? Does it clearly detail the aspirations for the property? How will the property be used and what are the benefits to existing and future generations?

6. Project funding and viability: Does the application demonstrate a realistic vision for financing the project objectives? Is funding already available to cover the KLTR's cost-recovery transfer value? If not, how will the funds be secured in time for the transfer date and any details of funding discussions already undertaken. Applicants should also explain how they will realise their objectives over time and how this will be funded, such as by providing a business plan.

Further information on the above criteria is contained in the respective sections below. If the OPTS Casework Team is satisfied that your application meets the criteria, your application may then be referred to the OPTS Advisory Panel for assessment (see section 12) below) before the KLTR's decision is made.



Town Hall building Greenlaw, Scottish Borders
Photo: Shutterstock / Wozzie

2.5 Public interest

The KLTR recognises that not all public bodies, local authorities and community bodies have the same aspirations or priorities. Where the KLTR transfers property to a public body or local authority, it will be for that authority to demonstrate to the KLTR and to their local community how their proposed use is in the public interest and why it will be of most benefit to the local community, and for that public body or local authority to explain the basis of their decision-making where required.

Where there are competing interests and/or potential beneficiaries, these should also be resolved locally before proposals are submitted to the KLTR. The KLTR will not adjudicate on local issues or disagreements and an application may be rejected if the KLTR concludes that it would create significant division or disruption within a community.

The KLTR aims to foster community empowerment and local collaboration, as this has inherent worth beyond the direct value to a community of owning and using land.

Public interest is not universally defined; it is for each policy area to apply criteria against which public interest may be measured, both in the local and wider interests. As such, the KLTR wants to avoid creating a definition of public interest which, in practice, could be too narrow and restrictive, thereby unnecessarily limiting applications under the Scheme.

The KLTR would encourage the more detailed public interest issues in each case to be addressed by public bodies, local authorities and communities collaboratively prior to an application being submitted. In considering a decision, the KLTR may require further information in relation to the proposal from the applicant or other key stakeholders.

The OPTS is not intended for transfers of property where the aim is to prevent development, as development issues are already considered in the public interest as part of the planning system. Applications considered to be an attempt to subvert the public interest by subverting the planning process will be rejected. In order to be successful, proposals will have to demonstrate a clear public and community benefit.

Key issues to consider when preparing your application are (this list is not exhaustive):

- > Demonstrate how the proposed acquisition will bring real benefits to the whole of the community and not only to individual members of the community or community body.
 - > Consider how the benefits are not outweighed by any disadvantages to the wider community, the environment or the economy, or are not disproportionate to the degree of any harm to private interests as a result of the acquisition or delivering the aspirations.
 - > An application may be refused if the aspirations will disadvantage the community or certain members within the community, for example, you might fail to satisfy the public interest test if the outcome was to restrict access to the OPTS property or any adjacent property. Alternatively, if the aspirations were to deliver substantial public benefits by widening access, improving management of a resource and adopting an inclusive approach, the application would be more likely to succeed.
- > The KLTR will also consider the wider public interest, which may include the interest of any sector of the public (however small) which, in the opinion of the KLTR, would be affected by the acquisition. To protect the interests of those who may not support the application, the KLTR will not place the interests of the community above the wider public interest. If, for example, a large number of residents oppose the application, the KLTR would be bound to consider the effect of delivering the aspirations on the wider community. Also, if a potential consequence of approving the application was to divide a community, the KLTR may take the view that the adverse effect would outweigh the public interest in retaining an otherwise unified community. However, negative impacts or objections will not, in themselves, mean that the public interest test cannot be met.
 - > Applicants should explain in their application why they consider that it is in the public interest that the OPTS property should be transferred to them.

2.6 Sustainable development

Sustainable development is one of the key issues the KLTR will consider carefully in determining an application. In considering what this means, the KLTR will consider how the proposals in the application are compatible with furthering the achievement of sustainable development, which is broadly defined as:

“development which meets the needs of the present without compromising the ability of future generations to meet their own needs”.²

In preparing your application, you should therefore consider how your proposals for the property are sustainable and what impact, positive and negative, they will have on the property, on any neighbouring property and on your community. There are three main aspects of sustainable development, sometimes referred to as “pillars”, covering social, economic and environmental issues. These should be addressed in your application and you should consider the following:

Social – This could include, for example, social benefits to your community, the creation of specific services, such as housing or recreation facilities and other local amenities to benefit your community, such as education, addressing poverty or community development. You should also consider how your proposals contribute to reducing social disadvantage in your community if they relate to facilities normally expected to be available on a community basis.

Economic – This could involve the responsible management of limited resources. A sustainable economy is one where people continue living normal lives without having to worry about running out of necessities, such as food, electricity or other goods.

Economic sustainability may also include the creation of new jobs or protecting existing local employment,

diversifying to introduce new activities in the local community to benefit their economic wellbeing or other ways of generating new income to reinvest in supporting local community benefit. You should also consider how your proposals will be affordable in the present and longer term to ensure these are both deliverable and sustainable.

Environmental – This could include the management of land, buildings, freshwater, oceans, forests, air, other natural resources and wildlife.

Using land in an environmentally sustainable way involves managing how we use resources such as land, water and buildings to achieve a sustainable future for generations to come. It also involves considering how we use resources, for example, energy, and how we manage waste.

Your application may wish to address how your plans will help to maintain or improve the natural or built environment for future generations to use and enjoy, or how the existing environment may be developed to best meet the needs of the local community both now and in the future. This might include, for example improved livestock management, woodland development, the provision of land for affordable housing or new amenities for the local community and visitors alike.

Some of these points will be more relevant to your plans than others. For example, if your proposed land use is for a wildflower meadow, environmentally sustainable development will be particularly important. If it is for a not-for-profit community café, this might be a good example of social and economic sustainability. In some cases, all three factors may not need to be met and the KLTR will consider whether longer-term benefits outweigh any short-term negative impacts.

As with public interest consideration, where the applicant is a community body, the KLTR will take into account any relevant information from a public authority relating to whether or not the proposed use of the property is sustainable and meets the above social, economic and environmental criteria.

For more information, contact your local authority's sustainable development staff through the Sustainable Scotland Network at [Sustainable Scotland Network](#) or through your local authority website. Further information on sustainable development can also be found on the Scottish Government's website at [Scotland and the sustainable development goals: a national review to drive action - gov.scot \(www.gov.scot\)](#).

2.7 Valuation

The KLTR will arrange the valuation for OPTS purposes, the costs of which will form part of the KLTR's cost-recovery transfer value. The purpose of the valuation is to establish the market value, which will then be used to calculate the level of discount for subsidy control purposes when the property is conveyed at nominal/cost-recovery value (see section 8.1).

In accordance with the SPFM³, the KLTR is not required to obtain a valuation where the property is likely to have a market value under £20,000. If the market value is expected to be above £500,000, the property will not automatically qualify for OPTS and you should contact the OPTS Casework Team prior to submitting your application.

To provide transparency to the OPTS process, the KLTR will make available any valuation, building, structural or condition surveys, title information and environmental reports undertaken by the KLTR to those involved in the OPTS process. These are for OPTS purposes only and should not be shared more widely or used for any other purposes. The valuation will be shared with stakeholders when the property is initially notified to public bodies, the local authority and the community simultaneously at the start of the OPTS process. Please note that our valuations are typically based on external inspections unless the nature of the property allows otherwise (e.g. a ruin with open access).

