

# Policy for the Acquisition and Disposal of Land and Buildings

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# **Policy for the Acquisition and Disposal of Land and Buildings**

## **Contents**

- 1. Introduction**
  - 2. Statutory Framework**
  - 3. Acquisition of Land and Buildings**
    - 3.1 Options for Acquisition of Land and Buildings
    - 3.2 Compulsory Purchase
    - 3.3 Acquisition of Land or Buildings for Service Delivery
    - 3.4 Acquisition of Land or Buildings for Investment Purposes
  - 4. Disposal of Land and Buildings**
    - 4.1 Options for Identification of Surplus Land and Buildings
    - 4.2 Criteria for Land and Buildings Disposals
    - 4.3 Methods of Disposal
    - 4.4 Open Market Disposal
    - 4.5 Negotiation with a Third Party
    - 4.6 Public Auction
  - 5. Community Asset Transfer**
  - 6. Common Good**
- [Appendix 1:](#)      **Checklist for Disposals**
- [Appendix 2:](#)      **Provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and Procedure**

## **1. Introduction**

- 1.1 The purpose of this policy for the Acquisition and Disposal of Land and Buildings is to inform Elected Members, services and also other interested parties of the principles and rules by which the Council will acquire and dispose of land and buildings.
- 1.2 The extent of Council land and buildings assets is significant and whilst this can be seen as a tremendous resource it can, if underperforming, become a major burden. It is therefore vital that the Council delivers proactive management of its land and buildings assets through the introduction of a policy for the acquisition and disposal of land and buildings and assessment of appropriateness for other uses, including for community use, or disposal.
- 1.3 As the strategic arrangements outlined within the Council's Asset Management Plan are embedded within the Council, it is likely that land and building assets will be identified as being surplus to requirements. The Council must make the most of the potential opportunities to rationalise the Council's land and buildings portfolio.
- 1.4 This policy aims to formalise the basis for the identification of any future need for land and buildings and the means of its disposal and contribute to the efficiency saving in future years.

## **2. Statutory Framework**

- 2.1 The disposal of the Council's land and buildings is subject to the statutory duty to secure best value in terms of section 1 of the Local Government Act 2003, the provisions of section 74 of the Local Government (Scotland) Act 1973 as amended and the Disposal of Land by Local Authorities (Scotland) Regulations 2010.
- 2.2 Section 74 (2) of the 1973 Act places a duty on the Council to achieve the best consideration that can reasonably be obtained in the disposal of land or buildings, except where disposal at less than the best consideration is in accordance with the above Act and/ or Regulations.
- 2.3 In addition to the requirements explained in paragraph 2.2 above, the disposal of land or buildings from the Housing Revenue Account (HRA) may require the consent of Scottish Ministers under section 12(7) of the Housing (Scotland) Act 1987. Similarly, consent is required under section 203(2) of the 1987 Act to transfer land or buildings between the HRA and the General Fund. This is also the case where land held on the HRA consists of common or open space or is held for use as allotments, under section 12(5) of the 1987 Act. The Scottish Government has introduced guidance on how Councils seek consent to dispose of assets from their HRA or to transfer assets between the General Fund and HRA. In order to improve efficiency and introduce uniformity across General Fund and HRA disposals, a general consent process in line with the existing 'Disposal of Land by Local Authorities (Scotland) Regulations 2010' has been developed. Under General Consent, Councils are able to 'self-certify' consent where two key considerations have been met: the disposal price is in line with a best consideration valuation performed by a surveyor accredited to the Royal Institution of Chartered Surveyors (RICS) and an appropriate level of tenant and public consultation has taken place.

