

**COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 – ASSET TRANSFER
REQUEST – ISLE OF GIGHA HERITAGE TRUST - ISLE OF GIGHA FERRY TERMINAL
CAR PARK – ASSESSMENT AND DECISION**

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to advise the standing sub-committee of the Policy & Resources Committee on the decision made by the Executive Director of Customer Services to refuse the asset transfer request (ATR) submitted by Isle of Gigha Heritage Trust (IGHT) in respect of Gigha Ferry Terminal Car Park for transfer of ownership for £1 in accordance with the recommendation of the Asset Transfer Group (ATG). There is a presumption of agreement to an ATR, unless there are reasonable grounds for refusal.
- 1.2 The ATR is *inter alia* in the following terms: IGHT is requesting ownership of the car park at the Gigha ferry terminal to use it as their primary access to provide camping and motorhome facilities at Ardmish on the Isle of Gigha. This will include serviced pitches, car parking and an accommodation block comprising toilets, showers, laundry, kitchen, a communal area for campers and a small welcome office for Gigha. Later phases of the development will include glamping pods, bunkhouse and games room.
- 1.3 IGHT stated in their Expression of Interest to the Scottish Government Rural Tourism Infrastructure Fund (RTIF) (which was submitted for consideration as part of their ATR) that acquisition of the Gigha Ferry Terminal car park was not crucial to their project as the Trust own the land covering alternative access routes to the site identified. As a consequence, it is considered that there may be other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.
- 1.4 Where the Executive Director of Customer Services refuses an ATR in accordance with the recommendation from the ATG, the final decision on that ATR shall be determined by the standing sub-committee of the Policy & Resources Committee comprising 6 members to be chaired by the Vice Chair of the Policy and Resources Committee.

RECOMMENDATIONS

It is recommended that:

- 1.5 The standing sub-committee of the Policy & Resources Committee refuses the ATR submitted by Isle of Gigha Heritage Trust in respect of the Isle of Gigha Ferry Terminal Car Park in accordance with the recommendation of the ATG and the Executive Director of Customer Services.

- 1.6 Notes that in the event the standing sub-committee of the Policy & Resources Committee determine that the asset transfer request should be refused officers will explore with IGHT other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.

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2. INTRODUCTION

- 2.1 The purpose of this report is to advise the standing sub-committee of the Policy & Resources Committee on the decision made by the Executive Director of Customer Services to refuse the asset transfer request submitted (ATR) by Isle of Gigha Heritage Trust (IGHT) in respect of Gigha Ferry Terminal Car Park for transfer of ownership for £1 in accordance with the recommendation of the Asset Transfer Group (ATG). There is a presumption of agreement to an ATR, unless there are reasonable grounds for refusal.
- 2.2 The ATR is *inter alia* in the following terms: IGHT is requesting to take ownership of the car park at the Gigha ferry terminal to use it as their primary access to provide camping and motorhome facilities at Ardmish on the Isle of Gigha. This will include serviced pitches, car parking and an accommodation block comprising toilets, showers, laundry, kitchen, a communal area for campers and a small welcome office for Gigha. Later phases of the development will include glamping pods, bunkhouse and games room.
- 2.3 IGHT stated in their Expression of Interest to the Scottish Government Rural Tourism Infrastructure Fund (RTIF) (which was submitted for consideration as part of their ATR) that acquisition of the Gigha Ferry Terminal car park was not crucial to their project as the Trust own the land covering alternative access routes to the site identified. As a consequence, it is considered that there may be other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.
- 2.4 Where the Executive Director of Customer Services refuses an ATR in accordance with the recommendation from the ATG, the final decision on that ATR shall be determined by a standing sub-committee of the Policy and Resources Committee comprising 6 members to be chaired by the Vice Chair of the Policy and Resources Committee.

3. RECOMMENDATIONS

It is recommended that:

- 3.1 The standing sub-committee of the Policy & Resources Committee refuses the ATR submitted by Isle of Gigha Heritage Trust in respect of the Isle of Gigha Ferry Terminal Car Park in accordance with the recommendation of the ATG and the

Executive Director of Customer Services.

- 3.2 Notes that in the event the standing sub-committee of the Policy & Resources Committee determine that the asset transfer request should be refused officers will explore with IGHT other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.