The KLTR will not meet the costs of any other valuation or survey undertaken by another party involved in the OPTS process but this does not prevent any party from seeking their own valuation or inspection at their own expense. The KLTR will not be able to provide keys or any other means of access to a property for such purposes.

2.8 Excluded property

Highly problematic or largely contaminated sites will normally be excluded from OPTS if they are too high risk and disclaiming is the preferred option (see section 6, Disclaimers and deadlines, below). The KLTR may also consider transferring property outwith the OPTS process, subject to any potential risks.

The following types of property will normally be excluded from OPTS (this list is not exhaustive and the KLTR will consider risk and suitability on a case-by-case basis):

- > Small adjacent properties where a transfer to another party could have a direct negative impact on others, such as garden ground;
- > Common areas left over from housing and other commercial developments;
- > "Ransom strips", i.e. small strips of land that have been retained where the larger areas of land have been sold;
- > Properties already occupied (e.g. by tenants);
- > Roads/common pathways/rights of way;
- > Pro-indiviso or joint ownership properties (unless all company owners are dissolved);
- > Leases (where the *bona vacantia* party is the lessee);
- > Heirless properties (*ultimus haeres*) properties and other properties where it is considered there is a high chance of a claim later being made against KLTR;
- > Properties that appear to be the subject of a dispute;
- > Areas covered by the KLTR's existing Policy BV 6 (amenity ground - see our website) that appear to have a history of being, either formally or informally, set aside for the amenity benefit of a neighbouring property or properties;

- > Properties belonging to a dissolved company/ other entity where it appears that the applicants have been connected with the dissolved company/other entity (i.e. people attempting to reclaim property where they have been involved in the original mismanagement that led to it being *bona vacantia*).

The purpose of excluding properties from OPTS is to protect those involved in the Scheme from potential liability. However, if you identify ownerless property that falls into any of the excluded categories above and you have good reason to acquire the property under OPTS, please contact the OPTS Casework Team before you submit your application to discuss the exemption.

Where a property is not suitable for OPTS, it will not be published on the KLTR's website but the party highlighting the property to the KLTR will be informed of the decision. Cases will be considered on their merits and there is no obligation to apply OPTS to any property referred to the KLTR should the KLTR have a preferred option.

³ SPFM Disposal of property guidance – Scottish Public Finance Manual – gov.scot (www.gov.scot) – Property: acquisition, disposal and management – Disposal of property guidance – paragraph 13.

2.9 Can part of the property be transferred?

The KLTR will normally expect to transfer the whole title to a property (or where the property consists of more than one title, the whole property) to avoid any party involved in the OPTS process from attempting to “cherry-pick” the most attractive parts of a property and leaving the less attractive parts to remain ownerless. This could result in the less attractive parts of the property becoming more problematic for the community in the longer term.

The KLTR is very unlikely to split a title. However, where two communities, or a community and a local authority wish to purchase different parts of the whole property, such as a large estate where communities are located at opposite ends, the KLTR would expect a collaborative solution towards the most straightforward outcome, such as the local authority purchasing the whole title and then transferring part to the community. This may be considered on a case-by-case basis.

In exceptional circumstances, the KLTR may consider selling part of the KLTR’s interests where, for example, a specific parcel of land is required for a specific purpose, such as a local authority requiring a small parcel of land to complete a path network. Again, this may be addressed on a case-by-case basis, providing any remaining property remains viable for disposal by the KLTR.

2.10 Standard securities and burdens

It is the sole responsibility of the applicant to note any standard securities or burdens on the property which might affect their proposal and longer-term plans. These should be shown on the title report from ScotLIS (see [Search land register](#)) and the KLTR will expect these to have been considered carefully by the applicant before their application is submitted.

The KLTR will not take action to remove or change, nor have liability for, existing securities or burdens relating to an OPTS property. It is for the recipient to consider how they will resolve any such securities or problematic burdens on taking ownership. Similarly, the KLTR does not take on the debts of dissolved companies and potential applicants should take their own independent legal advice on these issues.

If appropriate, you should also consider the KLTR’s policy BV8, relating to an outstanding security or charge in which the Crown is creditor. This can be viewed at [Our policies | KLTR](#).

2.11 Withdrawal from the OPTS process

As with any property transfer, any party may withdraw from the OPTS process at any time up to the point where missives are being exchanged. A cost may apply for withdrawing from the process thereafter.

The KLTR may also issue a disclaimer notice at any time (see section 6 below). Where this arises during the OPTS process, the OPTS Casework Team will discuss the reasons for this with the parties involved prior to disclaiming.



A collage of OPTS early and pilot properties

3. Additional Guidance for Public Bodies and Local Authorities

3.1 Key steps following OPTS notification

Following notification of an OPTS property, if your organisation wishes to take ownership, the KLTR would encourage you to:

- read the OPTS Guidance and familiarise yourself with the process and its requirements;
- discuss the property with colleagues and agree any proposals. KLTR contacts have included various departments within public organisations and the KLTR would encourage a "single point of contact" to be identified for OPTS purposes. Discussions could also include arranging a community meeting to address any suggested community uses, local issues and the way forward;
- contact the OPTS Casework Team to notify your interest in purchasing OPTS property in advance of submitting your OPTS application.

If you can achieve these first few steps, you may be on the way to commencing your OPTS process. Public Bodies and local authorities have 1 month and 3 months, respectively, from the date of the OPTS notification to confirm if they wish to take ownership or support a community ownership proposal. If a local authority wishes to purchase the property, a further 3 months will be provided to submit your

OPTS application. If the community supports your proposals, you may qualify for the "fast-track" process in section 2.3 above.

If a local authority does not wish to take ownership but wishes to support a community purchase, the above 6 months will be provided to demonstrate support. See below for more information on supporting your community.

3.2 Supporting community groups interested in acquiring OPTS property

Public bodies and local authorities already work closely with community groups to secure property in the public interest and a local network for communication may already be in place. If not, the KLTR would encourage collaborative working between all parties involved in the OPTS process.

If you are to support a community application, please consider submitting a letter of support to the KLTR within 6 months of the OPTS property notification, detailing why you think the community meets the OPTS criteria in section 2.4 above. The KLTR would welcome such confirmation as soon as possible after the property is intimated, rather than awaiting the 6-month deadline.

If no such letter is received, and in the absence of any objections to any community proposals submitted within the above 6-month period, the KLTR will assume you have no objections to any community application submitted.

3.3 Can a public body or local authority dispose of OPTS property following transfer from the KLTR?

There is nothing to prevent public bodies or local authorities from transferring property to a third party. In some cases, it may be beneficial for a public body or local authority to take temporary ownership of a property in support of the community or where joint proposals are being delivered. However, you should consider whether this will be in the interests of the local community and whether your proposals for the OPTS property are being delivered.

While the KLTR recognises that aspirations, plans and the needs of a particular community can change over time, a subsequent transfer for commercial or financial benefit could result in the KLTR considering activating the OPTS clawback provisions – see section 5.3. Where OPTS property is being transferred for purely commercial purposes, such as a sale to a supermarket chain or a private developer, the transfer value will be market value.

The public authority may also need to consider at what price the property (or part of) is transferred to ensure it meets any statutory or other requirements.

3.4 How else can public bodies and local authorities help with the OPTS process?

Public bodies and local authorities already have a range of powers to acquire property and ensure properties are appropriately maintained, such as the compulsory purchase process and applying charging orders where work is required to ensure a property is safe.

If you think any of your existing powers could assist the KLTR in creating opportunities for ownerless properties, please contact the OPTS Casework Team to discuss options.

