

**COMMUNITY EMPOWERMENT – COMMUNITY ASSET TRANSFER REQUESTS
PROPOSED GOVERNANCE PROCESSES**

1.0 EXECUTIVE SUMMARY

- 1.1 This paper sets out recommendations to ensure that the Council maintains a consistent and compliant approach in its governance and decision making processes when dealing with Asset Transfer Requests (ATR) in terms of Part 5 of the Community Empowerment (Scotland) Act 2015, which came into force on 23 January 2017.

RECOMMENDATIONS

- 1.2 It is recommended that the Council agree that where the Asset Transfer Group (ATG) recommend that an ATR should be approved, the authority to approve together with the form and conditions of such approval are delegated to the Executive Director of Customer Services in consultation with the Executive Director of the relevant holding service.
- 1.3 The Council agree that where the ATG recommend that an ATR be refused, the decision on that ATR be determined by standing sub-committee of the Policy and Resources Committee (which shall meet from time to time as required) comprising 6 members to be chaired by the Vice Chair of the Policy and Resources Committee.
- 1.4 The Council agree that any subsequent review of a decision in respect of an ATR be carried out by Members of the Policy and Resources Committee, excepting those on the standing sub-committee who make the decision in regard to the initial Asset Transfer Request.
- 1.5 The Council agree that the Policy and Resources Committee will receive, on a regular basis, a report on all applications and decisions in respect of the ATR process.
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2. INTRODUCTION

- 2.1 This paper sets out recommendations to ensure that the Council maintains a consistent and compliant approach in its governance and decision making processes when dealing with Asset Transfer Requests in terms of Part 5 of the Community Empowerment (Scotland) Act 2015, which came into force on 23 January 2017.
- 2.2 The Act provides community bodies with a right to request to purchase, lease, manage, or use land and buildings belonging to local authorities by the submission of an Asset Transfer Request (ATR).
- 2.3 While it is intended that an internal Asset Transfer Group (ATG) will make an initial assessment and recommendation in relation to submitted ATR's, there is currently no line of governance in place for Members, or delegation to officers to enable them to make decisions on any request made, other than a request which agrees to pay market value for an asset. The current arrangements mean that each request will require to be referred to the full Council, unless the request includes an offer to pay full market value.
- 2.4 Additionally, the Council must, if required to do so, carry out a review of a decision it has taken in respect of an ATR prior to a further right of appeal to the Scottish Ministers by community bodies. Members involved in the original decision should not participate in any review.
- 2.5 Consequently, Members should give consideration to an appropriate governance structure for both the determination of an initial Asset Transfer Request and any subsequent review.

3. RECOMMENDATIONS

- 3.1 It is recommended that the Council agree that where the Asset Transfer Group (ATG) recommend that an ATR should be approved, the authority to approve together with the form and conditions of such approval are delegated to the Executive Director of Customer Services in consultation with the Executive Director of the relevant holding service.
- 3.2 The Council agree that where the ATG recommend that an ATR be refused, the decision on that ATR be determined by a standing sub-committee of the Policy and Resources Committee (which shall meet from time to time as required) comprising 6 members to be chaired by the Vice Chair of the Policy and Resources Committee.

- 3.3 The Council agree that any subsequent review of a decision in respect of an ATR be carried out by Members of the Policy and Resources Committee, excepting those on the standing sub-committee who make the decision in regard to the initial Asset Transfer Request.
- 3.4 The Council agree that the Policy and Resources Committee will receive, on a regular basis, a report on all applications and decisions in respect of the ATR process.

