

To: Council

On: 23 February 2017

Report by: Director of Finance and Resources

Heading: Community Empowerment (Scotland) Act 2015 – Asset Transfer Requests.

1. Summary

- 1.1 The Community Empowerment (Scotland) Act 2015 includes provisions enabling community bodies to apply to the Council to take over Council owned land and facilities .This is referred to in the Act as an Asset Transfer Request.
 - 1.2 The Council is required to deal with Asset Transfer requests in a manner set out in the Act and following procedures established in Regulations. The Council's existing governance structure will require to be amended to make provision for dealing with these requests and for appeals against any decision to refuse a request or where there has been a delay in dealing with a request. This report provides information on the procedures for dealing with Asset Transfer Requests and the procedures for reviews and appeals. It also sets out proposals for changes to Board remits and the Scheme of Delegations to Officers to enable decisions on these matters to be dealt with at the most appropriate level.
 - 1.3 The report also sets out further changes required to implement provisions in the 2015 Act dealing with community right to buy and establishing a register of land owned or leased by the Council.
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2. Recommendations

2.1 It is recommended that the Council:-

- a) notes that the provisions in the Community Empowerment (Scotland) Act 2015 relating to Asset Transfer Requests have now been brought into force;
- b) notes that the procedure for considering such requests including how any reviews and appeals are dealt with are set out in Regulations;
- c) authorises the Director of Finance and Resources or the Head of Property Services to determine Asset Transfer Requests made in terms of Part 5 of the 2015 Act and to make all necessary arrangements to comply with the statutory procedures for dealing with such requests;
- d) approves the creation of a Community Asset Transfer Review Sub-Committee of the Planning and Property Policy Board with the membership and other arrangements for the sub-committee being as set out in paragraph 3.11 of this report;
- e) delegates to the Head of Property Services the responsibility for taking such measures as are necessary to protect the Council's interests should a community body register an interest in any Council property in the register held by the Scottish Government under the Land Reform (Scotland) Act 2003;
- f) delegates to the Head of Property Services the responsibility for establishing, publishing and maintaining the register of land under Section 94 of the 2015 Act;
- g) agrees to amend the remit of the Planning and Property Board to include reference to property issues arising from the 2015 Act; and
- h) authorises the Head of Corporate Governance to make changes to the Council's governance documents necessary to give effect to the proposals contained in this report.

3. Background

- ### **3.1**
- The Community Empowerment (Scotland) Act 2015 is intended to provide a framework which will empower community bodies through ownership of land and buildings and strengthen their say in the decisions that matter to them.

- 3.2 The Act contains a series of measures to assist community empowerment, a number of which have implications for the Council. In particular these measures will give communities the power to make requests to the Council on a range of matters such as taking control of land or facilities currently owned or leased by the Council.
- 3.3 Part 5 of the Act enables what are referred to as “community transfer bodies” to apply to the Council to request the transfer of land to them. These are referred to in the Act as Asset Transfer Requests. Part 5 has been brought into force on 23 January 2017 and, in view of this, the Council needs to put in place appropriate procedures for dealing with those requests.
- 3.4 A community transfer body must be a community body with a constitution or be a formally established corporate body. Individuals or groups with no formal constitution may not make Asset Transfer Requests.
- 3.5 Unlike the community right to buy provisions, the community body does not have to wait until the council wishes to sell the property before making their application.
- 3.6 When the Council receives an Asset Transfer Request, the decision on whether or not to agree to the request must be based on the criteria set out in the Act. The criteria includes such matters as whether the transfer would be likely to promote or improve economic development, regeneration, public health, social well-being or environmental well-being, as well as whether it would be likely to reduce inequalities of outcome which result from socio-economic disadvantage.
- 3.7 The Act provides that the Council must agree to the request unless there are reasonable grounds for refusing it. Once it has made its decision, the Council must issue a decision notice setting out whether it has agreed to or refused the request and the reasons for the decision.
- 3.8 Where the Council refuses the request or accepts the request but specifies in the decision notice material terms and conditions which differ to a significant degree from those specified in the request or fails to issue a decision notice, the community transfer body can ask the Council to carry out a review. The legislation requires that any review must be dealt with by the Council, one of its committees or a sub-committee.
- 3.9 In these circumstances, it is recommended that the initial decision on whether or not to accept a property transfer request is delegated to the Director of Finance and Resources or the Head of Property Services. A decision must be made within 6 months of a request being validated.
- 3.10 Where a valid Asset Transfer Request has been received the Council must acknowledge receipt of the application and provide an explanation of the

period within which the Council is to give notice of its decision and provide information on such matters as the right to request a review where the applicant is dissatisfied with the response to the request.

