

<b>Agenda Item</b>	<b>18</b>
<b>Report No</b>	<b>RES/15/18</b>

## HIGHLAND COUNCIL

**Committee:** Corporate Resources Committee

**Date:** 28 February 2018

**Report Title:** **Community Asset Transfer Review Process**

**Report By:** Acting Head of Policy

### 1. Purpose/Executive Summary

- 1.1 The purpose of this report is to seek approval for the process for conducting Member reviews of community asset transfer decisions.
- 1.2 Members have previously been advised that the Community Empowerment Act requires the Council to consider requests from communities for the transfer of land and buildings. A process for this was agreed by Communities and Partnerships Committee in December 2016. As part of this process, where requests have been refused, groups have the right to request that this decision is reviewed.
- 1.3 The guidance supporting the review process has been set out by the Scottish Government and is summarised in appendix 1. Councils are able to determine the procedure for carrying out a review and any hearing process and Appendix 2 sets out the proposed Highland Council Review panel process and procedure for conducting a hearing which may be held as part of the review process.
- 1.4 The review process provides the Council's final decision on any community asset transfer request. Therefore, for clarity, the Scheme of Delegation should be updated to reflect that the Review Panel has full delegated powers to conduct a review in accordance with the Council's Community Asset Transfer Review procedures and to make decisions regarding community asset transfers.

### 2. Recommendations

- 2.1 Members are asked to:
  - i. Consider the report and approve the process for the Member Review Panel and proposed hearing procedure for reviews of community asset transfer decisions as set out at **appendix 2**; and agree to recommend to Council that the Scheme of Delegation be updated to reflect the process.

## 3. Review Requirement

- 3.1 Members have previously been advised that the Community Empowerment Act (Scotland) – Part 3 Community Asset Transfer – requires the Council to consider requests from communities for the transfer of land and buildings.
- 3.2 A process for this was agreed by Communities and Partnerships Committee in December 2016. In this regard, requests which are recommended for approval will be considered by the Environment, Development and Infrastructure Committee.
- 3.3 Where requests are refused, either at stage one by the Asset Management Property Board or by the Environment, Development and Infrastructure Committee, community bodies have a right to ask for a review of that decision. The request for review must be made within 20 days and the review carried out within a timescale of 6 months. On that basis, it was agreed that a Review Panel comprising 5 Members (1 Member from each political group) should be set up from within the membership of the Corporate Resources Committee.
- 3.4 The review process guidance from the Scottish Government is summarised in **appendix 1**. As part of this:
- A review, where requested by the community transfer body, must be held within 6 months.
  - The community transfer body sets out in advance all matters it intends to raise in the review.
  - The review process should be proportionate to the scale of the transfer request the community transfer body has made.
  - The review must consider the request in the same way as the original process taking into account the same factors and benefits of the request and alternatives.
  - The Council must issue a new decision notice either confirming the original decision, or modifying it or substitute a different decision.
- 3.5 However, it is for the Council to decide the process for carrying out the review and the arrangements for any hearing procedure. The proposed approach is set out in **appendix 2**. The key features proposed are:-
- A Review Panel comprising 5 Members (1 Member from each political group) should be set up from within the membership of the Corporate Resources Committee.
  - A Chair of the Review Panel will be elected from amongst its membership. This will be reviewed should the membership of the panel change.
  - The Member Review Panel quorum is 3 Members drawn from 5 nominated Members.
  - The Review Panel meeting and decision will be minuted and a decision recorded. The Panel will be supported by a legal officer nominated by The Head of Corporate Governance. This officer will not have previously been involved in the consideration of the asset transfer request
  - For each review, a hearing will be held. Either party may request a paper only hearing in which case all parties should agree that attendance by parties is not required. Any hearing must include the community transfer body, any other body that made representations and any person the Council wants to provide information associated with the community asset transfer.

### 3

- The community transfer body and Council representative will have the opportunity to present to the Review Panel. The Panel will be able to question the representatives on points of clarification.
- The Review Panel will discuss the review in private before agreeing a decision on the review.

3.6 The review process provides the Council's final decision on any community asset transfer request. Therefore, for clarity, the Scheme of Delegation should be updated to reflect that the Review Panel has full delegated powers to conduct a review in accordance with the Council's Community Asset Transfer Review procedures and to make decisions regarding community asset transfers.

3.7 It should also be noted that, following consideration and decision by the Review Panel, community bodies **will still have a further right of appeal to Scottish Ministers**.

#### 4. Implications

4.1 Resource: There is no new or additional funding to support the management of asset transfer reviews and this must be managed within existing resources. This includes Member and staff time to conduct asset transfer reviews.