- 2.4 Removal of HRA assets that are no longer connected to the housing stock or are not providing a financial return can take two forms - sale (or lease) to a third party or transfer to the General Fund. There is no obligation for the General Fund to receive HRA assets no longer required by the HRA. A transfer will only occur where the Council determines there is a benefit to the General Fund by retaining the asset.
- 2.5 If transferring to the General Fund at market price, the Council has the option to keep the asset and use it productively as a General Fund asset or dispose of it at a later date. This approach ensures the HRA receives the full financial compensation for any disposal of HRA assets. Assets may be transferred for less than the market value but this requires the consent of Scottish Ministers.
- 2.6 If it is proposed to appropriate or dispose of any land or buildings which form part of the Common Good and with respect to which a question arises as to the right of the Council to alienate, authorisation must be obtained from the Court in accordance with section 75(2) of the Local Government (Scotland) Act 1973. This restriction applies in addition to the requirements explained at paragraph 2.2 above. In addition, in terms of the Community Empowerment (Scotland) Act 2015 section 104, before taking any decision to dispose of, or change the use of, any land or buildings forming part of the Common Good, the Council is required to carry out a public consultation. These processes must also be adhered to with regard to Community Asset Transfers of Common Good assets. Furthermore, under section 15(4) of the Local Government etc. (Scotland) Act 1994, regard must be had by the Council to the interests of the residents in the area of the former burgh to which the particular common good fund relates.
- 2.7 Before disposing of any land consisting or forming part of a common or open space (except land used for allotments), the Council will publish notice of the proposed disposal and consider any objections, in terms of the Town and Country Planning (Scotland) Act 1959 section 27(2A). There are also similar requirements in respect of the appropriation of common or open space of land (not being land held for use as allotments) under section 24(2A) of the 1959 Act.
- 2.8 The Community Empowerment (Scotland) Act 2015 Part 5 provides rights for qualifying community bodies to make requests to the Council for the transfer of the ownership of land or for land to be leased to the community body. There is a presumption in favour of granting such requests.

### **3. Acquisition of Land and Buildings**

#### **3.1 *Options for Acquisition of Land and Buildings***

3.1.1 The Council can choose to acquire land and buildings in either of the following forms:

- (i) ownership; or
- (ii) leasehold.

3.1.2 The reasons for the Council to acquire land or buildings would be:

- (i) opportunities for improved service delivery;
- (ii) investment purposes; and
- (iii) acquisition in line with Council's strategic objectives.

- 3.1.3 Prior to the purchase or lease of any asset a full options appraisal should be carried out which should involve appraisal of all the options for delivery of the final objective. Consideration should be given to all other Council-owned land and buildings and whether these could be used to fulfil the requirement prior to any acquisition.
- 3.1.4 Authority for the decision to pursue a purchase of any land or buildings will be by the Cabinet/ Council except insofar as included within the provisions of paragraph 3.1.5 below.
- 3.1.5 It is recognised that from time to time, it will be necessary to supplement new build Council housing with the acquisition of second hand residential properties on the open market. Scottish Government subsidy can be used to assist Councils to purchase properties on the open market which can then be used as affordable housing for rent. This, together with options for bringing empty private properties back into use as affordable housing through the Empty Homes Strategy and loan scheme, will increase the number of available Council houses for rent. In order to streamline this process (often referred to as Council House buy-backs as often the properties have previously been owned by the Council and sold under 'Right to Buy') the Director – Place has delegated authority to purchase individual residential properties to be used as Council houses for rent on behalf of Housing Services up to the value of £150,000 and the acquisition of land either in Council ownership or on the open market of up to £250,000 with agreement from the Portfolio Holder or in their absence, the Leader or Depute Leader of the Council each subject to available funds.

## 3.2 ***Compulsory Purchase***

- 3.2.1 The Council may consider, where appropriate the acquisition of land or buildings through its compulsory purchase powers. In this regard Legal Services would advise on the compulsory purchase powers available to the Council.
- 3.2.2 The Head of Legal, HR and Regulatory Services should be consulted at the earliest opportunity if consideration is being given to acquisition in this way.
- 3.2.3 Powers of compulsory purchase are conferred on public authorities by legislation. They enable the authorities authorised to compulsorily purchase land or buildings for a wide range of purposes, where there is a strong enough case for this in the public interest. The Council requires to be satisfied that the purposes for which a compulsory purchase order is made justify the interference with the rights of the people affected. The justification for making a compulsory purchase order will be subject to the requirements of the law and will be a matter of facts and circumstances in each case. These powers will be used where the owner or occupier of the land is unwilling to sell by agreement or where agreement cannot be achieved in a project timeframe or at reasonable cost, or where the owner cannot be traced.
- 3.2.4 The Council will consult and engage with people affected by compulsory purchase at every stage of the process. Where compulsory purchase powers are used, the land owner or occupier is entitled to compensation.

