

# COMMUNITY AGREEMENTS:

Definitions and a guide to use

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## 1. Background

Forest Enterprise Scotland recognises the value to local communities and communities of interest in getting involved with Scotland's National Forest Estate, both through what can be achieved on the Estate and because involvement can strengthen communities.

Our staff have gained experience working with communities in delivering successful projects through agreements and partnerships. We continue to engage with communities to develop and implement a range of projects on the National Forest Estate (the Estate).

The Community Empowerment (Scotland) Act 2015 introduced the statutory right for communities to request to manage, use or occupy public land. Forest Enterprise Scotland has developed a [Community Asset Transfer Scheme](#) (CATS) for the Estate. This sets out how we will process and assess asset transfer requests, in compliance with Scottish Government asset transfer regulations. All requests to purchase or lease assets on the Estate will be handled under CATS.

For many activities where a lease or purchase is not required, a community can decide not to submit a statutory request. Instead they can work with our staff to identify and implement the most appropriate arrangements for the activity they would like to carry out.

## 2. Purpose of this Guide

This guide provides information on the different agreements through which community groups (and other parties) can formalise their relationship with Forest Enterprise Scotland. It is intended as an overview to assist understanding of the types of agreement which may be used for eligible projects.

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### 3. Some Notes on Community Engagement

For any proposed community project there will be an initial period of engagement between our local staff and the community group. This is an important phase. The level of involvement Forest Enterprise Scotland will have during this phase will depend on whether the project is:

- Predominantly community led.
- Predominantly Forest Enterprise Scotland led.
- Partnership between Forest Enterprise Scotland and the community group.

The engagement phase will help Forest Enterprise Scotland and the community group assess whether the project is viable in principle. This will include issues such as:

- Planning requirements and level of wider community support.
- Impact on the activities of Forest Enterprise Scotland in managing the estate.
- Potential sources of funding and any conditions.
- Resources to manage ongoing commitments.

If the community project is viable then the engagement should move to detailed planning and dialogue. This will help to clarify the most appropriate agreement. Start up support for communities is available through the [Forestry Commission Scotland's Community Fund](#). This fund can help with feasibility studies and other eligible support.

If you would like more detail on community projects and activities on the estates please visit these pages on our [web site](#). This [link](#) will take you to further background information if you are interested in a renewables project.

For further information please [contact](#) your local Forest Enterprise Scotland District Office

## 4. Potential Community Agreements

### 4.1 Overview

		How to apply
<b>Permission (See 4.2)</b>	<ul style="list-style-type: none"> <li>The most frequently used agreement type.</li> <li>Individual or group.</li> <li>Short term activities, relatively informal.</li> <li>No long term obligations on permit holder.</li> <li>Not suitable for construction of permanent infrastructure.</li> <li>Some examples include: routine woodland management, motorised access, events.</li> </ul>	<b>Local FES office or CATS Request</b>
<b>Memorandum of Understanding (See 4.3)</b>	<ul style="list-style-type: none"> <li>Best suited for community groups in a longer term relationship. For example longer term woodland management.</li> <li>Sets out how the relationship between the two parties will work over time.</li> <li>Specific activities are delivered through supplementary agreements if required. For example a permission for volunteer work, or a CATS application for a lease.</li> </ul>	
<b>Minute of Agreement (See 4.4)</b>	<ul style="list-style-type: none"> <li>Individual or group.</li> <li>Sets out roles, responsibilities, obligations and rights.</li> <li>Specialist advice may be required</li> <li>Where two or more parties are bound by obligations without exclusive occupation of land forest or buildings.</li> <li>An example might be construction and long term management of footpaths.</li> </ul>	
<b>Lease (See 4.5)</b>	Exclusive possession of land forest or building.	<b>CATS Request</b>
<b>Disposition (Sale) or Servitude</b>	Permanent transfer of title over forest, land or building.	