3.5 Should public bodies and local authorities inform the KLTR of ownerless properties in their area?

The KLTR would welcome notification of any individual property which appears to a public body or local authority to be ownerless, together with the necessary evidence of why this is believed to be the case. In these cases, the KLTR would expect the public body or local authority to have already considered possible options for the property, including OPTS.

However, where a public authority has identified a number of potential ownerless properties, you should contact the OPTS Casework Team to discuss the number of properties involved. No details of individual properties should be provided at this stage as this may "trigger" the KLTR's disclaimer timescales in section 6 below. The OPTS Casework Team can then advise on the most appropriate way forward.

The KLTR intends to develop a pro-active approach to multiple ownerless properties with key stakeholders in due course.

3.6 OPTS holding agents

The purpose of an OPTS "holding agent" is to allow a public authority (public bodies, local authorities and other government organisations) to temporarily take ownership of an OPTS property to allow an appropriately constituted community body to raise the necessary funds if, through no fault of their own, it is likely that the 8 months provided in the OPTS process to raise the necessary funding and conclude the transfer will be exceeded, or where the KLTR's disclaimer deadline is approaching. This should be limited to circumstances where the delay in the provision of funding is outwith the community's control, such as, where a funding provider has deferred their funding decision to the next meeting, which will take place after the 8-month deadline. As the community should be involved in local OPTS discussions and considering their options, etc., from an early stage, this is not expected to be a common occurrence and the provision of a holding agent should not result in the 8-month deadline becoming redundant.

The proposal to use a holding agent may be submitted to the KLTR at any stage of the process and a holding agent may also be an applicant where a public authority and the community have already agreed prior to submitting the application. However, the holding agent must provide evidence that the OPTS criteria are met and also explain why a holding agent is being used. The holding agent will be expected to provide a plan for the expected use of the property following the transfer to the intended third party and have the funds available prior to transfer. A holding agent may not apply if its purpose is to retain the property indefinitely on the basis that a use may be identified in the future.

Where the holding agent wishes to transfer the property to a third party for commercial purposes,

rather than for community and public interest reasons, the KLTR may consider transferring the property at market value rather than nominal value. This will only apply where a public interest transfer has not been identified.

The KLTR will not accept more than one holding agent in a single case. Where there is more than one potential holding agent, the public authorities should agree which agent should proceed before contacting the KLTR.

Where the holding agent acquires OPTS property, it is for the holding agent to agree the onward transfer value with the intended recipient. OPTS clawback provisions in section 5.3 below apply equally to holding agents as they do to any other recipient of OPTS property.

4. Additional Guidance for Community Bodies

4.1 Key steps following OPTS notification

Following notification of an OPTS property, if your community wishes to take ownership, the KLTR would encourage the community to:

- > read the OPTS Guidance and familiarise yourself with the process and its requirements;
- > identify a "single point of contact" for OPTS purposes;
- > discuss the property and agree any proposals within your community. This could involve arranging a community meeting to address any suggested uses, local issues and the way forward;
- > ensure you will have community support for your proposals; and
- > discuss your proposals with your local authority before submitting your application.

If you can achieve these first few steps, you may be on the way to commencing your OPTS process. You are not required to create a community representative organisation at this stage but it would help if you did this as early as possible (see section 4.2 below).

Public Bodies and local authorities have 1 month and 3 months, respectively, from the date of the OPTS notification to confirm if they wish to take ownership or support a community ownership proposal. If a local authority wishes to purchase the property, a further 3 months will be provided to submit their OPTS

application. As the community will be informed of the property at the same time as public bodies and local authorities, this advance notice will allow the community to consider its position and be ready to respond to any views submitted by the local authority within 2 months of these views being submitted. This also provides time for the community to create a representative organisation and to consider community proposals for the property. You should also contact the local authority as early as possible to see if they have any plans for the property. If the KLTR receives notification that a public body or local authority wish to take ownership of the property, we will contact the community representative as soon as possible.

The KLTR would encourage community representatives to work with their local authority wherever possible to ensure that the OPTS process works as effectively as possible. Early contact could provide a community with more time to consider its proposals and prepare its application if, for example, the local authority is minded to respond towards the end of the 3 and 6-month periods, rather than at the beginning.

Once all responses have been considered by the KLTR and a decision on the property has been made, if the community's proposals are successful, you will then be given 8 months to raise the necessary funding and conclude the transfer. This includes the exchange of missives and you should seek independent legal advice to complete this stage of the process. Your community body must be a properly constituted legal entity to receive the property.

If you have already secured the approval of the relevant local authority and you are already an appropriately constituted community body as described above, you should tick the "fast-track" box on the application form. This means we can deal with your application on an accelerated timeline, if the KLTR agrees that it is suitable for the fast-track process (see section 2.3 above).



High Kirk of Campsie, Lennoxton
Photo: Shutterstock.com/MackScania

4.2 What types of community organisations can apply?

The KLTR encourages applications for OPTS properties from a range of appropriately constituted community bodies. The community body must be in place, and confirmed by the KLTR as meeting all of the criteria for eligibility, before a property can be transferred to your community. The KLTR reserves the right to use its discretion in confirming whether any particular body is eligible to receive property under the OPTS.

There are three criteria which community applicants must meet. These are:

1. Incorporated legal form

Community bodies must have an appropriate legal form. There are a range of possibilities, and groups are encouraged to take advice on which is most appropriate for their needs and purposes. To receive an OPTS property, applicants must be incorporated organisations, that is, they must be set up as a 'legal person', distinct from the individual members, trustees or directors, and able to enter into contractual relationships in their own right.

Examples of incorporated charitable organisations are a company limited by guarantee, a Scottish Charitable Incorporated Organisation (SCIO) or a community benefit society, sometimes known as a BenCom.⁴ This list is not exhaustive. The Scheme is designed to be inclusive rather than exclusive and the KLTR may consider other forms of organisation.

2. Appropriate constitution

An appropriately constituted community body for the purposes of the Scheme will be set up in such a way that the assets and income will always be directed to the public interest and community benefit, rather

than any private or commercial interest. There must also be effective provision for what will happen if the body is wound up, dissolved or otherwise ceases to exist. Any assets, including those transferred under the Scheme, must be transferred to another body with a similar focus on public interest and community benefit. There must also be provision in the governing documents for robust governing, oversight and transparency.

The Scottish Government provides model governing documents (a model Memorandum and Articles of Association for a company limited by guarantee, and model constitution for a Scottish Charitable Incorporated Organisation) ([Community right to buy - Land reform - gov.scot \(www.gov.scot\)](http://www.gov.scot)) which meets the requirements set out below. You do not have to use this, but you must demonstrate the following in terms of public benefit, succession planning and governing:

- > provision that any surplus funds or assets of the company are to be applied for the benefit of the community;
- > provision that, on the winding up of the company and after satisfaction of its liabilities, its property, including any land acquired by it under the OPTS, passes to another body which has purposes which resemble closely the purposes of the organisation;
- > provision for sufficient, appropriately quorate, regular ordinary and annual meetings so as to ensure proper oversight of the organisation's activities and use of resources, and for a timely response to public requests for copies of minutes, which are redacted only with an appropriate explanation; and
- > provision ensuring proper arrangements for the financial management of the company.

3. Community control: Where the community receives OPTS property, its organisation's governing documents must ensure that the community retains control of the company and the property through local decision-making. This requires the following:

- > the governing document must make reference to the defined community to which the organisation relates;
- > a majority of members, trustees or whoever has control or decision-making powers to have their main residence within the defined community (see section 4.3 below); and
- > the organisation must have not fewer than 10 members (this requirement may be waived in exceptional circumstances, for example, for particularly remote or island communities).