3.2.5 Any resolution to pursue acquisition by compulsory purchase of any land or buildings will be passed by a meeting of the Council as appropriate. The report to the Council will explain the public benefits to be delivered by the scheme and explain why these justify the interference with the rights of the people affected. The extent of the land to be acquired will be shown on a plan or map attached to the report.

3.2.6 Notification and advertising procedures which apply to the making of a compulsory purchase order will be adhered to. Once made, the order will be confirmed with the Scottish Ministers (where there are objections to the order, the Scottish Ministers may hold a public local inquiry or a hearing). Once the order has been confirmed by the Scottish Ministers any further notification or advertising procedures will be adhered to. Thereafter, provided there is no challenge to the validity of the order, the Council can take possession and legal title to the land, and pay any compensation due.

### 3.3 ***Acquisition of Land or Buildings for Service Delivery***

3.3.1 Land or buildings may be acquired for the purpose of service delivery, subject to the following conditions:

- (i) an options appraisal has been carried out and reported to the Director - Place, the result of which identifies the requirement for the land or buildings for service delivery;
- (ii) the ongoing revenue and capital costs are contained within an approved budget which has been confirmed as appropriate by the Head of Finance and ICT and/ or an appropriate budget is approved by the Council; and
- (iii) the Cabinet/ Council has approved the acquisition of the land or buildings for the purpose of service delivery.

3.3.2 Where land is identified for HRA housing purposes which is currently held under the General Services account then any transfer will follow this policy.

### 3.4 ***Acquisition of Land or Buildings for Investment Purposes***

3.4.1 Land or buildings may be acquired for the purpose of investment, subject to the following conditions:

- (i) an options appraisal has been carried out and reported to the Director - Place, the result of which identifies the suitability of the land or buildings for investment purposes;
- (ii) the ongoing revenue and capital costs are contained within an approved budget which has been confirmed as appropriate by the Head of Finance and ICT, and/ or an appropriate budget is approved by the Council; and
- (iii) the Cabinet/ Council has approved the acquisition of the land or buildings for investment purposes.

## 4. Disposal of Land and Buildings

### 4.1 *Options for Identification of Surplus Land and Buildings*

- 4.1.1 The identification of surplus assets is an ongoing process which will require the co-operation of all Council services. There are clear benefits to the Council in reducing its portfolio of properties and therefore a rigorous examination of assets is required.
- 4.1.2 The Asset Management Plan (land and buildings) highlighted that a key priority for the Council is to continually review the land and buildings it currently manages and assess whether these assets are surplus to Council requirements.
- 4.1.3 Vacant and surplus properties cost the Council money. It is therefore important that once a property is declared surplus its future use is determined in a timely manner to minimise ongoing costs to the Council. Until the property has been disposed of by the Council or formal transfer of a property to another Council service has been completed the incumbent holding service will continue to be responsible for the property and all associated costs.
- 4.1.4 Property may be identified as being potentially surplus to the Council's requirements as a result of any one or more of the following circumstances:
- (i) the holding service determining it no longer has a requirement for its property due to changes in its operational requirements;
  - (ii) as part of a wider strategic review of the Council's land and buildings an alternative and more cost effective service delivery site has been identified;
  - (iii) the property has no potential for future strategic or regeneration/ redevelopment purposes (including affordable housing);
  - (iv) the income generated from the land or buildings is nil or less than £1,000 per annum and there is a potential regeneration or redevelopment opportunity for the asset; and/ or
  - (v) the site has been identified by the Council's Housing Services or local or national Housing associations as being suitable for affordable housing.
- 4.1.5 All land and property that is potentially surplus to requirements will be offered to use as follows:
- (i) Housing Services;
  - (ii) Council Directorate; and
  - (iii) Public Sector Organisations.
- 4.1.6 Following consideration with the appropriate party above and with the Director – Place, a report will be presented to Cabinet/ Council which details



all valuations obtained for the transfer of the property and this report will include a recommendation on the appropriate value for that transfer and will, where appropriate, take into account the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the procedure set out in Appendix 2. Council/ Cabinet will determine the value to be applied to the transfer of the land and property.

