

**REGISTER OF SCOTLAND
COMPLETION OF THE LAND REGISTER
PUBLIC CONSULTATION**

RESPONSE FROM GLASGOW CITY COUNCIL

Question 1

Do you agree that Scottish Ministers should close the Sasine Register to standard securities?

Answer

Yes. The Council is not opposed to this proposal.

Question 2

Do you agree that the fee for the associated voluntary registration of the property should be waived?

Answer

Yes

In general the Council's view is that there should be no fee associated with Keeper induced or "triggered" registrations. Fees are likely to act as a disincentive to voluntary registration, unless the registration is associated with a prospective transaction.

Question 3

Do you agree that closure of the Sasine Register for standard securities should be introduced across Scotland at one time or should it be introduced on a staggered basis by county or by groups of counties.

Answer

Yes

It should be introduced across Scotland at the one time.

Question 4

What deeds to you consider it appropriate to close the Sasine Register to and so require voluntary registration of title in order to give legal effect to the deed?

Answer

Initially, only deeds granted by the proprietor or to which the proprietor is a party should trigger registration.

Deeds drawn up by a body other than the proprietor (eg notice of grant; charging orders; repairs grant etc) would inevitably result in Keeper induced registration as proprietors would be reluctant, and in some cases, unable, to undertake voluntary registration.

Question 5

Do you agree that the fee for the associated voluntary registration of the property should be waived?

Answer

Yes

In general the Council's view is that there should be no fee associated with Keeper induced or "triggered" registrations. Fees are likely to act as a disincentive to voluntary registration, unless the registration is associated with a prospective transaction.

Question 6

Do you agree that the legal power the Keeper has to refuse a request for voluntary registration should be removed, irrespective of the outcome of the proposals on introducing additional triggers?

Answer

Yes.

In theory, this could be beneficial, allowing forward planning and better management of resources in anticipation of large or complex transactions. However there remains a question over whether the substitution of Keeper's warranty for Keeper's indemnity, will reduce the benefits of the additional work involved in voluntary registration.

Question 7

Do you agree that a reduced fee should apply to voluntary registrations? If so do you agree with the proposed 10% reduction?

Answer

As stated in response to questions 2 and 5, in general the Council considers that fees associated with "new" forms of registration should be waived, or reduced as far as possible as an incentive to use these procedures. More comments will be included in the composite response to questions 8 to 11.

Questions 8 – 11

The Council has provided answers to these individual questions but these should be read in the context of the further commentary provided below.

Question 8

Do you agree with the proposed approach to piloting KIR to inform a Consultation on the detailed approach to and strategy for KIR?

Answer

No

Given the aspiration to register public land in the first 5 years after the designated date, the pilots selected are too narrow. Registration of heritage assets is important, but these titles are unlikely to be typical of land holdings of other public bodies, such as local authorities.

Further comment is provided below.

Question 9

Should other elements be included in the pilot and what should they be?

Answer

Yes

A further KIR pilot involving a public sector body with large and diverse land holdings (from which there have been multiple split-offs over a long period of time) should be undertaken. To allow the public body to properly participate in the pilot, funding should be made available by Scottish Ministers.

Further comment is provided below.

Question 10

Do you agree with the proposed approach to completion?

Answer

No

For the reasons stated below, the Council is unlikely to use voluntary registration. Based on the current proposals to close the Sasine Register to certain deeds and automatic plot registration of landlord titles, we estimate between 25 – 50 instances of 'trigger' registration per year. As a result, neither of these methods will make any significant impact on transferring the Council's overwhelmingly Sasine based titles into the Land Register.

Question 11

Have you any views on our proposals for funding the completion of the Land Register?

Answer

Yes

On the basis of the information provided in the consultation, the Council is unable to properly assess whether the Keeper will have sufficient resources without having to increase fees.

However, as stated, the Council's view is that the take up of voluntary registration is likely to be low, at least amongst local authorities, unless funding is made available for the additional resources which would be required. The consultation makes no provision for this. A low take up of voluntary registration will inevitably have an impact on the Keeper's analysis.