Contacts listed on the KLTR's website may also be able to help with creating your community organisation.

Charitable purpose

An OPTS community body is not required to be a charity, but there are benefits in so being. The aims of the charity must be in line with those of the Scheme. That is, the charitable aims must represent the interests of the community or matters of public interest relevant to and of benefit to the local area, for example, improving local wellbeing.

⁴ Company limited by guarantee" has the meaning given by section 3(3) of the Companies Act 2006. "Scottish charitable incorporated organisation" has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005; "Charity" means a body entered in the Scottish Charity Register; "Community benefit society" means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act.

4.3 Defining your community

While it is for the applicant to decide how to define their community, you should ensure your definition is inclusive rather than exclusive, i.e. that your geographic definition does not seek to exclude any area or person who would reasonably be determined to be a member of the local community and expect to benefit from, or be impacted by, your proposals. For example, a community defined by a selection of postcode units which creates an area with postcode gaps, or where the OPTS property is adjacent to excluded postcode units, is unlikely to be successful.

In defining your community, you should consider who the community body is there to represent and who will benefit from your proposals.

As a general guide, a community body will normally represent the residents of a particular area, such as a village or town, which could be defined by a postcode unit, sector or district. For example, the KLTR's Office postcode is EH6 6QQ, where EH is the area code for the city or region; EH6 is the district code; EH6 6 is the sector code, indicating the street; and EH6 6QQ is the postcode unit identifying the delivery point (usually a group of around 15 addresses).

In completing the application form, you will need to include the geographical area relevant to your community project and this can be done in a number of ways. The definition of community in your application form must match the definition of the community in your community body's governing documents. The following guide from the Scottish Government's website may be useful:

[Community right to buy](http://www.gov.scot) (Part 2) - Land reform - gov.scot (www.gov.scot)

The following types or areas may be used to define your community:

- > postcode unit(s) (e.g. EH6 6QQ)
- > postcode sector(s) (e.g. EH6 6)
- > postcode district(s) (e.g. EH6)
- > electoral ward(s)
- > community council area(s)
- > island(s)
- > settlement(s)
- > locality or localities

If you wish to define your community in any other way, please contact the OPTS Casework Team to discuss your proposed definition before you submit your application.

Mapping your community area

Your application should be accompanied by a map of your defined local community showing the proximity to the OPTS property you are applying for. The OPTS property will normally be expected to be within your defined community or adjacent to it.

The following community mapping tool on the Scottish Government's website may be helpful in defining your community boundary:

[Community Right to Buy Mapping Tool \(sedsh.gov.uk\)](http://www.sedsh.gov.uk)

[Land reform community mapping tool: guidance - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Your map should:

- (a) be drawn to a metric scale corresponding to a scale used by the Ordnance Survey for that land;
- (b) be taxative and not demonstrative only (that is, definitive for the area it includes);
- (c) show the compass orientation of north;
- (d) contain map grid reference numbers and sufficient surrounding details (fences, houses etc.) to enable the position of the land to be fixed accurately;
- (e) show the boundaries of the land and defined community; and
- (f) where measurements are given, give those measurements to one decimal place.

The easiest way of satisfying these criteria is to use either the mapping tool in the link above or an Ordnance Survey map at an appropriate scale.

4.4 Demonstrating community support

If your application is to be successful, you must provide evidence of community consultation and support for your proposal. This may be demonstrated through any suitably transparent method for demonstrating the level of support from the whole community, for example:

- > a petition;
- > a community council consultation; or
- > a ballot of those on the Electoral Register in the defined community.

This list is not intended to be exhaustive. The Scheme is designed to be inclusive and KLTR can consider other forms of support.

Community support must be secured within 6 months prior to the date on which your application is submitted. For example, if community support is demonstrated by a petition, each entry must be dated within 6 months before your application is submitted.

Level of support

There should not be a one size fits all approach to determining the level of support. We will use your application to assess the quality and/or value of the extent to which your community is engaged in, and supportive of, your project.

As a general guide, the greater the community support you can demonstrate, the stronger your application will be in this respect. For example, the KLTR can accept less than 25% support from the defined community if the scoring for other criteria in the application is particularly high but you may wish

to consider how a low level of support can demonstrate that the community organisation is representative of the community.

Further help

Population figures for each council area may be available on the internet and your local Electoral Registration Office should be able to supply you with a copy of the relevant Edited Electoral Register and the number of eligible voters. Organisations listed on the KLTR's website may also be able to assist with demonstrating your support.



5. Transferring OPTS property

5.1 Concluding the transfer

The KLTR's solicitors will facilitate the transfer to the new owner and will provide draft conveyancing documentation to their solicitor to help increase efficiency and minimise expense.

Any parties involved in the OPTS process who are not the recipient of the property will be informed that the Crown's interest no longer applies and whom they should contact if they remain interested in the property. Where the property is disclaimed, details of the disclaimer notice will be provided to those involved in the OPTS process. As indicated above, this could happen at any stage of the process and will be published on our website (www.KLTR.gov.uk).

5.2 Transfer value

The OPTS will provide opportunities for properties to be transferred to other public bodies, local authorities and appropriate community bodies at less than market value where it is (i) in the public interest to do so (ii) when the KLTR's Accountable Officer is satisfied that the requirements and aims of the scheme are being met, and (iii) the proposals do not raise subsidy control issues (Scottish Public Finance Manual (SPFM) rules apply).

The transfer value applied by the OPTS in such cases will, therefore, be "nominal value" or discounted value. Nominal value will normally be achieved on a cost-recovery basis, with the KLTR recovering

professional costs only, such as legal and valuation fees (but not administrative costs). Where the assessed market value is less than the KLTR's costs, the KLTR will still recover any professional costs incurred. To provide transparency throughout the OPTS process, the valuation undertaken on behalf of the KLTR will be shared with key stakeholders on intimation of an OPTS property.

Where there is a significant difference between the valuation and the nominal value (e.g. the market value is £200,000 and the KLTR's costs are £10,000), the Accountable Officer must be satisfied that the transfer is strongly indicative that it is in the public interest in order to protect public funds.

Where a property is then transferred from a public authority to a community body, the public authority will determine the onward sale value under their own policies. Where the KLTR agrees to transfer the property, the decision letter will give an estimate of costs, but this will not be definitive at this stage.

5.3 Conditions of transfer - clawback provisions

OPTS clawback provisions are designed to allow public bodies, local authorities and communities to use the property to maximise community and public benefit. They are not designed to prevent recipients from:

- > Selling parts of a property to fund projects for community or public benefit, for example, small parcels of land to fund the purchase of equipment needed for a community project;
- > Selling or transferring a property to a public body, local authority or community group intending to use it for the benefit of the public;

- > Using the property for the benefit of the community in a different way to that originally intended, perhaps because of changing needs or circumstances in the local community.

Clawback agreements are intended to prevent recipients of properties under the OPTS from selling all or part of the property to a third party to use for commercial or private purposes, rather than for public benefit, such as selling to a private developer to build flats or to a supermarket chain. While providing such services may be in the community interest, this is essentially for commercial gain.

The KLTR has a responsibility to ensure that public and local community interests are considered as a priority over commercial or private interest. As OPTS properties may be transferred for a fraction of their market value, the KLTR needs to ensure that these funds and assets are used for the benefit of the community and in the public interest, balanced with appropriate protection of funds that may otherwise have been transferred to the Scottish Consolidated Fund.