- 3.11 Where the applicant requests a review, the proposal is that the review is considered by a sub-committee of the Planning and Property Policy Board to be called the Community Asset Transfer Review Sub-Committee. It is proposed that the sub-committee will comprise of any five members of the Board provided three are from the administration and two from the opposition members. The sub-committee will be chaired by either the convener or vice-convener of the Board and will meet as and when required to deal with a request for review. The sub-committee may in some circumstances hold a hearing to determine the review.
- 3.12 Should the review refuse the request, agree to the request but make it subject to material terms and conditions which differ to a significant extent from those specified in the request or fail to issue a decision notice within the required timescale, the applicant then has the right to appeal to the Scottish Ministers.
- 3.13 The Act requires that the Council publishes an annual asset transfer report detailing the number of transfer requests received, the number agreed to or refused, the number of reviews and how they were determined. It is proposed that the annual report will be prepared by the Director of Finance and Resources and submitted to the Planning and Property Policy Board.
- 3.14 The procedures for dealing with Asset Transfer Requests, Reviews and Appeals are set out in separate Regulations
- <http://www.legislation.gov.uk/ssi/2016/357/made/data.pdf>
- <http://www.legislation.gov.uk/ssi/2016/358/made/data.pdf>
- <http://www.legislation.gov.uk/ssi/2016/359/contents/made>
- <http://www.legislation.gov.uk/ssi/2016/360/contents/made>
- 3.15 This implementation of procedures for dealing with Asset Transfer Requests will involve changes to the Council's governance arrangements including changes to the remit of the Planning and Property Policy Board, the creation of a sub-committee of that Board to deal with reviews as well as additions being made to the delegated powers of some senior officers. It is proposed that the Head of Corporate Governance is given the authority to make the necessary changes to the Council's governance documents to give effect to the proposals in this report.

4. Community Right To Buy

- 4.1 The Act extends the existing Community Right to Buy provisions in the Land Reform (Scotland) Act to urban areas so that potentially any areas of land held by the Council could be affected. The Act means that a community body can register an interest with the Scottish Government in any Council owned property. Where such an interest has been registered, the Council must first negotiate with the body that has registered the interest before it could offer the property for sale on the open market or to another purchaser.
- 4.2 The register is maintained by the Scottish Government. However, it is recommended that the Head of Property Services has a specific delegation to take steps to protect the council's interest in land which is subject to an application on the community right to buy register.

5. Register of Land

- 5.1 The 2015 Act imposes a duty on the Council to establish and maintain a register of land it owns or leases. The Council is also required to make arrangements for the register to be open to public inspection and to publish it on the website. It is proposed that responsibility for all of the actions arising from this new duty which came into force on 23 January 2017 is delegated to the Head of Property Services.

6. General

- 6.1 The current Scheme of Delegations makes no reference to the Community Empowerment (Scotland) Act 2015. However, the Terms of Reference of the Leadership Board includes the following paragraph: "To promote strategic oversight of the Council's approach to community empowerment and engagement including the development of community cohesiveness and capacity."
- 6.2 To distinguish between this strategic responsibility of the Leadership Board and the very specific duties imposed by the 2015 Act in relation to land, it is proposed that the remit of the Planning and Property Board makes explicit reference to property issues arising from the Act.
- 6.3 The provisions in the 2015 Act relating to Common Good property and allotments have still to be commenced. When that happens, a further report will be brought to Council to make any additional changes to the Council's governance arrangements arising from those provisions.

Implications of the Report

1. **Financial** – There are no direct financial implications arising from this report. However, the Act once in force will give community bodies and individuals rights that may have resource implications for the Council including the right in some circumstances to claim compensation
2. **HR & Organisational Development** - None
3. **Community Planning** –
Empowering our Communities – The report concerns the governance changes that are required to enable the council to fully implement some provisions of the Community Empowerment (Scotland) Act 2015. The purpose of the legislation is to provide a framework to empower local communities mainly through the ownership of land.
4. **Legal** – The report concerns the implementation of new legislation which imposes a number of significant new duties on the Council
5. **Property/Assets** – The Act introduces new procedures to enable community bodies and individuals to gain ownership or take on a lease of council property. It also introduces new obligations to maintain register of land owned or leased by the Council and property held as part of the common good.
6. **Information Technology**- None
7. **Equality & Human Rights**

(a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because it relates to the changing of governance structures to implement new legislation. If required, following implementation, the actual impact of the recommendations will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – None
9. **Procurement** –None
10. **Risk** –None
11. **Privacy Impact** –None

List of Background Papers

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