Further commentary in response to Questions 8 – 11

Q. 8 Do you agree with the proposed approach to piloting KIR to inform a Consultation on the detailed approach to and strategy for KIR?

Q. 9 Should other elements be include in the pilot and what should they be?

Q. 10 Do you agree with the proposed approach to completion?

Q. 11 Have you any views on our proposals for funding the completion of the Land Register?

Answer

The issues raised in these questions are closely related and the Council considers there is merit in providing a composite response.

Introduction

At the outset, it should be stated that the Council welcomes the principle underpinning completion of the Land Register. To have access to an accurate, reliable, plan based system of ownership information would be of great assistance, not only to the Council, but to those involved in property transactions with it, and would have wider public benefits as well.

However, it is the Council's view that there has been no proper recognition of the sheer scale of the task involved in achieving completion of registration of titles held by bodies such as local authorities.

The Council is unlikely to be in a position to carry out voluntary registrations, as explained below, and it would assume that other public sector bodies will be in a similar position.

Trigger registrations will have a limited impact.

By the Keeper's own admission, she will be relying on "trigger" and voluntary registrations in the first five years. The results of the pilots for KIR will not be available and consulted on until late 2015 and the "low level" KIR following on evaluation of the Consultation will not commence until 2016, some two years into the five year period.

For these reasons, the Council considers that the timescale set out for completion of the Register, in particular for registration of all public land within five years, is at very best challenging, and in fact, is unrealistic.

Council's titles

The reason completion of the Register would be of benefit to the Council is also the reason why we are reacting with caution to the proposals set out in the Consultation, in particular, the timescales proposed.

The Council's titles are numerous, complex and overwhelmingly Sasine registered. There are in excess of 20,000 title bundles. Of this total, only around 5% are currently Land Registered. Most, but not all of the title bundles will relate to a single title deed (disposition; feu contract, statutory conveyance; CPO/GVD etc). Some bundles contain multiple deeds, not always for contiguous areas of land. The title deeds range from that for a single tenement flat (or more likely the airspace to a former flat) to a title such as a 'Housing' title containing multiple acres.

Many of the titles are old, have no plans and only poor descriptions. Many cover very large areas which now bear no physical resemblance to the land when it was acquired, making historical descriptions difficult to relate to current features on the ground. Many titles have been partially sold over the years, with larger titles having

had multiple split offs (this is excluding council houses sold under right to buy legislation). Some titles are 'residual estate' titles where the Council has acquired everything in a particular area which had not already been sold.

Many titles are only registered in the Burgh Register, which has no proper index making it very difficult to search, and from which it is not possible to obtain duplicate plans.

Searches against titles can be difficult. For example, at some point in the early 1960s, the Keeper began a search sheet which now has thousands of separate titles on it relating to land in different parts of the city. It is not clear why this happened, but the result is a search sheet which runs to hundreds, if not thousands, of pages (it is not easy to work out the exact number from Registers Direct). This makes searching against subjects on the sheet very difficult.

Changes in the structure and boundaries of local government over the years have sometimes led to problems with records which the Council now holds about its property.

Voluntary registration

Under the current proposals, voluntary registration would still incur fees, and the proposed discount would provide little incentive for a body with large land holdings such as the Council.

There is no recognition of the scale of resources which would be needed to carry out work required for voluntary registration.

To illustrate this, we have selected a number of recent transactions which have involved title investigations. Although complex, these are not untypical of the type of work which would be required for registration of many of the Council's titles.

Example: Mixed Use Commercial Building

This building occupies a block in the city centre near Glasgow Cross. The building is in fact an amalgam of buildings, consisting of shops, offices, and some former Council housing (now transferred to GHA or purchased under 'right to buy').

The titles date from the 19th century when the Council's predecessors began 'slum clearance' using The City Improvement Acts – forerunners of modern housing action areas. There are numerous individual titles, with descriptions which are almost impossible to relate to modern addresses. Most of the deeds do not contain plans. The plans which do exist have no ordinance survey, or indeed any other features on them which would allow their location to be easily identified. They are at best 'floating rectangles'. Extensive work has been done by the Council's solicitors over the years to try to piece together the title to the block in preparation for a voluntary registration application. This work has relied heavily on indexes made up by the Town Clerk at the time of acquisition which allow cross referencing of the names of sellers. Without these records, which are held by the Council, it would be extremely difficult, if not impossible to assemble the title.