The KLTR may therefore place conditions on the transfer of ownerless property, similar to those in section 14 of the Community Asset Transfer Guidance⁵ or those used in the planning system and other areas to ensure that OPTS property is used as intended. The KLTR will normally require a community body to enter into a general "clawback" or "overage" agreement to ensure the aims of the Scheme continue to be met and to prevent the property being subsequently used for private commercial purposes or personal gain, rather than delivering the community and public benefits expected to accrue from an OPTS transfer.

⁵ Asset Transfer under the Community Empowerment (Scotland) Act 2015: Guidance for Relevant Authorities (www.gov.scot)

A clawback agreement may state that the organisation receiving the property will pay or reimburse part or all of its value to the seller when certain events (“triggers”) take place. Clawback agreements are typically secured with a standard security, that is, a registered interest in a property similar to that applying to a mortgage agreement recorded in the Land Register.

However, the KLTR recognises that, in some cases, clawback provisions may be prohibitive and a disincentive to invest, therefore, an OPTS clawback will be proportionate in order to safeguard public investment and the aims of the Scheme. This is particularly appropriate where there is a significant difference between the OPTS transfer value and the

market value, or where there is a reasonable chance of the property attracting development value. The KLTR also recognises that, in some cases, where the OPTS transfer value is significantly lower than the market value, an application for funding from the Scottish Land Fund may not be required and the purchaser may already have the necessary funds to complete the transfer. In these cases, additional protection is required to safeguard public funds and the KLTR's interests.

The OPTS clawback “trigger” will only apply if the property is sold to a third party, but the clawback value will not be required to be paid to the KLTR until the third-party transfer is complete and funds become available. No clawback will apply if the community secures planning consent and wishes to retain the property for its own development which is compliant with the Scheme. Nor will it apply where a transfer of OPTS property is to a public body, a local authority or to another community body where OPTS aims and criteria continue to be met. Where a transfer is for non-monetary consideration or transferred to the above parties, the clawback provision will continue to apply to the property.

The clawback period will normally be 5 years from the date of the OPTS transfer and will terminate at the point of payment or on the expiry date.

In practice, recipients of OPTS properties have nothing to fear if the aims of the Scheme continue to be met. For example, if the recipient delivers their proposed aspirations and uses the property as intended, clawback will never apply as it will only apply at the point of sale. A clawback payment will not be required until the community receives payment from an onward sale of all or part of the OPTS property.

The clawback value will normally be 50% of any profit gained, i.e. half of the difference between the KLTR's selling price and the onward disposal value. For example, if the OPTS recipient pays £10k for the OPTS property and sells the property for £80k, they would pay the KLTR £35k clawback (being half the difference of £70k as £10k has already been paid to the KLTR initially), allowing the recipient to retain £45k.

However, the KLTR may also take into account any investment in the property in the interim. For example, if the community had invested £20k on improvements since purchasing the property, the clawback value would be £25k (that is, initial £10k + £20k investment subtracted from £80k = half of the £50k profit each). It is expected that this approach should not prevent investment if the community is guaranteed to recover at least that amount. However, the community would be required to evidence its investment.

In recovering funds, the KLTR will normally take second ranking to standard securities granted by other public bodies.

If you are unsure whether OPTS clawback provisions will apply, you should contact the OPTS Casework Team to discuss your disposal proposals. The KLTR is unable to provide legal advice.



Lion Chambers Glasgow.
Photo: @trafficedesignuk

6. Disclaimers and deadlines

The KLTR is subject to short time limits under the Companies Act 2006 in dealing with ownerless property. Section 1013 of the Companies Act provides 3 years for the KLTR to decide whether or not to disclaim property from the date we are first made aware of it being ownerless. This is further limited to 1 year if we are specifically asked to disclaim the property. We also apply the 1-year limit in cases of significant liability as a matter of fiscal prudence.

These time limits are fundamental to the KLTR's decision-making process and overall risk assessment of dealing with properties beyond the statutory deadlines. Decisions therefore need to be taken relatively quickly where the 1-year deadline applies which, in practice, may mean that it is not feasible for the KLTR to engage with stakeholders through the normal OPTS process. For example, on notification of an OPTS property, communities will wish to consider their timescales for creating their community body, agree proposals and obtain funding as, in these cases, the fiscal risk to the KLTR would be too great to wait. To minimise the impact on stakeholders, the KLTR will inform known interested parties if the 1-year deadline applies.

If the KLTR decides to disclaim a property, a notice will appear in [the Gazette](#) and, in the case of *bona vacantia* last owned by a dissolved company, the original disclaimer notice will also be sent to Companies House for registration. Where this arises during the OPTS process, the OPTS Casework Team will discuss the reasons for this with the parties

involved prior to disclaiming. The effect of a disclaimer is to remove the Crown's interest in the *bona vacantia* property – further information is available on the KLTR's website at www.kltr.gov.uk.

As the disclaimer deadline begins as soon as the property is notified to the KLTR, you should gather evidence of *bona vacantia* status of the property and prepare your application before contacting us to avoid "triggering" the disclaimer clock. Alternatively, contacting the OPTS Casework Team to discuss a potential ownerless property without identifying the specific property should not trigger the disclaimer clock. Waiting until you have the application material

ready should minimise time constraints on the OPTS process for all involved.

Where the asset is a result of a company dissolution, the KLTR may consider a "timed" disclaimer for the whole property to allow the applicant to seek a vesting order under section 1021 of the Companies Act 2006 for the relevant part of the property. It would then be for the court to decide if such an order should be granted.

The KLTR disclaiming a property does not result in any party losing the opportunity to acquire the property (see section 7 below), it simply means that it cannot be acquired under OPTS.



7. Other options for applicants

If the OPTS process does not conclude by a property being transferred to you as the applicant, there are still other options available for acquiring it. You should seek independent legal advice about the options below.

7.1 Vesting order

If the KLTR disclaims a *bona vacantia* property, an interested party may apply to the court under section 1017 of the Companies Act 2006 for a vesting order to transfer ownership to them. If uncontested and the application is successful, the applicant will be granted a vesting order, which can be registered in the Land Register of Scotland and will form the basis of the applicant's title to the property. Local authorities are familiar with this process and it would be helpful if you informed the KLTR of your intention to use this process as early as possible.

7.2 Prescriptive claim

Any person may seek to acquire title to a *bona vacantia* property by making a prescriptive claim under sections 43 to 45 of the Land Registration etc. (Scotland) Act 2012. A prescriptive claim can be made where a person has possessed land openly, peaceably and without judicial interruption for a period of one year. If the criteria are met, a person can seek to take title to the property by registering a disposition in their own name in the Land Register of Scotland. The title will then be considered unchallengeable following the expiry of 10 years after the date of

registration of the disposition. Information on the prescriptive claim process is available on the Registers of Scotland's website at [Prescriptive claimants - RoS Knowledge Base](#).

