

ITEM No ...2.....

REPORT TO: POLICY AND RESOURCES COMMITTEE – 13 MARCH 2017

REPORT ON: COMMUNITY ASSET TRANSFER STRATEGY

REPORT BY: EXECUTIVE DIRECTOR OF NEIGHBOURHOOD SERVICES

REPORT NO: 85-2017

1.0 PURPOSE OF REPORT

1.1 To seek approval for a revised Community Asset Transfer scheme, which incorporates the legislative requirements under the Community Empowerment (Scotland) Act 2015, hereafter referred to as “The Act”.

2.0 RECOMMENDATIONS

2.1 Committee is asked to:

2.2 Approve the Asset Transfer scheme as proposed in section 4.8 and summarised in Appendix 2.

2.3 Establish a Community Asset Transfer Sub-Committee.

3.0 FINANCIAL IMPLICATIONS

3.1 The financial implications of each transfer request will be looked at on a case by case basis and form part of the assessment process.

4.0 MAIN TEXT

4.1 Dundee City Council has significant experience in working with communities to build capacity and has a proven track record in delivering asset transfers through the current voluntary Community Asset Transfer scheme.

4.2 Part 5 of the Community Empowerment (Scotland) Act 2015 provides a framework for the asset transfer process. Part 5 of the Act and the Regulations came into force on 23 January 2017. This introduces a right for Community Bodies, as defined in the Act, to make requests to all Local Authorities, Scottish Ministers, and a wide-ranging list of public bodies, for any land or buildings which they feel they could deliver community activities and services from to transfer to them. Community bodies can request ownership or lease.

4.3 Embracing the spirit of the legislation, we propose a scheme which offers an enhanced opportunity for communities to become involved in asset transfer if they so wish.

4.4 The Act requires public authorities to publish a land and property register and assess any requests from a qualifying Community Body against a specified list of criteria. Dundee City Council is required to agree to the request unless there are reasonable grounds for refusal.

4.5 The Act requires a review process to be set up which must be carried out by Councillors and cannot be delegated to officers, with final appeal being to the Scottish Government. A community body can seek a review or appeal if their request is refused, the request is agreed but the terms and conditions in the decision notice are significantly different to those in the request, or no decision notice is issued in the required period.

- 4.6 It is proposed that Officers will make recommendations based on the Community Asset Transfer Scheme.
- 4.7 Applications recommended for approval will be submitted to Policy and Resources Committee for a decision.
- 4.8 Applications where Officers recommend conditions which differ from the request or recommend refusal will be submitted to the Community Asset Transfer Sub Committee.
- 4.9 If the Sub-Committee recommends approval of the application it will be presented to the Policy and Resources Committee for them to review and finally decide.
- 4.10 If the Sub-Committee recommends imposing conditions different from the request or recommends refusal the application will also be presented to the Policy and Resources Committee for them to review and finally decide.
- 4.11 It is proposed that the composition of the Sub Committee will have regard to the political balance of the Council and Members of the Sub Committee would declare an interest and not take part in the Policy and Resources Committee consideration of any applications which had been previously referred to the Sub Committee.
- 4.12 If the outcome of the review does not resolve the issue, or no decision is made within the required period, the community body can then appeal to the Scottish Ministers under Section 88.
- 4.13 Section 95 of the Act requires an annual report to be published for each financial year, the first one being published by 30th of June 2018. The report must state the number of requests, refusal and approvals, appeals and their outcomes.
- 4.14 Dundee Council City has operated a voluntary Asset Transfer Scheme, as approved by Dundee City Council's Policy and Resources Committee on 19 August 2013 (Article IV of the Minute of the Meeting and Report No: 244-2013 refer), for a number of years. Under this scheme we have successfully transferred 8 properties to date (5 ownership and 3 leases). Appendix 1 highlights the differences between DCC's current scheme, guidance provided in the Act and the potential impacts which have been considered in the preparation of this report.
- 4.15 Scottish Government guidance allows for the good practice developed under our current voluntary scheme of operation to be retained in any new scheme. Therefore, it is proposed that Committee approves an enhanced Community Asset transfer scheme which adopts a wider definition of Community Bodies than that defined in section 77 of the Act as detailed Appendix 2.

5.0 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any Policy implications in respect of sustainable development, strategic environmental assessment, anti-poverty, equality impact assessment and risk management.

An equality impact assessment is attached.

6.0 CONSULTATIONS

6.1 The Chief Executive, Executive Director of Corporate Services, Head of Democratic and Legal Services and all other Chief Officers have been consulted in the preparation of this report and are in agreement with its contents.