## 4.2 Permission

<b>Summary</b>	<p>A "permission" is essentially an official document granting specific personal rights (subject to conditions) to an individual or group. It is generally used to permit routine activities where exclusive possession of a building or site is not required, but the activity does not fall within the principles of the Scottish Outdoor Access Code.</p>
<b>Duration</b>	<p>We will issue a Permission for a short term one off event or activity. The duration is usually less than 12 months.</p>
<b>Key Points</b>	<p>Depending on the nature of the activity, specialist input such as a solicitor is not necessarily required. Forest Enterprise Scotland has a suite of standard permission documents covering many routine community activities.</p> <p>Permissions will be issued for a maximum of 12 months duration. This is to ensure there is regular review and communication between Forest Enterprise Scotland staff and the community group if the activity continues longer than 12 months.</p> <p>Permissions will be managed in line with Forest Enterprise Scotland guidance. This will include procedures to share constraints and hazards information, ensuring the activity can proceed in a safe environment.</p> <p>Permission is required where the activity may impact on other users, affect Forest Enterprise Scotland operational activity, or have an impact on the environment.</p>
<b>Link to additional relevant guidance</b>	<p>Detailed guidance and templates can be found at this link: <a href="http://scotland.forestry.gov.uk/managing/get-involved/permissions-and-permits">http://scotland.forestry.gov.uk/managing/get-involved/permissions-and-permits</a></p> <p>Further guidance on responsible access to the countryside can be found in the Scottish Outdoor Access Code here: <a href="http://www.outdooraccess-scotland.com/">http://www.outdooraccess-scotland.com/</a></p>
<b>Best Suited</b>	<p>Permissions are best suited where no long term maintenance or liabilities are created by the proposed activity. To that end they are</p>

	useful for some aspects of woodland management such as non-native species removal, and habitat improvement works, access improvements works such as maintaining a path. They are also used for a wide range of sporting, fund raising events, and group activities where landowner consent with a certain degree of control is considered best practice.
<b>Legacy Considerations</b>	It is not usual to have legacy considerations for Permissions.

## 4.3 Memorandum of Understanding

<b>Summary</b>	A Memorandum of Understanding (MOU) is not legally binding but establishes an agreement (or “understanding”) between two or more parties to deliver mutual aims and objectives. They are less formal than a contract or a lease and are usually used to set out high level principles on roles and responsibilities for example health and safety management and delivery of specific activities. Forest Enterprise Scotland can enter into a MOU in its capacity as the agency responsible for managing the National Forest Estate.
<b>Duration</b>	MOU’s are flexible agreements and not always time bound, although they must include provisions to review and terminate.
<b>Key Points</b>	<ul style="list-style-type: none"> <li>• An MOU may not require specialist legal advice unless it is particularly complex.</li> <li>• The MOU should set out details of the parties involved.</li> <li>• It should set out the main roles and responsibilities, how the parties will communicate including frequency of reviews.</li> <li>• Include agreed objectives outputs and activities.</li> <li>• Set out the general obligations of each party. This must include relevant documentation required to support delivery of outputs.</li> <li>• Be clear on action required to review and/or terminate the MOU.</li> </ul>
<b>Link to an example</b>	Case study: Glen Affric Partnership: <a href="http://scotland.forestry.gov.uk/images/corporate/pdf/communityprojects-glen-affric-case-study.pdf">http://scotland.forestry.gov.uk/images/corporate/pdf/communityprojects-glen-affric-case-study.pdf</a>
<b>Best Suited</b>	MOUs are best suited to longer term community relationships that

	<p>involve the delivery of a range of projects over time. They are the mechanism to manage and review the overarching relationship, agree projects, and importantly plan how projects will proceed.</p> <p>Specific activities are then managed through supplementary agreements if required. For example the MOU may set out how the long term management of a woodland will work. But the practical delivery of elements of woodland management within a given year may be delivered by a permission which would cover the detail of specific projects on the ground.</p>
<b>Legacy considerations</b>	<p>Legacy considerations would be agreed in the supplementary agreements if required, rather than the MOU. The MOU does not leave any legacy works or infrastructure on the Estate.</p>