7.3 Purchase at auction

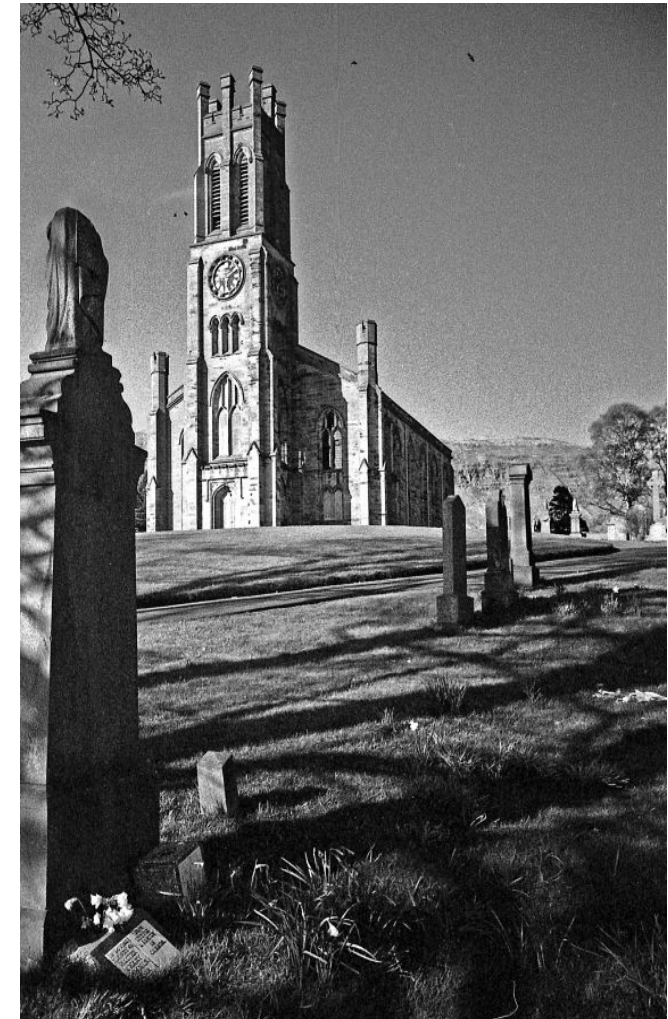
If the KLTR does not dispose of a property through the OPTS, one option is to sell at auction. Unsuccessful applicants under the OPTS are, like any other party, able to bid at auction for a property being sold by the KLTR. Applicants may wish to discuss the auction process with potential funders before the auction date.

7.4 Compulsory purchase

Many public authorities have existing compulsory purchase powers which can be used to acquire property in the public interest. Any public body or local authority wishing to exercise such powers should contact the KLTR as early as possible in order to identify a suitable solution. The KLTR encourages a collaborative approach and there is unlikely to be a need to use these powers for OPTS property.

7.5 Other options for property acquisition (See Annex B – other community acquisition vehicles)

If you are considering using an existing legislative option to acquire ownerless property, such as those contained in the Land Reform (Scotland) Acts 2003 or 2016, or if you are a public body or local authority considering using compulsory purchase powers to acquire OPTS property, please contact the OPTS Casework Team to discuss your options.



Campsie High Church, Lennoxtown

8. Financial issues: Subsidy Control, SPFM and Audit Scotland

8.1 Subsidy Control

OPTS has been designed to be compliant with Subsidy Control requirements (previously known as State Aid) and with the Scottish Public Finance Manual (SPFM) [Subsidy control - Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot).

The Scottish Government's Subsidy Control Team has been involved in the development of OPTS, particularly in relation to transferring property at nominal value. Our professional advisors will also provide an assessment of any potential subsidy control issues. The initial transfer of property from the KLTR to a public body or local authority is unlikely to be considered a subsidy in itself but it will be for the recipient of OPTS property to ensure they comply with Subsidy Control rules. The OPTS application form requires the applicant to confirm that the transfer will not breach such rules as the KLTR will not be aware of any other subsidies the applicant receives.

The KLTR's Accountable Officer has the authority to determine transfer values up to £500,000 per case with additional safeguards as follows:

- > For any property transferred under the scheme, an SPFM compliant valuation will be obtained in advance of the transfer.

- > The Accountable Officer must be confident that the transfer, including the proposed discount, represents value for money including, where necessary, obtaining sufficient assurance from the recipient public body, local authority or community body to reach this conclusion.
- > In administering a transfer under the scheme, we will inform Scottish Government Finance Directorate of the following information:
 - > Recipient public body, local authority or community body
 - > Proposed community use
 - > Market valuation
 - > Level of discount

Ongoing dialogue between us and the Scottish Government will be maintained to ensure OPTS objectives are met, desired outcomes are being delivered and any potential risks are addressed as they arise.

8.2 Audit Scotland

Ongoing dialogue will also be maintained with Audit Scotland in the development of appropriate monitoring, safeguarding and reporting processes. To ensure the Scheme is working as intended, the KLTR will require the recipient of OPTS property to complete a 12-months response form on how the property has delivered the aims of the Scheme. A simple response form will be provided by the KLTR for this purpose.



Marine Parade, Dunoon

9. Dissolved Companies and Restoration

Under Part 31 of the Companies Act 2006, dissolved UK registered companies can be restored at any point up to 6 years following dissolution (either by application to Companies House for 'administrative' restoration or application to the courts). That period is unlimited where personal injury proceedings are brought against the dissolved company or against a third party in the name of the dissolved company.

If a dissolved company is restored, then any property owned by that company at the point of dissolution is re-vested in that company. If this happens, the KLTR has no authority to deal with the property as it will no longer be *bona vacantia*. However, foreign registered companies have no such rights to re-vesting on restoration.

Section 1034 of the Companies Act applies where a dissolved company is restored, and places certain obligations on the Crown to account to the restored company in relation to *bona vacantia* property disposed of by the Crown in the period before the dissolved company was restored – this means the KLTR would require to pay to a restored company an amount equal to any consideration received by the KLTR for sale of *bona vacantia* property.

The KLTR is therefore likely to take a cautious approach when dealing with *bona vacantia* property where the dissolved company owner is still within its 6-year restoration window, particularly where the *bona*

vacantia property is high value. If a *bona vacantia* property is notified to us and the dissolved company owner is still within its 6-year restoration period, we will assess the risks involved, for example:

- > Considering the time left within the restoration period; and
- > Notifying former officers of the dissolved company that the property has been brought to the KLTR's attention as potentially being *bona vacantia* to ascertain if they intend to restore the company in an attempt to retrieve the property.

If the KLTR considers the risk in dealing with a *bona vacantia* property is too great, we will discuss the position with the relevant interested parties. The KLTR may disclaim the Crown's interest in the property to allow an interested party to apply for a vesting order or to enter into this process if such an order has already been applied for. Where the interested party is a public body or local authority, they may wish to consider compulsory purchase as an option for securing the property for public benefit.

The KLTR will bear the risks associated with the transfer, rather than the receiving public body, local authority or community organisation and will defend any legal challenges, if necessary.

The KLTR will notify interested parties as soon as possible if any company restoration issues impact on the OPTS process.

10. Liability and risk

As with any property transfer, there is usually a degree of liability and risk involved. Some liabilities and risks may be short term and acceptable: others may require detailed consideration, or simply be unacceptable. The OPTS will aim to assist in minimising liability and risk for all involved in the process where it is reasonable to do so.

Where a *bona vacantia* property appears to have significant liabilities (e.g., poor physical condition, environmental issues, etc.), the KLTR may choose not to claim the property and liaise with an interested party to carry out a timed disclaimer and vesting order approach⁶.

For example, where the property is a coal mine or a landfill site, where the liabilities are expected to be significantly greater than the value of the property, it is unlikely to be the best use of public funds for the KLTR to claim and transfer the property under OPTS.

⁶ As indicated previously, the KLTR has 3 years to disclaim property from the date it is notified to him. Following disclaimer, property may be obtained via vesting order via the process described at Section 1021 of the Companies Act 2006.

