
Report to Clackmannanshire Council

Date of Meeting: 20 December 2018

**Subject: Governance Arrangements for Community Asset Transfer
Under the Community Empowerment (Scotland) Act 2015**

Report by: Senior Manager, Partnership and Performance

1.0 Purpose

- 1.1.** To agree the governance arrangements for applications and review/appeals for Community Asset Transfer requests made by a community transfer body under the Community Empowerment (Scotland) Act 2015.

2.0 Recommendations

Council is asked to:

- 2.1.** Agree that decisions on applications for Community Asset Transfer (CAT) are made by the Place Committee;
- 2.2.** Agree to establish a Community Asset Transfer Review Body to review any appeals or requests for review of any CAT requests;
- 2.3.** Make consequential changes to the Scheme of Delegation and Standing Orders to reflect the decision taken at recommendation 2.1 and 2.2 which will be brought to Council for approval as part of the wider review of Standing Orders and Scheme of Delegation in February 2019; and
- 2.4.** Note that the governance arrangements should also be able to accommodate the transfer of Housing Revenue Account (HRA) assets which may be the subject of a CAT request.

3.0 Considerations

- 3.1.** The Council set out the process by which Clackmannanshire Council will manage asset transfer in its Community Asset Transfer Guidance dated March 2017. The Guidance aims to inform the public of the process to ensure it is open and transparent. It was published on the Council's website and has been circulated to local community groups. One aspect of the guidance is that decisions on applications were to be taken by the full Council.

- 3.2.** Since publication, it has been identified that a decision cannot be made by the full Council as this does not allow for an appeal route. In order to process a CAT request smoothly and in accordance with the statutory guidance, the governance arrangements will have to be amended accordingly.
- 3.3. Decision on CAT requests:** In terms of who can make the decision on the CAT request, the guidance from the Scottish Government advises that each relevant authority will need to establish its own procedures for obtaining approval of decisions at an appropriate level, within the time limit required.
- 3.4. Reviewing Decisions:** The legislation requires that any review of a CAT decision must be carried out by elected members and cannot be delegated to officers. This precludes any decision on a Community Asset Transfer request being made by the full Clackmannanshire Council as there must be at least a sufficient number of elected members free from involvement in the original decision to ensure that there is scope for an independent review.
- 3.5.** Therefore our process must provide for both:
- a. Original decisions on CAT requests not to be made by full Council; and
 - b. Any review of a CAT decision to be made only by elected members.
- 3.6.** In addition, the decision-making structures responsible for CAT decisions and reviews would require to be given formally the appropriate delegated authority.
- 3.7. Decision Making on Community Asset Transfer Requests**

Officers have reviewed the alternatives to a full Council decision and consider that the best option is that the Place Committee are given delegated authority to take responsibility for this decision making. The Place Committee is the best fit in terms of its current remit as CAT requests relate to the transfer of Council assets and this links with the Place Committee's responsibility for determining policies for Council assets. It is however necessary for there to be an explicit delegation of the decision making function in relation to CAT requests

The alternatives considered by officers included creating a new committee for this process, which is considered to be disproportionate when the Place Committee's remit could be extended to incorporate this decision making. Officers also considered whether this decision making could be delegated to officer level but this did not seem the most appropriate way forward given the significance of some of the CAT requests. It is still anticipated that before the request is referred to the Place Committee for decision that a lead officer would bring together officers with relevant responsibilities within the Council including property, legal and those with a focus on community development and community engagement to prepare a report for the Committee prior to decision.

3.8. Reviewing/Appealing a Decision on a Community Asset Transfer Request

A community transfer body can seek a review or appeal if:

3.8.1. Their request is refused;

3.8.2. The request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request; or

3.8.3. No decision notice is issued within the required period.

3.9. Following an initial CAT decision, should an applicant appeal the decision, it would be referred to a separate Community Asset Transfer Review Body made up of elected members and dealt with through a process similar to that of the Local Review Body. This review body will have to be established for the purpose. Elected members who are also members of the Place Committee would not be part of any review body. In addition, elected members in whose ward the asset is situated would also be exempt from the independent review.

4.0 Sustainability Implications

4.1. None.

5.0 Resource Implications

5.1. *Financial Details*

5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

5.4. *Staffing*

6.0 Exempt Reports

6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

- Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all
- Our families; children and young people will have the best possible start in life
- Women and girls will be confident and aspirational, and achieve their full potential
- Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

- 8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
Yes No

9.0 Legality

- 9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

- 10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".
None

11.0 Background Papers

- 11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)
Yes (please list the documents below) No

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