

**COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 – ASSET TRANSFER  
REQUEST – KILMORY WOODLANDS – PART OF KILMORY HOME FARM –  
ASSESSMENT AND RECOMMENDATION**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 The purpose of this report is to advise the Policy and Resources Asset Transfer Sub Committee on the recommendation made by the Executive Director with responsibility for Commercial Services (in accordance with the recommendation of the Asset Transfer Group (ATG)) to refuse the asset transfer (ATR) request submitted by Kilmory Woodlands (KW) seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum. There is a presumption of agreement to an ATR, unless there are reasonable grounds for refusal.
- 1.2 The purpose of the ATR is to enable Kilmory Woodlands to provide sports facilities at Kilmory Woodlands including a rugby, pitch, running track, shooting targets and BMX tracks.
- 1.3 Where the Executive Director with responsibility for Commercial Services (following the recommendation of the ATG) recommends that an ATR be refused, the final decision on that ATR shall be determined by the Policy and Resources Asset Transfer Sub Committee comprising 6 members to be chaired by the Vice Chair of the Policy and Resources Committee.

**RECOMMENDATIONS**

It is recommended that:

- 1.4 The Policy and Resources Asset Transfer Sub-Committee refuses the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum (in accordance with the recommendation of the Executive Director with responsibility for Commercial Services and the ATG).

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**2. INTRODUCTION**

- 2.1 The purpose of this report is to advise the Policy and Resources Asset Transfer Sub Committee on the recommendation made by the Executive Director with responsibility for Commercial Services (in accordance with the recommendation of the Asset Transfer Group (ATG)) to refuse the asset transfer (ATR) request submitted by Kilmory Woodlands (KW) seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum. There is a presumption of agreement to an ATR, unless there are reasonable grounds for refusal
- 2.2 The purpose of the ATR is to enable Kilmory Woodlands to provide sports facilities at Kilmory Woodlands including a rugby, pitch, running track, shooting targets and BMX tracks.
- 2.3 Where the Executive Director with responsibility for Commercial Services (following the recommendation of the ATG) recommends that an ATR be refused, the final decision on that ATR shall be determined by the Policy and Resources Asset Transfer Sub 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 Policy and Resources Asset Transfer Sub-Committee refuses the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum (in accordance with the recommendation of the Executive Director with responsibility for Commercial Services and the ATG).

**4. DETAIL**

**ASSET TRANSFER REQUEST - KILMORY WOODLANDS – PART OF KILMORY  
HOME FARM**

- 4.1 On 25 March 2019, Kilmory Woodlands (KW) submitted an asset transfer request in respect of part of Kilmory Home Farm, Lochgilphead seeking a 99 year lease of the land at £1 per annum (a copy of the asset transfer request form is attached as

appendix 1; and a plan of the land to which the ATR relates is attached as appendix 2).

- 4.2 The Council have title to the subjects known as Kilmory Home Farm (a plan detailing the location of the ATR within Kilmory Home Farm is attached as appendix 3). It should be noted that the area shown in the plan setting out the extent of the land subject to the request does not cover the full extent of Council ownership which comprises other areas shown in red included in the Kilmory Home Farm title.
- 4.3 The purpose of the ATR is to provide sports facilities at Kilmory Woodlands including a rugby, pitch, running track, shooting targets and BMX tracks.
- 4.4 On 14 June 2019, 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 December 2019.
- 4.5 As required by the Asset Transfer (Procedure) 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. One representation was received in respect of the request and the considered inter alia during the assessment of the Asset Transfer Request.

## **VALUATION**

- 4.6 There is no requirement to obtain a valuation for the purposes of the Act. Best Value considerations were assessed as weak in the assessment of the asset transfer request and should the request be refused state aid is not a relevant consideration. On that basis, the ATG determined that a valuation was not required in the circumstances given that the request for a 99 year lease at £1 per annum is likely to be significantly less than market value of the asset.

## **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 14 October 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 The ATG appraised and compared the costs, benefits and dis-benefits of the proposal and was satisfied that while the disposal was likely to contribute to purposes set out in the Regulations in respect of part of the area of the local authority and persons resident or present in its area it was not satisfied that the request was reasonable and that that consequently:

- the Council could not discharge its obligations under the Disposal of Land (Scotland) Regulations 2010 in relation to the disposing of land at less than best consideration; and
- There were reasonable grounds to refuse the request under the Community Empowerment (Scotland) Act 2015.

## **PART 5 OF THE COMMUNITY EMPOWERMENT (SCOTLAND) Act 2015**

4.10 In assessing the ATR the ATG 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 are reasonable grounds for refusing the request; and
- It would recommend that the authority did not agree to the request.

## **REASONABLE GROUNDS FOR REFUSAL**

4.11 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, it is not clear whether anticipated funding sources have been applied for and none have been awarded; the request has not adequately identified relevant costs including initial investment, ongoing running costs and end of project costs or how the project will be funded in the future.
- There is currently no access to the site which is crucial to its development. While the group have obtained a letter offering access rights there is no detail of what this will entail, or what cost they might incur when trying to establish and use the access. Access is some way from the town and entry to the site other than through the new Industrial Estate is limited to a private road off the main road or through the council car park and gardens;
- While the asset has been identified surplus to requirements and is zoned for community use, it is integral to the development of the Kilmory Industrial Estate as set out in the Council's Framework Concept Master Plan 2015. The benefits to be achieved by the request would be outweighed by the proposal potentially adversely affect and jeopardise the development of the Kilmory Industrial Estate. As part of that development the Service require to retain rights of way to enable the installation of power and water to allow for the development set out in the framework plan, and as the plan is revisited and amended as required in relation of the layout of the phases, some of the land may be required to be incorporated into the development plan; and
- The consideration of the project related benefits, sustainability, equality and best value was assessed as weak and 99 year lease would provide the community transfer body with security and exclusive right to the land while concerns remained about the deliverability of the project. In addition and other development of the site or other groups wishing to utilise the site would be required to fit within the confines of Kilmory Woodlands aims and objectives.

## **5. NEXT STEPS**

### **DECISION**

5.1 In the event that the Policy and Resources Asset Transfer Sub Committee refuses the asset transfer request based on the reasonable grounds for refusal then 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.

5.2 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.

5.3 It should be noted that if the Council refuse an asset transfer request, the community transfer body which submitted it may apply to the Council for a review of that decision.

## 6. CONCLUSION

It is recommended that:

6.1 The Policy and Resources Asset Transfer Sub-Committee refuses the ATR submitted by Kilmory Woodlands seeking a 99 year lease of part of Kilmory Home Farm for £1 per annum (in accordance with the recommendation of the Executive Director with responsibility for Commercial Services and the ATG).

## 7. IMPLICATIONS

7.1 The implications of the proposal are outlined in the table below.

<b>Table 6.1: Implications</b>	
<b>Policy</b>	In line with Council policy relating to the Asset Transfer Process
<b>Financial</b>	None at present
<b>Legal</b>	In line with Statutory requirements of the Community Empowerment (Scotland) Act 2015 and related Regulations
<b>HR</b>	None at present
<b>Equalities</b>	None at present
<b>Risk</b>	None at present
<b>Customer Service</b>	None at present

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