4. DETAIL

ISLE OF GIGHA HERITAGE TRUST – ISLE OF GIGHA FERRY TERMINAL CAR PARK

- 4.1 On 22 October 2018, Isle of Gigha Heritage Trust (IGHT) submitted an asset transfer request in respect of Isle of Gigha Ferry Terminal Car Park seeking ownership of the asset at £1 per annum (A copy of the asset transfer request form is attached as appendix 1 and a plan showing the location of the car park is attached as appendix 2).
- 4.2 The ATR is inter alia in the following terms: IGHT is requesting ownership of the car park at the Gigha ferry terminal to use it as their primary access to provide camping and motorhome facilities at Ardminish on the Isle of Gigha. This will include serviced pitches, car parking and an accommodation block comprising toilets, showers, laundry, kitchen, a communal area for campers and a small welcome office for Gigha. Later phases of the development will include glamping pods, bunkhouse and games room (a plan showing proposed camping site relative to the car park is attached as appendix 3).
- 4.3 IGHT stated in their expression of Interest to the Scottish Government Rural Tourism Infrastructure Fund (RTIF) (which was submitted for consideration as part of their ATR) that acquisition of the Gigha Ferry Terminal car park was not crucial to their project as the Trust own the land covering alternative access routes to the site identified. As a consequence, it is considered that there may be other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.
- 4.4 On 14 December 2018, the Asset Transfer Group agreed that the request contained the relevant information required by the legislation to enable them to validate the request and consequently, unless otherwise agreed with the applicant, the Council now require to make a decision on the request no later than 6 months following the date of validation - namely 14 June 2019.
- 4.5 As required by the Asset Transfer (Procedure) (Scotland) Regulations 2016 details of a validated asset transfer request were published in a Notice online and the Notice was displayed at a public place in the vicinity of the land to which the asset transfer request relates. Two representations were received in respect of the request and these were considered inter alia during the assessment of the Asset Transfer Request.

VALUATION OF THE SITE

- 4.6 A valuation of the asset was instructed and Galbraiths determined that the Market Value of the site was approximately £75,000.

ASSESSMENT OF THE ASSET TRANSFER REQUEST

- 4.7 The agreed assessment and information documentation was completed and returned by key Services within the Council.
- 4.8 Thereafter, on 28 March 2019, the ATG carried out a final assessment in relation to the submitted request utilising the agreed assessment methodology, incorporating assessments provided by those key Council Services and having regard to the legislation, relevant Guidance and valuation. (A copy of the overall assessment document is attached as appendix 4). The ATG determined the following:

DISPOSAL OF LAND (SCOTLAND) REGULATIONS 2010

- 4.9 In terms of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 the ATG was satisfied that the disposal could be capable of contributing to the purposes set out in 4(2) of the Regulations.
- 4.10 However, it was not satisfied that the disposal was reasonable in all the circumstances, particularly having regard to the alternative use by the Council and the strategic and lifeline nature of the ferry service and that the request had not discharged the requirements of the regulations in relation to disposing of the land at less than best consideration having regard to those factors.

PART 5 OF THE COMMUNITY EMPOWERMENT (SCOTLAND) At 2015

- 4.11 In assessing the ATR the ATG also gave proper consideration to the requirements set out in Part 5 of the Community Empowerment (Scotland) Act 2015 and corresponding Scottish Government Guidance for Relevant Authorities and determined that:
- There were reasonable grounds for refusing the request;
 - It would therefore recommend that the Council did not agree to the request based on the reasonable grounds which are set out below; and
 - That in light of any refusal of the request, officers would seek to have further discussions with IGHT in relation to a potential right of access from the public road or servitude right of access to support them to achieve the aims of their ATR.

REASONABLE GROUNDS FOR REFUSAL

- 4.12 The ATG determined that the reasonable grounds for refusal are as follows:
- The request or accompanying documentation was not sufficiently robust to give confidence that the plans and benefits will be achieved, particularly since not all of the anticipated sources of funding have been awarded and may be substantially materially less than set out; the RTIF funding which has been awarded has a shortfall of £120,783 to that anticipated in the ATR; the community engagement/support element of the request is not robust with objections set out in the representation from the community council; and the request does not adequately address sustainability or equality matters;
 - The proposal at a nil capital consideration is not reasonable having regard to the loss of a strategic asset required to deliver the existing lifeline ferry services between Gigha and the mainland;

- The benefits to be achieved by the request would be outweighed by the current/alternative proposal: adversely affecting and jeopardising the ongoing sustainability of the lifeline ferry services between the mainland and the island; the deliverability of the future development plans for the Gigha Ferry Service and proposed infrastructure (including a breakwater/aligning structure) in light of the anticipated hybrid ferry; the Council wide harbour order; and the proposed rationalisation of the recycling collection in Gigha which it is intended will be situated at the asset; and
- It is considered that there are potential alternatives which would provide IGHT with the access they require to the proposed site namely a clearly defined right of servitude or access to the intended site from the public road. IGHT stated in their Expression of Interest to the Scottish Government Rural Tourism Infrastructure Fund (RTIF) (which was submitted for consideration as part of their ATR) that acquisition of the Gigha Ferry Terminal car park was not crucial to their project as the Trust own the land covering alternative access routes to the site identified.