4.2 Legal: The Community Empowerment Act sets out the required review process for asset transfer requests.

4.3 Community (Equality, Poverty and Rural): No equality, rural or poverty implications have been identified. The CAT process supports communities to take on and run local assets.

4.4 Climate Change / Carbon Clever: None identified at this time

4.5 Risk: There is a risk that the Council does not comply with the new legislation however by establishing a system and process for conducting asset transfer reviews this risk is mitigated.

4.6 Gaelic: None identified at this time.

Designation: Acting Head of Policy

Date:21/02/18

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Appendix 1: Community Asset Transfer Review Process and Procedure  
Scottish Government Guidance

Appendix 2: Community Asset Transfer Requests  
DRAFT - Review Panel and Review Hearing Procedure

Background Papers: Community Asset Transfer Process: [www.highland.gov.uk/cat](http://www.highland.gov.uk/cat)

## Community Asset Transfer Review Process and Procedure

### Scottish Government Guidance

The following summarises guidance from the Scottish Government related to the process required for undertaking a review as part of the community asset transfer process.

The full guidance is available here <https://beta.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-relevant-9781786527493/>

#### 1. Reviews

- 1.1 A community transfer body can seek a review if:
- their request is refused,
  - the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request, or
  - no decision notice is issued within the required period.
- 1.2 For Local Authorities, this review must be undertaken by Councillors. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016.

#### 2. Highland Council Review Process

- 2.1 ***Application for review and acknowledgement***  
 The community transfer body's application for review must be made in writing to the Council within **20 working days beginning with the date of the decision notice**, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request). This application should be made to:
- [cat@highland.gov.uk](mailto:cat@highland.gov.uk)
- 2.2 The application must include:
- the name and contact address of the community transfer body,
  - specify the land or building to which the asset transfer request relates.
  - a statement setting out the reasons for requiring a review. This should include:
    - All matters which the community transfer body intends to raise in the review
    - Any further matters or evidence in response to representations on the application or those requested by the Council
    - The application must be accompanied by a list of documents and other evidence supporting the case, and copies of any of those documents or evidence the Council does not already have. These will be published on the Council's website. Any personal details will be redacted.
    - The procedure which the community transfer body consider should be used to obtain further information, for example whether there should be a hearing or perhaps a site visit, in addition to written representations.

- 2.3 The final decision on procedure is for the Highland Council Review Panel and Review Hearing Procedure
- 2.4 The Council must send an acknowledgement of the application for review to the community transfer body within 10 working days of receiving it. The acknowledgement must state the date on which the application was made, and tell the community transfer body how the review documents can be inspected.
- 2.5 ***Notification of interested parties***  
Also within 10 working days of receiving the application, The Council must give notice of the review to anyone who made representations on the original asset transfer request. These people are described as "interested parties". Notice must be sent by post to any interested party who is a tenant or occupier of the land or building to which the request relates, or an owner if the relevant authority leases it. Other interested parties may be notified by post, or by newspaper advertisement. Every interested party should have given a name and address with their original representation, but newspaper advertisement may be more appropriate if there are large numbers to be notified.
- 2.6 If the requirements for notification and publication of the original asset transfer request were not fully met at the time, the local authority must complete this before determining the review.
- 2.7 The notice to interested parties must state the name of the community transfer body and the land to which the asset transfer request relates. It must say that copies of any representations previously made about the asset transfer request will be considered by the local authority when determining the review, and that further representations may be made, giving information about how and by what date they must be made, and that a copy will be sent to the community transfer body for comment. It must also state how documents relating to the review can be inspected. A template notice is provided on the Scottish Government website. The notices must be published online with the other review documents.
- 2.8 Interested parties may make representations to the local authority within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the local authority requests it.
- 2.9 The Local Authority must send a copy of any representations received to the community transfer body, and inform them how and by what date they may make comments to the local authority. This must be at least 10 working days from the date of sending the copy to them.
- 2.10 If appropriate, regulation 15 allows the Council to require anyone who has submitted any documents or other material in connection with the review to provide additional copies to the local authority or to any other person, and you must make such materials available for inspection until the review is determined.
- 2.11 ***Further representations***  
Once the Council has the initial evidence, any representations from interested parties and comments on those representations, the local authority may consider they have enough information to determine the appeal. If not, they may decide

what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body can say in their initial evidence what procedures they think should be used, but the final decision is with the Council. Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

- 2.12 Any request for further information should be proportionate to the transfer request to which the review relates.
- 2.13 If further written submissions are required, The Council must send a notice to the community transfer body and any other person you want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the local authority. It must also give the name and address of each person the notice is sent to. Any information provided to the local authority in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the relevant authority, again copied to everyone else.
- 2.14 ***Hearing session rules***  
The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.
- 2.15 If the local authority decides they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. The people invited must confirm within 10 working days if they plan to attend the hearing session. Anyone who does not do so will not be entitled to be involved in the procedures that follow. You must inform the people who have confirmed they will attend the hearing session of the date, time and place when it will be held, giving them as much notice as you consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.
- 2.16 If they wish, the local authority may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, with supporting documents. These statements will be copied to everyone attending the hearing.
- 2.17 The hearing session is intended to be a discussion, led by the local authority, on the particular matters set out in the notice. The people attending will not normally be allowed to question each other on their statements, and the local authority will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Apart from the points set out in the Hearing Session Rules, the local authority can determine the procedure of the hearing.