11. Fraud measures

Effective counter-fraud measures have been put in place through internal controls to minimise the potential for property and financial frauds. These will be reviewed regularly to take into account current and emerging counter-fraud risks facing the scheme and to ensure any corrective action is taken as necessary. Any fraud relating to the OPTS will be pursued vigorously.

The SPFM (Scottish Public Finance Manual) [Fraud - Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](#) provides guidance for all public sector organisations to which the SPFM is directly applicable.

The KLTR follows counter fraud and anti-bribery policies and practices applied by its parent organisation, the Crown Office and Procurator Fiscal Service (COPFS). These are set out in the annual report and accounts of COPFS which can be found on the COPFS website at <http://www.copfs.gov.uk>.

Fraud, including the misuse of data, is a key risk which is incorporated into the OPTS process and KLTR staff are encouraged to report any signs of potential fraud to their line manager. Public authorities across Scotland and the wider UK work collaboratively to combat fraud and other types of criminal activity and details of attempted fraud under OPTS may be shared with public sector colleagues. COPFS also participated in the last National Fraud Initiative exercise led by Audit Scotland and will continue to do so going forward.

If you believe you are a victim of property fraud, for example, if you think someone is attempting to identify your property as ownerless in the knowledge that you are the owner, you should contact the KLTR's

Office immediately. You should also report your concerns to Police Scotland, as the KLTR cannot report this on your behalf and cannot provide legal advice. You can:

- > contact Police Scotland by telephone: 101 for non-emergencies or (+44) 141 308 1070 if you are outside of Scotland;
- > contact Crimestoppers at [Giving information anonymously | Crimestoppers \(crimestoppers-uk.org\)](#)
- > seek advice from [Citizens Advice Scotland \(cas.org.uk\)](#);
- > view a list of solicitors registered in Scotland at [Find a Solicitor | Law Society of Scotland \(lawscot.org.uk\)](#)

12. OPTS Advisory Panel

The OPTS Casework Team may refer any OPTS application to an independent advisory panel (the OPTS Advisory Panel) for advice or consideration. However, there is no requirement to do so and the OPTS Casework Team will consider this on a case-by-case basis. This will depend on the complexity of each case and whether advice is required.

If referred, OPTS applications will be assessed by the Panel against the criteria set out in this Guidance. The Panel will provide support for, and scrutiny of, the OPTS decision-making process and will make recommendations to the KLTR on OPTS applications.

The Panel will consist of an independent Chair and a minimum of 4 ex-officio appointees from the public bodies, local authority and community/charity sectors. Information on present members of the Panel is available on the KLTR's website.

The Panel will report to the KLTR Board and will be supported by a Secretary and other staff as necessary from the KLTR's Office.

13 Complaints Procedure

If you wish further feedback or have a complaint, please refer to:-

[KLTR Customer Complaints and Feedback Policy | KLTR](#)

14. Privacy Notice

Contact details

The KLTR is the Crown's representative in Scotland who deals with ownerless property. You can contact us on enquiries@kltr.gov.uk or opts@kltr.gov.uk.

Our postal address is:

KLTR Office
1F North Scottish Government building
Victoria Quay
Edinburgh
EH6 6QQ

What types of personal data do we collect?

If you make an application to us for have an OPTS property conveyed to you, we will collect details such as your name, address, email address and telephone number.

Why do we need your personal data, and how will we use it?

We need your data to be able to communicate with you about your application. Whilst the application will be made by or on behalf of an organisation such as a Scottish Charitable Incorporated Organisation or a company limited by guarantee, we will need the details of a named individual for the purposes of communication.

Who do we share your personal data with?

For the purposes of assessing your application, we might share your data with your local authority and with our Community Co-ordination team. The latter is composed of community support services and the relevant Enterprise Agency for your area. Your data will also be accessible to those hosting our website.

Your data will be used solely for the purpose of assessing your/your organisation's application, and for the purposes of communication.

We will publish the name of your organisation on our website, where we provide the public with information about applications for OPTS properties. Where the organisation's contact details are the same as yours, this will include those details.

How long do we hold your information for?

We will hold your contact details for the duration of your application to us for an OPTS property, and for one year after the transfer, when we will contact you to find out how the property is being used.

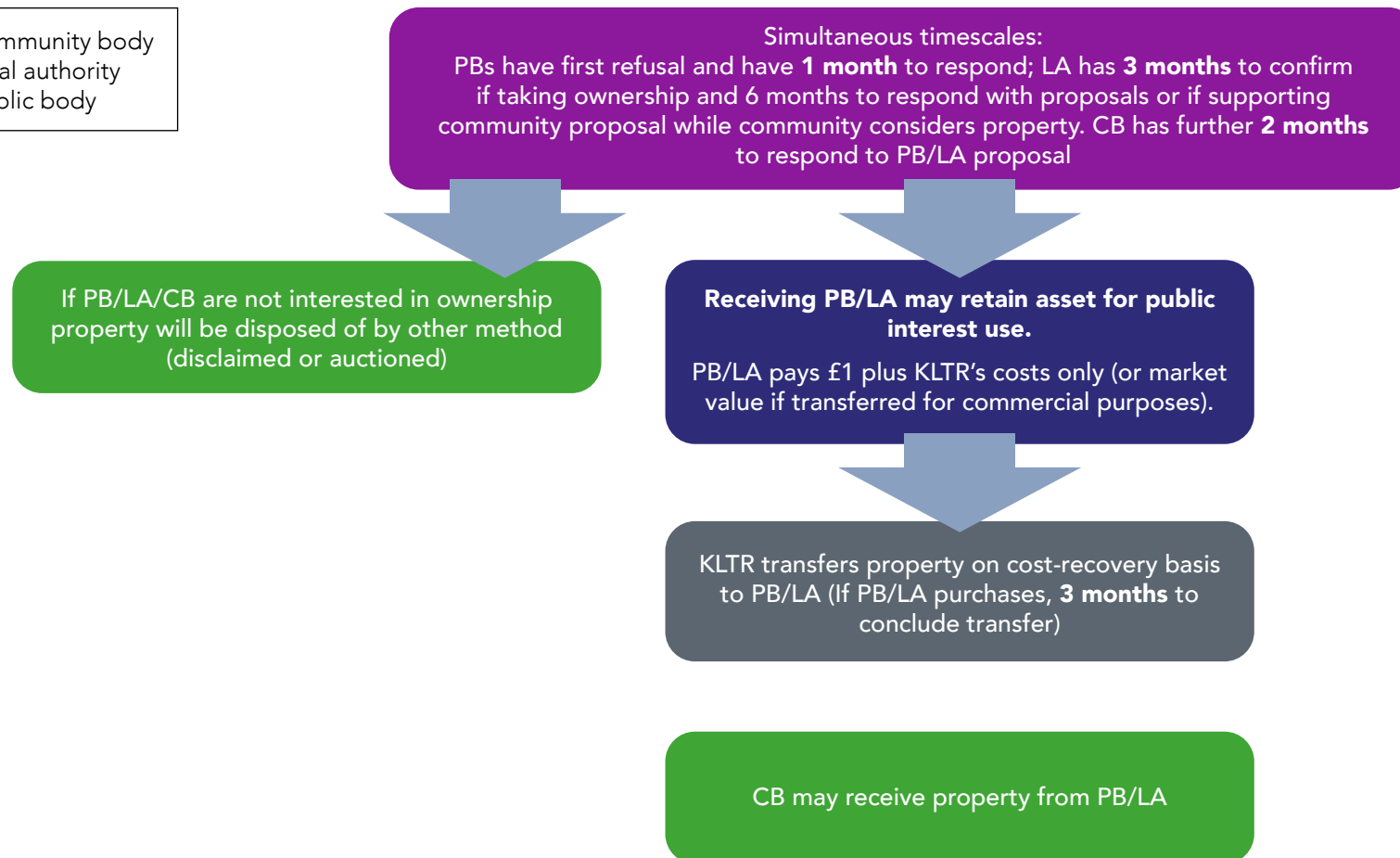
As part of our responsibility to demonstrate how we make decisions, your name might be held for longer as part of our Policy Log. We will not hold your contact details for this reason.