7.0 BACKGROUND PAPERS

7.1 None

Elaine Zwirlein
Executive Director of Neighbourhood Services

David Simpson
Head of Housing & Communities

17th January 2017

KEY DIFFERENCES BETWEEN DUNDEE CITY COUNCIL'S STRATEGY ON ASSET TRANSFER AND THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

	Existing DCC Strategy and Process	Community Empowerment (Scotland) Act 2015	Impacts
1.	Dundee City Council City Development identify surplus properties/ land to be included on Asset Transfer list.	<u>All</u> land and property to be placed on a public register.	All DCC properties and land are now available for Asset Transfer.
2.	Current scheme is voluntary Dundee City Council has had an Asset Transfer scheme since 2013/14 to facilitate transfers.	The Act places a legal requirement on all public authorities working within to follow the process for Asset Transfer as laid out in the Act. The authority must agree to the request unless there are reasonable grounds for refusal.	Now a legal requirement to deal with Asset Transfer requests made under part 5 of the Act. DCC must be clear as to our grounds for refusal. No definition of 'reasonable grounds' in provided in the guidance and will need to be interpreted on a case by case basis.
3.	As long as all aspects of governance are met lease and ownership can be awarded to a voluntary or community organisation (VCO) which can take a range of forms and legal structures.	To make an Asset Transfer request for a lease an organisation needs to be a community controlled body as set out in section 5.11 of the guidance. A transfer of ownership requires the body to be a SCIO or a Community Benefit Company with a minimum of 20 members.	Based on experience of the current scheme, implementing the definition of Community Body as per the guidance may restrict our ability to asset transfer particularly to smaller community organisations. We, therefore, propose to retain a wider definition of Community Body in our revised scheme.

	Existing DCC Strategy and Process	Community Empowerment (Scotland) Act 2015	Impacts
4.	Decisions on Asset Transfer made at DCC Committee	The Act requires a review process to be established. This must be carried out by Elected Members and cannot be delegated to officers. There is a further right appeal to Scottish Ministers.	In order to adhere to the Act's terms there will need to be a review process established.
5.	Dundee City Council strategy includes indicative timelines.	Once an application has been submitted DCC has six months to issue a Decision Notice. There is then a further 6 months for the community transfer body to submit an offer and thereafter a further 6 months to conclude the transfer. An extension of time can be formally agreed.	Right of appeal if agreed time lines have not been met. Act does not allow flexibility for dynamic responses to community need e.g. regarding short term leases or where more time is required for capacity building.
6.	Dundee City Council introduced a two stage application process to allow officers/support agencies to work with groups towards successful transfer.	The Act only allows a single stage process. Community Transfer bodies have a right to submit an Asset Transfer request without any previous contact and DCC must be ready to process in accordance with the requirements of the Act.	We propose to establish a 'pre application process' as suggested in s8.2 of the Scottish Government guidance. Applicants will be encouraged to work with officers to discuss their proposal ahead of submitting an Asset Transfer request.
7.	Main priority was identifying community benefit.	There is now an explicit requirement for the applicant to identify the price/rent they are prepared to pay. DCC can supply an indicative value. Guidance states that Community transfer bodies should not assume that asset transfers will be at a nominal sum.	Valid applications under the Act require a 'formal assessment of market value' (s12.7 of guidance). This will incur costs for both the applicant and DCC. As well as 'value' all other 'terms' need to be agreed and included in the application.

	Existing DCC Strategy and Process	Community Empowerment (Scotland) Act 2015	Impacts
8.	The DCC website included guidance, application forms and current list of properties available.	The Act requires a property register to be available online as well as the completed Asset Transfer request and associated documents.	Review DCC strategy to incorporate the requirements to place all Asset Transfer requests (whether under the Act or DCC strategy) online.
9.	Consultation with LCPP'S and Building Stronger Communities	The Act including a requirement to post public notices on asset transfer proposals along the lines of planning applications and to produce annual reports to Scottish Government.	The revised strategy needs to adopt the requirements to produce notice and establish annual report to P&R Committee.

APPENDIX 2

COMMUNITY EMPOWERMENT (SCOTLAND) ACT GUIDANCE	DCC 'S PROPOSED SCHEME
Requirements for a community controlled body	Requirements for a community controlled body
<p>To make an Asset Transfer request, an organisation needs to be a community transfer body. This is defined in Section 77 of the Act. It can be either a community controlled body (defined in Section 19) or a body designated by the Scottish Ministers.</p> <p>A community controlled body does not have to be incorporated, but it must have a written constitution, incorporating the provisions set out in paragraph 5.11 of Scottish Government Guidance</p> <p>A community controlled body which wants to make an Asset Transfer request for ownership must also be incorporated as a company, a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company), with a minimum of 20 members and provision for transfer of its assets on winding up.</p>	<p>In addition to the definitions laid out in the Act and Guidance, DCC's scheme will offer enhanced opportunities to community bodies considering lease and transfer assets.</p> <p>In relation to requests for transfer of ownership we would consider applications from community bodies who:</p> <ul style="list-style-type: none"> • are formally-constituted • have sound management and governance arrangements • have their own decision-making systems and accountability to independent trustees or their own members or constituents • are non-political and not engaged in supporting candidates for political office • have an element of involvement of volunteers <p>The Council may consider the transfer of particular assets to an umbrella group of Voluntary Community Organisations acting on behalf of a range of local community interests. Newly formed or less formally constituted groups may also be considered suitable for transfer provided they can demonstrate that they have the necessary expertise and experience to manage the asset and have a sound business plan in place.</p>