- 4.1.7 The internal transfer of all land or property from General Services or Common Good for affordable housing to Housing Services and disposals to Housing Associations will take into account any abnormal costs, nature of the site and any other factor considered to be appropriate. Abnormal or 'extraordinary' development costs are site-specific costs that relate to additional works that would otherwise not be required on a greenfield site with reasonable ground bearing strata including those associated with the treatment of contamination, demolitions, ground remediation, flood risk protection and utilities upgrades to ensure that the site and the building under development are legally compliant and meet all planning obligations. These costs will be reported to the Council's Cabinet for its consideration and approval.
- 4.1.8 Whilst not specifically required by the legislation, it is implied that a HRA in Scotland is self-financing, that is the budgeted income is sufficient to cover budgeted expenditure. The legislation permits a Council to transfer, any actual HRA surpluses to the General Fund. However, they are not permitted to budget for a transfer of funds from the General Fund to the HRA. The HRA is also not permitted to show a deficit at the end of the financial year. If this occurs, authorities are required to transfer funds from the General Fund to cover this deficit.
- 4.1.9 Since April 2010, no limits have been set on contributions from the General Fund to the HRA though any such contribution would require the consent of Scottish Ministers under paragraph 2(5) of schedule 15 to the 1987 Act. In theory therefore a subsidy is allowed with appropriate permissions. Subsidies from the General Services Fund should not be planned or budgeted; however, if they do occur and are approved by Cabinet/ Council, then permission must be sought from the Scottish Ministers.
- 4.1.10 The financial implications of any subsidy required from the General Services Fund to the HRA requires to be approved by the Cabinet/ Council. The decision sought from the Cabinet should clearly set out why the subsidy is required in order that they are fully aware of the financial implications of the decision they require to make.
- 4.1.11 As part of the ongoing remit of the Asset Management Plan, the Service Lead – Asset Management and Community Asset Transfer will discuss with services to determine if there is a continuing need for the Council to retain the asset. If a Council service expresses an interest in retaining the asset, a clear business case including recognition of the ongoing financial responsibilities will require to be developed to justify retention.
- 4.1.12 This exercise may therefore culminate in an alternative Council use being identified, disposal to a community organisation, the leasing of the property where the Council wishes to retain a long term interest, demolition of the property or the property's outright sale on the open market.

4.1.13 Formal approval to declare the asset surplus to requirements will be given by the Cabinet or Council. Requests for approval to declare land and buildings surplus to requirements will usually be sought in batches to limit the number of individual reports required.

#### 4.2 ***Criteria for Land and Buildings Disposals***

4.2.1 For the disposal of land and buildings which have been declared surplus to requirements up to the value of £100,000 and are to be marketed for disposal, the Director - Place will decide if the disposal should be on the open market or by public auction.

4.2.2 Formal approval from the Cabinet or Council will be sought to approve disposals and acquisitions of land and buildings which exceed £100,000, and disposals of land to community organisations, public sector organisations and Housing Associations.

#### 4.3 ***Methods of Disposal***

4.3.1 Where the Council approves the property's disposal for a capital receipt, the disposal will be carried out in accordance with the Council's Standing Orders Relating to Contracts.

4.3.2 The Service Lead – Asset Management and Community Asset Transfer, in conjunction with the Service Lead – Planning and Building Standards, will determine if there is a requirement for a planning brief or statement to be provided prior to marketing the property.

4.3.3 Methods of disposal are:

- (i) open market disposal;
- (ii) negotiation with a third party; and
- (iii) public auction.

#### 4.4 ***Open Market Disposal***

4.4.1 The Service Lead – Asset Management and Community Asset Transfer shall assess, on a case by case basis, the degree of advertising necessary to ensure that a proposed disposal of land and buildings will be subject to open competition, will satisfy the requirements of transparency and will achieve best value for the Council.

4.4.2 When appropriate, independent agents will be appointed to manage the advertisement and the disposal of the land or buildings, to report to the Council the value of the bids received and to recommend which they consider to be the best consideration, taking into account both financial and non-financial benefits.

#### 4.5 ***Negotiation with a Third Party***

4.5.1 In certain circumstances, the Council will decide to dispose of an asset by negotiation with a third party without prior advertisement.

