



GILLESPIE MACANDREW

CASE STUDY

# WHALE, The Arts Agency Community Asset Transfer



## WHALE, The Arts Agency

### Community Asset Transfer

We act for WHALE, The Arts Agency (“WHALE Arts”) in respect of the Community Asset Transfer (CAT) of the land on which their arts centre in the Wester Hailes area of Edinburgh is built on. The CAT was successfully implemented from the City of Edinburgh Council to WHALE Arts in February 2024.

A Community Asset Transfer is the process for the transfer of a publicly owned asset (usually land or buildings) to a community organisation at less than market value, or no cost. CATs are aimed at making better use of a public asset for the benefit of the community, recognising that in many instances local charities are better placed to serve the community and meet its long term needs.

Originally set up by local people, WHALE Arts has firmly established itself as the cultural anchor organisation within the Wester Hailes and wider Edinburgh area. As a community-led charity and social enterprise, the mission of WHALE Arts is to be the creative heart of a vibrant, thriving community and to inspire and empower residents, workers, artists and designers to continue to demonstrate the power of creativity as a driver of social change. It achieves this through the delivery of projects, programmes and events and by connecting the local community with city and national wide partners.

WHALE Arts has run a purpose built creative and community venue on the land in question since 1999. The land was owned by The City of Edinburgh Council and prior to the CAT, WHALE Arts had been renting the ground for £1 per annum. The 25 year lease was due to expire in 2024. Since 1999, WHALE Arts has invested significantly into the land, having established the purpose built venue with the help of funding from The Scottish Arts Council (now known as Creative Scotland). The grant was secured over the lease property by way of a Standard Security, which added an extra layer of complication to the CAT.

WHALE Arts strongly felt that rather than continuing to lease the land, it should bring the land into community ownership. This would solidify its past investment in the building but also allow WHALE Arts the ability to raise funds to expand and redevelop enabling the implementation of more social and creative activities, as well as, new enterprise activities for locals, creating jobs, skills development and volunteering opportunities locally.

Community ownership was supported by the Council as it was accepted that the community benefit of transferring the land is substantial compared to the value of the asset if retained. It was also acknowledged that the ongoing development of WHALE Arts will make a significant positive contribution to The City of Edinburgh Council’s aspirations and values.

More than ever, community ownership of assets is becoming vital to the ongoing success of many community based charities and social enterprises.



### Community Consultation

As part of the CAT process, WHALE Arts undertook a substantial community consultation in 2021, with a total of 242 responses (169 online surveys, 70 paper surveys, and 3 phone surveys). The consultation process included:

The conclusion of the consultation was that 97% of survey respondents supported WHALE Arts’ ambition of acquiring the land the arts building sits on.

“I was delighted to assist Kate and her team at WHALE Arts with their Community Asset Transfer. Despite the legal complexities of the matter, all parties worked efficiently together to achieve this positive outcome. It is clear to see the great work and impact WHALE Arts has on the local community and I look forward to seeing what they do with their property in the future”

Kevin Sturgeon, Associate, Gillespie Macandrew

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## Our legal support

We provided legal support to WHALE Arts in respect of the land purchase via the CAT legislation, which included:

- > Consideration of the CAT Decision Notice and advising on the potential issues of any conditions and possibility of review or appeal
- > Drafting and submitting a bespoke offer to the Council within the timescale required by the Decision Notice to comply with all requirements and conditions
- > Investigating the Council's complex historic Sasine title and reviewing all property related diligence
- > Reporting to WHALE Arts on the title to the heritable property, in particular focusing on any unduly onerous title conditions or security restrictions which may excessively prohibit the long term aims of the charity
- > Negotiating the terms of the transfer agreement (the Disposition) ensuring all conditions supports WHALE Arts' ongoing mission
- > Handling the negotiation and discharge of the existing Creative Scotland security
- > Drafting and submitting a first registration application to Registers of Scotland. This requires careful consideration of what title conditions are still valid and whether historic title conditions can be removed from the title.

- > Handling the merging of WHALE Arts lease interest and ownership interest within the Land Register of Scotland. This was important to ensure the lease did not continue to be effective after the purchase.
- > Advising WHALE Arts regarding Land and Buildings Transaction Tax (LBTT) as well as any potential LBTT reliefs (such as charities relief).
- > Dealing with the legal requirements tied to the grant funding, which included providing a certificate of title to the funder's solicitor.

## Outcome for WHALE Arts

WHALE Arts Agency sees the completion of the CAT process as an opportunity for the local community to think differently about what community ownership of this land means for WHALE Arts, and its role in the community as the cultural anchor organization for Wester Hailes.

Thanks to effective collaboration from all parties involved, Gillespie Macandrew LLP were able to conclude the CAT within a relatively short timescale having consideration to the added complexity of the title and lease interest. This will allow WHALE Arts to now focus on what it does best – delivering a range of high quality creative spaces for the community, including an Arts Workshop, Performance Space, pop up Community Cafe and Digital Media facilities.

“We're thrilled to have completed the Community Asset Transfer process and are very grateful for Kevin and Gillespie Macandrew's support and expertise to make it happen so smoothly despite some unexpected challenges! Working together the WHALE Arts team, our Members, volunteers and artists look forward to seeing our award winning projects developing and thriving in our space at the creative heart of our community”

**Kate Griffin, Interim-CEO, WHALE, The Arts Agency**

To find out more about WHALE, The Arts Agency's community-led charity initiatives and social enterprise please visit, [www.whalearts.co.uk](http://www.whalearts.co.uk)



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