## 4.4 Minute of Agreement.

<b>Summary</b>	<p>A Minute of Agreement is a legally binding contract between two or more parties which wish to be bound by obligations and rights, without exclusively occupying land or buildings. It will set out clear roles and responsibilities for each party. So far as the National Forest Estate is concerned, the landowner (and party to a Minute of Agreement) will be the Scottish Ministers.</p>
<b>Duration</b>	<p>Short, medium or long term dictated by the nature of the activity or project.</p>
<b>Key Points</b>	<p>Forest Enterprise Scotland will normally engage a solicitor to draft a minute of agreement having first agreed terms with the community group. Our advice would always be for community groups to seek appropriate legal and professional advice before entering into a legally binding agreement.</p> <p>Forest Enterprise Scotland Land Agents will develop "heads of terms". This includes roles, responsibilities and obligations. These will need to be agreed and, ultimately, detailed in the minute of agreement.</p>

	As a community group it will be important to nominate individuals who can meet with and work with the local district team to reach an agreement. This would also include engaging specialist advice to develop plans or represent the interests of your community group.
<b>Link to an example</b>	Case study: Gallowhill Community Woodland Project: <a href="http://scotland.forestry.gov.uk/images/corporate/pdf/communityprojects-gallowhill-case-study.pdf">http://scotland.forestry.gov.uk/images/corporate/pdf/communityprojects-gallowhill-case-study.pdf</a>
<b>Best suited</b>	A Minute of Agreement is best suited to activities that do not require exclusive possession. This type of agreement could support some form of construction project for example trails, wildlife ponds, or building works. A minute of agreement could also be used to formalise specific commitments, roles, responsibilities and actions for the delivery of a partnership project.
<b>Legacy considerations</b>	This type of agreement has the potential to create legacy issues and this should be effectively addressed during the planning stage. Arrangements for handling legacies would be agreed and set out in the minute of agreement.

## 4.5 Lease

<b>Summary</b>	A lease is a legally binding agreement between two parties (a landlord (or lessor) and a tenant (or lessee)). It is established where exclusive occupation is granted over land or a building, for a particular purpose and a given period of time, in exchange for a rent. So far as the National Forest Estate is concerned, the landlord will be the Scottish Ministers.
<b>Duration</b>	Under Scots Law, a lease can be for any period of time up to a maximum of 175 years. In practice, a lease will need to be of sufficient duration to allow a reasonable time for a community to develop and implement its plans having regard to any funding criteria.
<b>Key Points</b>	An eligible community body can submit an asset transfer request for lease under the Community Asset Transfer Scheme. This must

	<p>include any other terms and conditions you want to be included in the lease.</p> <p>If the request is approved, Forest Enterprise Scotland will normally engage a solicitor to draft a lease, incorporating terms that have been agreed between the parties involved. Our advice would always be for community groups to seek appropriate professional and legal advice before entering into a lease.</p> <p>The local Forest District’s Land Agent will develop “heads of terms”. This summarises key terms (such as roles, responsibilities and obligations) that will need to be agreed and, ultimately, detailed in the lease.</p> <p>As with the minute of agreement the community group should nominate individuals who can work with the local district team to reach an agreement on the lease.</p> <p>The lease should establish clear rights and obligations on each party and, in most cases, will pass full responsibility for managing the land or buildings to the Community.</p> <p>If land is being leased for forestry purposes, the land and woodland must continue to be managed in accordance with the UK Forestry Standard and associated guidelines.</p> <p>The amount of rent to be paid will be agreed on a case by case basis, but having regard to potential public benefit that will be delivered and the commerciality of the activity.</p>
<p><b>Link to additional relevant guidance</b></p>	<p>Case study: Lesmahagow Development Trust Allotments: <a href="http://scotland.forestry.gov.uk/images/corporate/pdf/communityprojects-lesmahagow-case-study.pdf">http://scotland.forestry.gov.uk/images/corporate/pdf/communityprojects-lesmahagow-case-study.pdf</a></p> <p>As a lease passes significant control and responsibility over to a community group, the project is assessed through our Community Asset Transfer Scheme. Details of which can be found here; <a href="http://scotland.forestry.gov.uk/managing/get-involved/community-asset-transfer-scheme">http://scotland.forestry.gov.uk/managing/get-involved/community-asset-transfer-scheme</a></p>
<p><b>Best suited for</b></p>	<p>Where a community group does not want to take on ownership but requires exclusive possession of an area of land (or a building). For example, where planning permission is required, and some form of infrastructure is proposed, and/or where longer term tenure is needed to meet funder’s criteria. Whilst each case is different, in general the project is best delivered through the transfer of</p>