- 4.5.2 In order to justify a private disposal, the proposal must meet one, or more of the following criteria:
- (i) the proposed disposal is to a purchaser who owns or controls an adjoining property or piece of land;
  - (ii) the proposed disposal is to a third party who, whilst not an adjoining landowner, would bring additional social, environmental, health or economic benefit: an example would be a sale to an existing major employer who could otherwise leave the area or a sale to a new major employer who would move into the area or organisations who wish to invest in upgrading existing facilities or building new facilities; and/ or
  - (iii) to enable the purchase of another site, which the Council considers necessary to meet its priorities and objectives.

#### 4.6 **Public Auction**

- 4.6.1 The Service Lead – Asset Management and Community Asset Transfer shall assess, on a case by case basis, whether it is appropriate to market a property by public auction. In such cases, the Director – Place, in consultation with the Service Lead – Asset Management and Community Asset Transfer, will set a reserve price at a level that ensures the Council's interests are protected.
- 4.6.2 Formal approval from the Cabinet or Council will be sought to approve disposals and acquisitions of land and buildings by public auction where the reserve price exceeds £100,000 prior to the auction date.

### 5. **Community Asset Transfer**

- 5.1 Part 5 of the Community Empowerment (Scotland) Act was passed on 7 June 2015 and the part relating to the community asset transfer requests came into force on 23 January 2017. The disposal of assets from local authorities and other public sector organisations is legally recognised as an important means of supporting communities to own assets. The Scottish Government hopes the Act will increase the flow of assets into community ownership and aims to facilitate this by encouraging and supporting local authorities and community organisations both to gain a wider appreciation of the benefits and risks associated with asset transfers.
- 5.2 Community ownership of assets can make an important contribution to the range of innovative, 'bottom up' solutions which community organisations can develop to address local needs. These solutions can meet the needs of local people and also contribute to the delivery of both the Council's Single Outcome Agreement and national government outcomes. The Council does, however, recognise that the community ownership of land and buildings assets is a major commitment for eligible bodies.
- 5.3 The process for any Community Asset Transfer is set out in the Council's Community Asset Transfer Process. This process is in accordance with Part 5 of the Community Empowerment (Scotland) Act 2015. It should be noted that this process is different from the acquisitions and disposal process as it provides communities with the right to make requests for ownership, lease management or use of publicly owned buildings

and land, including common good properties, which are still in operational use by the Council. Applications under Part 5 of the Community Empowerment (Scotland) Act 2015 are determined under the Community Asset Transfer Process and in accordance with the requirements of the Act and the associated Scottish Government Guidance.

- 5.4 It is recognised that in small rural communities the requirements to form Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Company (Bencom) in accordance with Part 5 of the Community Empowerment (Scotland) Act 2015 which requires a minimum 20 person board can be a potential obstacle with regard to the ownership of land and property assets being transferred to these communities.
- 5.5 In these circumstances, if an application for the transfer of ownership would not meet the requirements of Part 5 of the Community Empowerment (Scotland) Act 2015, it would be open to the Council to consider the transfer of an asset to a community group for less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 if the disposal is considered reasonable, demonstrates the following purposes of promotion or improvement of:
- 5.5.1 Economic development or regeneration;
  - 5.5.2 Health;
  - 5.5.3 Social wellbeing; and/ or
  - 5.5.4 Environmental wellbeing.

## **6. Common Good**

- 6.1 Where a disposal involves Common Good property, the same considerations of the acquisitions and disposals policy generally apply. Any potential sale of Common Good property would be subject to the statutory restrictions explained in paragraph 2.6 above.
- 6.2 It is necessary to consider advice from Legal Services as to whether an application to the Court is required to dispose of the property. The Service Lead – Asset Management and Community Asset Transfer will determine, following consultation with Legal Services, if the matter is to be referred to the Court for authority to dispose of the asset.
- 6.3 Formal approval will be sought from the Cabinet or Council to approve the acquisition and disposal of all Common Good assets regardless of its value.
- 6.4 Where there is a disposal of the Common Good asset the proceeds will be treated as receipts to the relevant Common Good account.