4. DETAIL

BACKGROUND

- 4.1 Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) deals with ATRs and came into force on 23 January 2015. There is a presumption of agreement to ATRs, unless there are reasonable grounds for refusal.
- 4.2 In order to ensure that the Council complies with the provisions in the Act, a set of enhanced procedures have been developed to provide a clear and transparent asset transfer process in compliance with the Act.
- 4.3 The Council have developed Asset Transfer webpages which provide advice and guidance, a list of the Council's assets, contact details, the relevant forms and documents required to make a request, an Expression of Interest form (to facilitate early informal discussions between organisations and officers) and contact details for a single point of contact for enquiries.
- 4.4 An Asset Transfer Group (ATG) has been established which includes Officers from Legal Services, Strategic Finance, Property Services, Special Projects and the Social Enterprise Team who focus on community development and engagement.
- 4.5 The ATG currently meet monthly with the purpose of reviewing Expressions of Interest (EOIs) submitted, validating any ATRs, and making a final assessment and recommendation in relation to submitted ATR's utilising an assessment methodology, which incorporates advice from key services within the Council. Unless agreed with the applicant, the Council must make a decision within 6 months of the date the formal application is validated.
- 4.6 To date, while no Asset Transfer requests have been made, the Council have received 16 EOI's, some of which have subsequently been withdrawn or dealt with by means of a non-exclusive licence.

GOVERNANCE

- 4.7 While the ATG will make a final decision and recommendation on an Asset Transfer Request, there is currently no line of governance in place for Members, or delegation to officers to enable them to make decisions on any request made, other than a request which agrees to pay market value for an asset. The current arrangements mean that each request will require to be referred to the full Council, unless the request includes an offer to pay full market value.
- 4.8 It is considered that where the ATG recommend that an ATR should be approved, agreement on the form and conditions of the transfer are delegated to the Executive Director of Customer Services, in consultation with the Executive Director of the relevant holding service.
- 4.9 However, in order ensure that the decision making process is fair and transparent where the ATG recommend that an ATR be refused, it is considered that the decision making body should comprise of a standing sub-committee of the Policy and Resources Committee comprising 6 Members. Appointing such a sub-committee as the decision making body for an ATR recommended for refusal will also facilitate meeting the timescales set out in 4.5.

REVIEW

- 4.10 If an asset transfer request has been made to a local authority and has been refused, or agreed to but the terms of the decision specify material terms and conditions which differ significantly from the request, or where a decision has not been made within 6 months of the application being received, then the community body can apply for an internal review by the local authority.
- 4.11 A review of an asset transfer decision should be carried out by a committee or sub-committee made up of Councillors who were not involved in the original decision, and the review cannot be delegated to officers.
- 4.12 Consequently, to ensure that the decision making process is fair and transparent, it is considered that any such review should be carried out by the Members of the Policy and Resources Committee not on the standing sub-committee making the decision in respect of the initial Asset Transfer Request.

CONCLUSION

- 5.1 It is recommended that the Council agree that where the Asset Transfer Group (ATG) recommend that an ATR should be approved, the authority to approve together with the form and conditions of such approval are delegated to the Executive Director of Customer Services in consultation with the Executive Director of the relevant holding service.
- 5.2 The Council agree that where the ATG recommend that an ATR be refused, the decision on that ATR be determined by a standing sub-committee of the Policy and Resources Committee (which shall meet from time to time as required) comprising 6 members to be chaired by the Vice Chair of the Policy and Resources Committee.

- 5.3 The Council agree that any subsequent review of a decision in respect of an ATR be carried out by Members of the Policy and Resources Committee, excepting those on the standing sub-committee who make the decision in regard to the initial Asset Transfer Request.
- 5.4 The Council agree that the Policy and Resources Committee will receive, on a regular basis, a report on all applications and decisions in respect of the ATR process.

6. IMPLICATIONS

- 6.1 The implications of the proposal are outlined in the table below.

Table 6.1: Implications	
Policy	The recommendations ensure the Council policy with respect to Asset Transfer Requests are in accordance with the relevant legislation
Financial	None
Legal	The recommendations ensure the Council arrangements with respect to Asset Transfer Requests are in accordance with the relevant legislation
HR	None
Equalities	None
Risk	The recommended process will mitigate any risk of legal challenge with regard to the process followed
Customer Service	None

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