The Keeper has recently confirmed that she will accept an application for voluntary registration based on the information exhibited to her.

The work carried out by the solicitor with the most recent involvement, has been in excess of 500 chargeable hours. This is something in the region of 5 months worth of work for one full time solicitor.

In a further twist, the application will be in the name of City Property Glasgow (Investments) LLP, an ALEO set up and owned by the Council, to acquire some 1500 commercial investment properties from it. This transfer in 2010 was effected by a General Disposition, which is not capable of being registered in the Sasine or Land Register. The reason for using the general disposition, was that it was simply not possible to carry out the title investigations or conveyancing required to prepare a title which would have resulted in Land Certificates in the LLP's name at the time of the transfer.

This situation remains, and is a further complication in any approach to completion of the Council's title.

It is not clear from the Consultation what the definition of 'public land' is and whether property held by ALEOs would fall within it.

Further Examples

The example above is by no means a unique in terms of the Council's titles though it is unusual in being the subject of a proposed application for voluntary registration.

The following table contains examples of recent transactions where title work has been undertaken in anticipation of a sale or other conveyance. These are typical of the complexities in the Council's titles.

Example	Description	Time spent on title examination/ verification
1. Dispositions of several areas of land at adjacent to the river Clyde.	Numerous correspondences with the Land Register's Title Investigation Unit in trying to determine the exact extent of areas covered. One site, alone, which extended to 1.58 hectares, involved 28 different title bundles. The title investigation process took about a year to complete.	Approx 200 hours
2. Small area of ground in north of the city centre – required for completion of title by another public body	20 different title bundles mostly dating back to the nineteenth century. Transaction took 18 months to complete.	60 hours
3. Area in the east end	11 separate titles compiled in this area of ground, Land Ownership report, 20 page Disposition	80 hours
4. Area of land in Bridgeton	Complicated Disposition with associated Deed of Servitude for boundary areas	48 hours
5. Area of ground in Dalmarnock	Complicated Disposition (40 separate title deeds, 14 page Disposition, associated issues with CPO land plots, Development Agreement etc)	78 hours

6. car park near city centre	Council have occupied this land for over 30 years but have recently become aware of an issue with the title to the land and a dispute has been ongoing for 2 years.	36 hours
Sale of land to housing association in south of the city	24 individual titles making up the disposal site	120 hours

These figures are for solicitor time only. They do not reflect the time spent by surveyors, plan technicians, and admin staff.

Transfer of Council's housing stock to Glasgow Housing Association

The Keeper refers to the experience of 6 local authority housing stock transfers in her assessment of the challenge for completion of the Register (paragraph 18).

These transfers will undoubtedly have provided the Keeper with useful experience, and the work already carried out will make completion of the Register in these 'research areas' easier (in the sense of transferring those houses to the Land Register, which had been sold and registered in the Sasine Register prior to stock transfer)

The 2003 transfer of the Council's housing stock to GHA is one of these six. The experience inevitably informs the Council's response to the current consultation.

The stock transfer involved the transfer of around 81,000 council houses throughout the city. The geographical extent of the city was broken down into 253 areas, each having its own plan and disposition. A plan may have contained one or several delineated areas of housing and in some cases associated amenity grounds, and/or shops on the ground floor of tenements.

The transaction involved examination of around 650 Council title bundles (fewer than 2.5% of the total number of Council titles bundles).

This work was done by a dedicated team of solicitors, plan technicians, admin staff and surveyors. The team consisted of 4 solicitors; a chief solicitor, 6 paralegal/admin with additional WPO staff; 2 to 3 plan technicians, and a number of surveyors.

A conservative estimate of the amalgamated time spent on the project is as follows:-

Solicitor	-	50 months
Admin	-	60 months
Plan technicians	-	48 months
WPO	-	18 months

This was all work associated with titles and conveyancing, not the wider contractual/regulatory aspects of the stock transfer. The solicitors involved (other

than the chief solicitor who worked on the project for over 2 years) were all recruited specifically to carry out title work and conveyancing, as were the admin staff.