## Checklist for Disposals

- Surplus to requirements
  - has the land/ property been declared surplus to requirements in line with the relevant policy? Y/N
- Title Issues:
  - Has a recent or refreshed title report been completed by Legal Services? Y/N
  - Have any issues raised by Legal Services in the title report been addressed by Estates, for example, if further deeds are needed or a legal report obtained? Y/N/NA
  - Has the extent of the disposal been plotted with reference to the title? Y/N
  - Are Legal Services satisfied that the disposal does not trigger any rights under the School Sites Act 1841? Y/N
- Common Good
  - Is the land/ property common good? Y/N
  - If yes, have Legal Services been consulted about the disposal? Y/N
  - Is the land/ property alienable? Y/N
  - Is a sheriff court petition required? Y/N
  - Has a common good consultation been carried out? Y/N
- Owning account
  - Is the land/ property in the HRA? Y/N
  - If yes, has the HRA disposal procedure for general consent been followed? Y/N
  - [HRA++Consent+Reforms+-+General+Consent+Guidance+-+February+2016.pdf \(www.gov.scot\)](#)
  - If advice is required from Finance or Legal Services, has this been obtained and followed? Y/N/NA
- Open Space
  - Is the land open space? Y/N
  - If yes, have the open space statutory requirements (notice of disposal and consideration of any objections) been fulfilled? Y/N
  - [Town and Country Planning \(Scotland\) Act 1959 \(legislation.gov.uk\) s.24 and s.27](#)
  - If advice is required from Legal Services, has this been obtained and followed? Y/N/NA

- Valuation

- Have Estates undertaken a valuation of the land/ property in line with the relevant policy? Y/N

- If the land/ property is being sold for less than market value, has the legislation and statutory guidance for disposals for less than market been adhered to? Y/N

[The Disposal of Land by Local Authorities \(Scotland\) Regulations 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

[Disposal of Land by Local Authorities \(Scotland\) Regulations: General Guidance - gov.scot \(www.gov.scot\)](http://www.gov.scot)

- If advice is required from Finance or Legal Services, has this been obtained and followed? Y/N/NA

- Conditions

- Are there any special conditions recommended for the disposal, such as clawback, economic development burdens? Y/N

- If yes, have the conditions been discussed with Legal Services? Y/N

## Provisions of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and Procedure

1. Unless the value of the land (best consideration for the disposal) is less than £10,000 (the 'threshold amount'), or the difference between the best consideration that can reasonably be obtained and proposed consideration (the 'marginal amount') is 25% or less of the best consideration that can reasonably be obtained, then the local authority must follow the 'procedure' set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010 which requires that the local authority must:
  - a) appraise and compare the costs and other dis-benefits and benefits of the proposal; and
  - b) determine that the 'circumstances' set out in Regulation 4 are met.
2. The 'circumstances' in which a local authority may dispose of land for a consideration less than the best that can be reasonably be obtained are that:
  - a) the local authority is satisfied that the disposal for that consideration is reasonable; and
  - b) the disposal is likely to contribute to any of the 'purposes' set out within the Regulations (in respect of the whole or any part of the area of the local authority or any persons resident or present in its area).
3. These 'purposes', which the local authority must consider, include the promotion or improvement of following types of benefit:
  - a) economic development;
  - b) regeneration;
  - c) public health;
  - d) social wellbeing; and
  - e) environmental wellbeing.
4. Officers in the Council Directorate seeking the transfer at less than market value shall, with the assistance of the Service Lead - Asset Management and Community Asset Transfer, arrange for a business justification/ evaluation to be prepared that demonstrates how the proposal meets the requirements of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the Community Empowerment (Scotland) Act 2015 (if applicable) having regard to the following:
  - a) the business justification/ evaluation will need to take account of whether/ not the proposed 'benefits' to be delivered by the proposal justify the proposed level of discount sought;
  - b) the business justification/ evaluation will need to include an assessment of the proposed disposal taking into account all relevant factors, all available options and all relevant information, and demonstrates that an evaluation, supported by evidence, makes clear how the decision has been reached; and

- c) the benefits of such a proposal should be proportionate to the value of the asset and the level of discount being proposed, with an appropriate level of information to support the business justification/ evaluation.