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	landowner rights and obligations to the community group.
<b>Legacy Issues</b>	All leases should set out agreed actions for dealing with tenant works or improvements at, or prior to, the expiry date. If it is agreed that Forest Enterprise Scotland will inherit legacy works or issues after the expiry of the lease, this should be clearly set out within the lease.

## Annex 1

### Appropriate Agreements

This table aims to guide parties towards the most appropriate agreement to formalise specific activities that are commonly undertaken on the National Forest Estate. It may be possible for an activity to be carried under more than one agreement type and initial dialogue and planning between local staff and the community group is key to success to ensure the agreement best suited to the specific project is selected. It is a guide and is not intended to be exhaustive.

**Maybe – The activity may be possible but further discussion and understanding is required as individual cases can differ significantly.**

**X – The activity is unlikely to be suitable under this type of agreement.**

**Grey Cell – The activity can take place but this level of agreement is unlikely to be required, unless the activity is included as part of a wider project.**

Category	Activity	Activity can take place under SOAC*	Permission	Minute of Agreement	Lease	Ownership
Group activities	Group visits	✓	✓			Decisions on activities and their management pass to new owner of the asset.
	Guided walks	✓	✓			
	Sporting events	✓	✓			
	Fundraising events (sponsored walks, etc)	✓	✓			
	Nature study (pond-dipping etc)	✓	✓			
	Forest School	Maybe	✓			
	Bush craft	Maybe	✓			
Nature conservation work	Overnight camping (scouts etc)	Maybe	✓			
	Pond clearance	X	✓			
	Pond Creation	X	X	✓	✓	
	Control of invasive (Rhododendron)	X	✓	✓	✓	
Cultural heritage	Mowing meadows, ride edges	X	✓	✓	✓	
	Management of historic sites	X	Maybe	✓	✓	
Public amenity and access	Drystone dyking / restoration of historic sites	X	X	✓	✓	
	Litter picking etc	X	✓	✓	✓	
	Allotments or community growing spaces	X	✓	✓	✓	
	Maintaining existing footpaths	X	✓	✓		
	Constructing new footpaths	X	X	Maybe	✓	
	Maintaining specialist recreation provision for example mountain bike trails, equestrian access.	X	Maybe	✓	✓	

	Constructing new specialist recreation provision	X	X	Maybe	✓	Decisions on activities and their management pass to new owner of the asset.
	Maintaining existing car parks	X	✓	✓	✓	
	Constructing new car parks	X	X	Maybe	✓	
Arts and Culture	Theatre performance	Maybe	✓	✓	✓	
	Temporary installations for example willow weaved creatures	✓	✓			
	Permanent installations	X	X	Maybe	✓	
Creating structures	Hides and dens	Maybe	✓			
	Unserviced open shelters	X	X	✓	✓	
	Unserviced closed sheds	X	X	✓	✓	
	Serviced facilities (toilets etc)	X	X	Maybe	✓	
Woodland management	Tree planting	X	✓			
	Tree nursery	X	X	Maybe	✓	
	Coppicing	X	✓	✓		
	Felling	X	✓	✓		
	Woodland Crofts	X	X	X	Maybe	
	Wood fuel processing / sales	X	X	Maybe	✓	
Regular usage for external customers	Use for commercial recreational activity (paintball? Go ape type projects)	X	X	Maybe	✓	
	Use for green gym type activity	✓	✓			
	Use for health and rehabilitation projects	✓	✓			
	Use for social care and inclusion projects	✓	✓			
Other projects	Affordable housing	X	X	X	X	
	Renewables (wind, hydro, PV)	X	X	X	✓	
	Woodland burials	X	X	X	X	

\*[Scottish Outdoor Access Code](#)