EQUALITY IMPACT ASSESSMENT TOOL

Part 1: Description/Consultation

Is this a Rapid Equality Impact Assessment (RIAT)? Yes <input type="checkbox"/> x No <input type="checkbox"/>	
Is this a Full Equality Impact Assessment (EQIA)? Yes <input type="checkbox"/> No <input type="checkbox"/> x	
Date of Assessment: 13/02/17	Committee Report Number:
Title of document being assessed:	Community Asset Transfer Strategy
1. This is a new policy, procedure, strategy or practice being assessed (If yes please check box) <input type="checkbox"/>	This is an existing policy, procedure, strategy or practice being assessed? (If yes please check box) x
2. Please give a brief description of the policy, procedure, strategy or practice being assessed.	This is a revision of current Asset Transfer strategy in line with new government legislation as part of the Community Empowerment (Scotland) 2015 Act
3. What is the intended outcome of this policy, procedure, strategy or practice?	To develop a revise scheme for the transfer of land and property assets to community bodies.
4. Please list any existing documents which have been used to inform this Equality and Diversity Impact Assessment.	Community Empowerment (Scotland) 2015 Act
5. Has any consultation, involvement or research with protected characteristic communities informed this assessment? If yes please give details.	No
6. Please give details of council officer involvement in this assessment. (e.g. names of officers consulted, dates of meetings etc)	Marie Dailly (Service Manger), Carole Jenkins (Communities Officer) Jim Murray, Jennifer Kay (Legal), Alistair Kay, Colin Craig (City Development)
7. Is there a need to collect further evidence or to involve or consult protected characteristics communities on the impact of the proposed policy? (Example: if the impact on a community is not known what will you do to gather the information needed and when will you do this?)	No

Part 2: Protected Characteristics

Which protected characteristics communities will be positively or negatively affected by this policy, procedure or strategy?

NB Please place an X in the box which best describes the "overall" impact. It is possible for an assessment to identify that a positive policy can have some negative impacts and visa versa. When this is the case please identify both positive and negative impacts in Part 3 of this form.

If the impact on a protected characteristic communities are not known please state how you will gather evidence of any potential negative impacts in box Part 1 section 7 above.

	Positively	Negatively	No Impact	Not Known
Ethnic Minority Communities including Gypsies and Travellers	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender Reassignment	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or Belief	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People with a disability	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Age	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lesbian, Gay and Bisexual	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Socio-economic	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy & Maternity	<input checked="" type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part 3: Impacts/Monitoring

<p>1. Have any positive impacts been identified?</p> <p>(We must ensure at this stage that we are not achieving equality for one strand of equality at the expense of another)</p>	<p>The potential for community groups to design and manage assets and services.</p>
<p>2. Have any negative impacts been identified?</p> <p>(Based on direct knowledge, published research, community involvement, customer feedback etc. If unsure seek advice from your departmental Equality Champion.)</p>	<p>No</p>
<p>3. What action is proposed to overcome any negative impacts?</p> <p>(e.g. involving community groups in the development or delivery of the policy or practice, providing information in community languages etc. See Good Practice on DCC equalities web page)</p>	<p>N/A</p>
<p>4. Is there a justification for continuing with this policy even if it cannot be amended or changed to end or reduce inequality without compromising its intended outcome?</p> <p>(If the policy that shows actual or potential unlawful discrimination you must stop and seek legal advice)</p>	<p>N/A</p>
<p>5. Has a 'Full' Equality Impact Assessment been recommended?</p> <p>(If the policy is a major one or is likely to have a major impact on protected characteristics communities a Full Equality Impact Assessment may be required. Seek advice from your departmental Equality lead.)</p>	<p>No</p>
<p>6. How will the policy be monitored?</p> <p>(How will you know it is doing what it is intended to do? e.g. data collection, customer survey etc.)</p>	<p>Annual reports to committee and Scottish Government</p>

Part 4: Contact Information

Name of Department or Partnership	Neighbourhood Services
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Type of Document	
Human Resource Policy	<input type="checkbox"/>
General Policy	<input type="checkbox"/>
Strategy/Service	<input checked="" type="checkbox"/> x
Change Papers/Local Procedure	<input type="checkbox"/>
Guidelines and Protocols	<input type="checkbox"/>
Other	<input type="checkbox"/>

Manager Responsible	Author Responsible
Name: David Simpson	Name: Marie Dailly
Designation: Head of Housing and Communities	Designation: Service Manager (Housing & Communities)
Base: 3 City Square Dundee.	Base: Mitchell Street Centre Mitchell Street Dundee
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Signature of author of the policy:	Date:
Signature of Director/Head of Service:	
Name of Director/Head of Service: <i>David Simpson</i>	17/02/17
Date of Next Policy Review:	N/A