You can opt out of your data being held at any stage by writing to us at: opts@kltr.gov.uk.

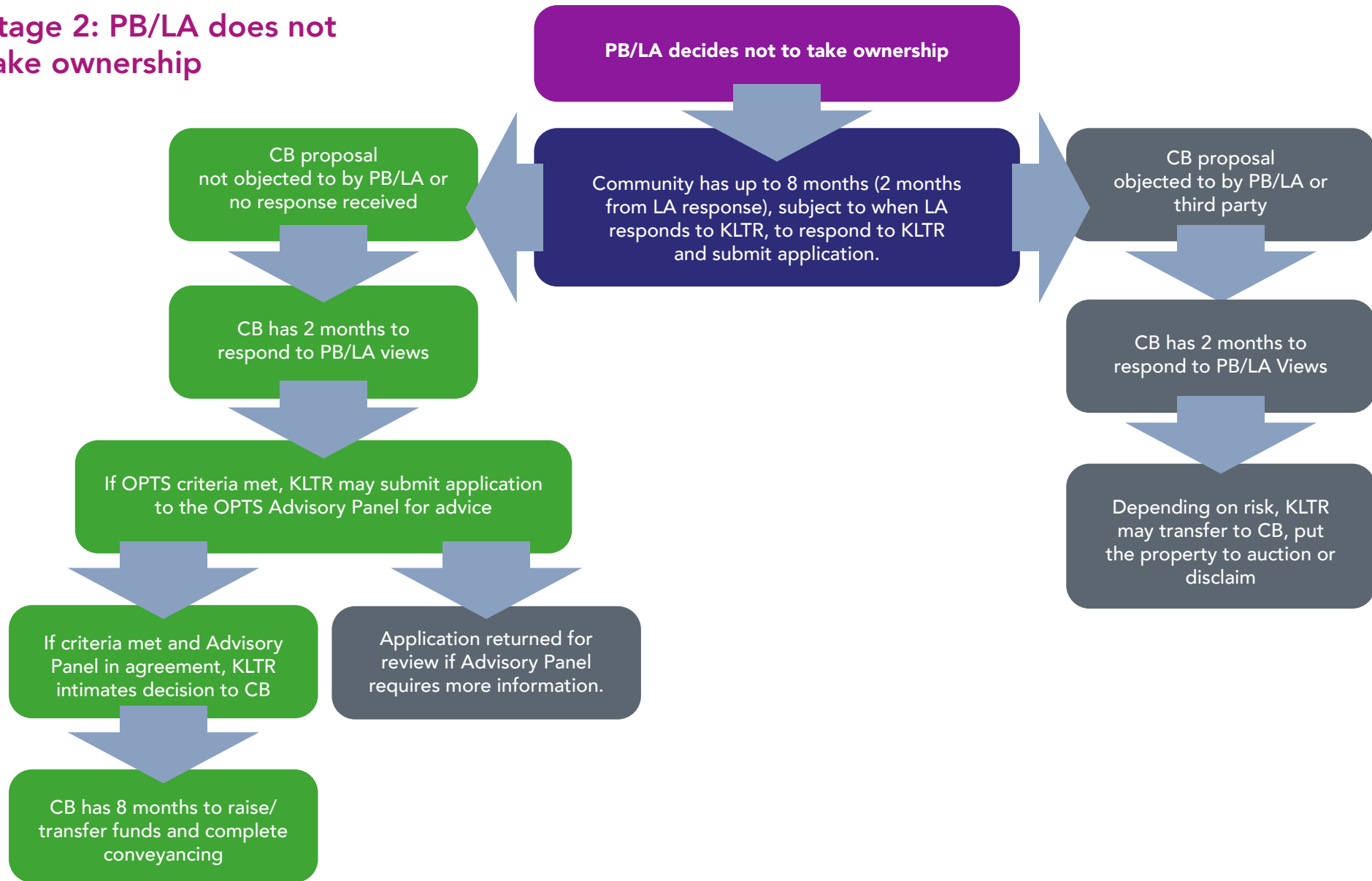
Annex A – OPTS process Flowchart

Stage 1: PB/LA takes ownership

Key	CB – community body LA – local authority PB – public body
------------	---



Stage 2: PB/LA does not take ownership



Annex B - OPTS and other community acquisition vehicles

Until recently, our focus has been on selling ownerless properties at full market value, often at auction. In recent years, however, we have been reviewing the way we work and have taken an increasingly proactive approach. We are working more closely with our public sector partners, looking at how we can deal with ownerless properties in a way that benefits the public.

The OPTS is a new scheme which forms part of the community ownership landscape in Scotland. There are various other schemes that community bodies can use to acquire land. These are governed by a framework of legislation introduced over the past 20 years, namely the Land Reform (Scotland) Acts 2003 and 2016, and the Community Empowerment Act 2015, and the OPTS will continue to be considered in conjunction with any new policies developed.

The OPTS is a distinct pathway to community or public land ownership. It is intended to provide an additional option to the above legislation as an alternative to owned property. The Scheme is also unique in allowing applicants to receive property on a cost-recovery basis, that is, the KLTR's professional costs only, such as legal advice and conveyancing and valuation fees (but not KLTR administrative staff costs). In most cases, this is expected to be a fraction of the property's market value.

Unlike the legislative processes, no applicant has the right to acquire properties under the Scheme. Potential applicants should take qualified advice on which pathway to community ownership would be best suited to their organisation and local circumstances.

If a CRtB interest is already registered or in progress and the owner is a company that has since been dissolved, you should contact the respective scheme administrator if you intend to submit an OPTS application. The KLTR Team can then discuss the way forward with the scheme administrator.

There are a range of funding options for communities wishing to acquire property. Funding is not offered by the KLTR as properties are expected to be transferred at below market value. You may wish to contact the Scottish Land Fund in the first instance, as it has dedicated community advisors who can help talk through your options. Further useful contacts are listed on the KLTR website.

Scottish Land Fund Guidance Notes
(tnlcommunityfund.org.uk)

It is important to note that a successful application to the Scottish Land Fund does not guarantee that the KLTR will transfer the property to your organisation. Nor does acceptance of an application to the OPTS guarantee Scottish Land Fund support.

OPTS uses similar eligibility criteria to the legislative processes and those aiming to create appropriately constituted community bodies may find the Scottish Government's guide to the [Community Right to Buy](#) useful.

OPTS is designed to encourage community bodies, local authorities and others to work collaboratively to determine how ownerless properties can best be used to benefit the local community. More details of how this can work can be found in this guidance.

The overall aim of the Scheme is to create opportunities for ownerless property to benefit local communities where proposals are in the public interest. It is for those interested in acquiring ownerless property to make use of these opportunities.



Ownerless Property Transfer Scheme (OPTS)

Guidance for
prospective applicants

E: enquiries@kltr.gov.uk

W: www.kltr.gov.uk

KLTR Office
1F North Scottish Government building
Victoria Quay
Edinburgh
EH6 6QQ