ALTERNATIVE TO ASSET TRANSFER REQUEST

4.13 As stated above, should the ATR be refused by the Council that there may be alternatives which would provide the IGHT with the access that they require in order to progress their proposal specifically:

- A clearly defined servitude over part of the car park which sets out that it is a right of access only and not a right to park, stay or inhabit the car park; or
- Access to the intended site from the public road.

4.14 It is intended that in the event of any refusal of ATR officers will explore with IGHT other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.

NEXT STEPS

DECISION

4.15 Following a final decision on the ATR by the standing subcommittee of the Policy and Resources Committee the following steps require to be carried out:

DECISION NOTICE

4.16 The Council must issue a decision notice which must:

- State the date on which the asset transfer request was made;
- Identify the community transfer body which made the request;
- Identify the land to which the request relates;
- Set out the Council's decision or agree or refuse the request;
- Set out the Council's reason for that decision;
- Contain notification of the right of review, how an application for review may be made and the date it must be made.

4.17 If the request is refused because an alternative proposal (including the current use) is preferred, the decision notice also requires to describe the alternative proposal

and how it was considered to provide greater benefits. The decision notice should be equally clear if the request is refused because of deficiencies in the community transfer body's case.

4.18 Thereafter the Council must:

- Publish a copy of the decision notice on a website or by other electronic means; and
- Inform every person who made written representations in respect of the asset transfer request (and provided an address) of its decision and where a copy of the decision notice is available for inspection.

REQUEST REFUSED

4.19 It should be noted that if the Council refuse an asset transfer request, and the community transfer body does not believe the grounds for doing so to be reasonable it may apply in writing to the Council for a review of that decision within 20 working days of the date of the decision notice.

4.20 The Community Empowerment (Scotland) Act 2015 amends the Local Government (Scotland) Act 1973 so that a review of an asset transfer decision must be carried out by Councillors. On 28 September 2017 the Council agreed that following refusal of an ATR, any subsequent review of that decision be carried out by Members of the Policy and Resources Committee, not on the standing sub-committee who made the original decision to refuse the ATR.

4.21 If any review of an ATR uphold the original decision to refuse the request the community group can thereafter appeal the decision to the Scottish Ministers.

REQUEST AGREED TO

4.22 If the request is agreed to, the community transfer body must submit an offer to purchase the land by the date stated in the decision notice, and which must reflect the terms and conditions set out in the decision notice. However, if those terms and conditions are significantly different to those in the original request they can require the Council to carry out a review of the decision.

4.23 It should be noted that if no offer is made by the date in the decision notice the process is terminated and the Council may deal with the asset in any way it wishes.

4.24 Following receipt of the community transfer body's offer, the Council may carry out further negotiations with them if required in order to conclude the contract. The contract must normally be concluded within 6 months of the date of the community transfer body's offer.

4.25 If no contract is concluded within 6 months of the offer the process is concluded and the community transfer body has no further claim on the asset unless the community transfer body:

- agrees and extension with the Council;

- applies to the Scottish Ministers for a direction to extend the period; or
- appeals to the Scottish Ministers to determine the terms and conditions for the contract which the Council may be required to accept.

5. CONCLUSION

It is recommended that:

- 5.1 The standing sub-committee of the Policy & Resources Committee refuses the ATR submitted by Isle of Gigha Heritage Trust in respect of the Isle of Gigha Ferry Terminal Car Park in accordance with the recommendation of the ATG and the Executive Director of Customer Services.
- 5.2 Notes that in the event the standing sub-committee of the Policy & Resources Committee determine that the asset transfer request should be refused officers will explore with IGHT other avenues short of an ATR transferring ownership that could be utilised to advance their proposal.

6.0 IMPLICATIONS

- 6.1 Policy – In line with Council policy on Asset Transfer Requests
- 6.2 Financial – Possible loss of strategic asset valued at £75,000
- 6.3 Legal - In line with Community Empowerment (Scotland) Act 2015
- 6.4 HR - None
- 6.5 Fairer Scotland Duty: None
- 6.5.1 Equalities - protected characteristics – Decision reached in line with Community Empowerment (Scotland) Act 2015
- 6.5.2 Socio-economic Duty: Decision reached in line with Community Empowerment (Scotland) Act 2015
- 6.5.3 Islands –Lifeline Ferry Services may be affected
- 6.6. Risk – As above
- 6.7 Customer Service - None

Executive Director of Customer Services: Douglas Hendry
Policy Lead: Rory Colville

24 April 2019

For further information contact:

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APPENDICES

- Appendix 1 – Asset Transfer Request Form Submitted by IGHT
 Appendix 2 – Plan showing location of the car park
 Appendix 3 – Plan showing proposed camping site relative to car park

Appendix 4 – Overall assessment document