There was substantial consultation with the Keeper prior to the transfer.

It is submitted that while the scale of this transfer marks it out, in fact the titles are not particularly complex, being predominantly large housing titles with relatively clear boundaries; and split offs being restricted to houses already purchased under right to buy.

Keeper Induced Registration

Given the resources (both in terms of fees and employee time) required, the Council is unlikely to undertake voluntary registration except on isolated occasions.

As a consequence, substantial progress towards completion of the Register would then fall on the Keeper through Keeper Induced Registration. The examples given above of work carried out by the Council remain relevant as in KIR the work would initially fall to the Keeper.

It is not evident from the consultation that the KIR pilots will take account of the type of land holdings which Councils and other public sector bodies (and indeed other large "estate" owners) are likely to have.

The Council suggests that another KIR pilot involving a public sector body with large and diverse land holdings should be undertaken and crucially that funding is made available to that body, by RoS or the Scottish Ministers to take part in the pilot.

The results of the KIR pilots will be crucial in determining a realistic timescale and a workable process for completion of the Register.

Further, the Council does not accept that KIR could be carried out with little or no input from a proprietor, as implied in the consultation (paragraph 43).

A proprietor will only know if a property has been accurately, or "over" or "under - mapped", or if rights and restrictions it believes apply to the title have been properly recorded, if it checks the Register in response to a notification of KIR.

The alternative would be to wait until registration of a neighbouring plot highlights an anomaly on the cadastral map, or a problem is discovered when the proprietor comes to transact with the title. That will not be acceptable for many proprietors.

In reality, a comparison exercise will be required by the proprietor's own legal advisers to establish that boundaries have been accurately mapped and that servitudes, burdens, securities etc had also been properly noted on the Register.

For the Register to be as useful as it can be, the opportunity should be taken to cleanse it of redundant burdens. It is unlikely that the Keeper would be able to do this entirely without reference to a proprietor and in some cases, the purported benefited proprietor. No mention is made of this in the consultation, but is likely to be time consuming.

The consultation makes no mention of notification to anyone other than the proprietor, but security holders would surely also have an interest in being notified of

KIR, and of checking that the security is registered over what it considers to be the security subjects.

The benefit of having a comprehensive Land Register is in providing accurate, warranted information which can be relied on; this is explicitly recognised in paragraphs 14 and 15 of the consultation. If this reliability and warranty is diminished, as suggested in paragraphs 34 and 35, those benefits are greatly undermined.

The funding approach suggested in paragraphs 41 and 42 seem open to question. For the reasons already stated above, the Council is unlikely to carry out voluntary registrations to any great degree and from our analysis of previous transactions, "trigger" registration, while it creates additional work which will be challenging to resource, will not make any real impact on transferring the Council's overwhelmingly Sasine based titles into the Land Register.

Summary

The Council supports the principle of completion of the Land Register. It also accepts that steps will be required to make this happen.

The benefits to be had from completion of the Register should be clear, demonstrable, and proportionate with the resources, time and costs which will be required to achieve it. This is particularly important for public bodies in a time of restricted budgets when resources are stretched and priorities have to be identified carefully.

The Council does not consider that the timescale for completion, in particular for registration of public land, is realistic. In under-estimating the complexity of Sasine registered titles held by bodies such as the local authorities, the consultation is over optimistic about the role which voluntary registration will play in completion, and about how quickly KIR can be carried out.

The Council considers that a further KIR pilot should be included which would consider public sector bodies with large and diverse land holdings, and it would welcome the opportunity to engage with the Keeper in this respect. For any pilot to be meaningful, funding should be made available to the participant.

The opportunity exists through the process of completion of the Register to, in the words of the consultation 'maximise fully the gains to be had from having secure, reliable and accessible information on land ownership' (para 9). It is important that this opportunity is not compromised through a lack of time or resources required to carry out the process properly.

Elaine Galletly
Head of Legal and Administration
Corporate Services
Glasgow City Council

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