2.18 ***Additional evidence***

If the local authority proposes to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other "relevant parties" an opportunity to comment on that evidence. "Relevant parties" are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

2.19 ***Highland Council Review Panel***

Any review submitted to Highland Council will follow the procedures set out above. Any review will be considered by a panel of Members drawn from the Corporate Resources Committee and not involved in the original decision making process.

2.20 ***Decision***

In carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

2.21 Having carried out the review, the Council may:

- confirm the original decision,
- modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision.
- must issue a new decision notice, which replaces the previous decision notice. The decision notice must be given within 6 months of the date the application for review was made, or a longer period if agreed with the community transfer body.

2.22 The decision notice must be sent to the community transfer body, interested parties and must be published online.

2.23 If the request is refused (or no decision is made within the time limit, or the terms and conditions are not acceptable) the community transfer body can appeal to the Scottish Ministers.

## Community Asset Transfer Requests

### DRAFT - Review Panel and Review Hearing Procedure

#### 1. Review Panel

##### 1.1 A Review Panel will be formed as follows-

- The Review Panel will comprise of 5 Members and will be set up from within the membership of the Corporate Resources Committee.
- Members will not have been involved in the original decision on the transfer request.
- The Review Panel quorum is 3 Members drawn from the 5 nominated Members.
- A Chair of the Review Panel will be elected from amongst the membership prior to the first meeting of the Panel. This will be reviewed should the membership of the panel change.

##### 1.2 Decision on review process-

- For each review, a hearing will be held which will provide the opportunity for both sides to present their case.
- Either party may request a paper only hearing in which case all parties should agree that attendance by parties is not required.
- Any hearing must include the community transfer body, any other body that made representations and any person the Council wants to provide information associated with the community asset transfer.

#### 2. The Review Process

##### 2.1 ***Prior to the Review Panel Hearing:***

The decision to hold a hearing as part of the Review process will be communicated by the Council to the community transfer body, any interested parties, and any other person the Council considers can provide further information. This decision to hold a hearing, and the timing of the hearing, will be communicated to all parties 1 month prior to the hearing date.

##### 2.2 The notice for the hearing will set out the matters to be considered at the hearing. This will include submissions from the community transfer body (as indicated in their request for review), any representations and any Council documents related to the original decision. These documents will be circulated to the community transfer body and the panel members 10 days in advance of the hearing.

##### 2.3 The community transfer body, and any interested party, will be required to nominate who will represent them at the hearing. This should be a maximum of 3 representatives which will be confirmed to the Council 10 working days in advance of the hearing.

The Council's case will be presented by the Chair of the Asset Management Project Board (or their nominee) supported by 2 nominated officers.



#### 2.4 **The Review Panel Hearing:**

The review hearing will be completed in one hearing and will not generally accept information that is submitted for the first time at the hearing or offered subsequently.

The Review Panel meeting and decision will be minuted and a decision recorded. The Panel will be supported by a legal officer nominated by The Head of Corporate Governance. This officer will not have previously been involved in the consideration of the asset transfer request.

2.5 The review hearing will allow the community transfer body to set out their reasons for seeking a review of the decision and the Council to set out the reasons they refused the request. The following order of Hearing should be adhered to unless otherwise agreed by all parties-

1. Case for the community transfer body
2. Questions by Panel
3. Case for the Council
4. Questions by Panel
5. Input by any other body that made representations and any person the Council wants to provide information associated with the community asset transfer.
6. Summing up on behalf of community transfer body
7. Summing up on behalf of Council

2.6 Both parties can do this by way of a presentation supported by documentation that has been submitted in advance and shared with both parties. Presentations will be restricted to a maximum of 15 minutes.

2.7 The hearing process does not allow each party to question each other.

2.8 Members of the review panel will have an opportunity to question both parties in order to seek any clarification they require.

2.9 Both parties will be asked to withdraw from the hearing having made their presentations and provided any clarifications.

2.10 The Chair of the Panel will lead a discussion amongst panel Members and seek to agree a decision on the review. A majority decision will be sufficient. In the event of their not being a majority the Chair will have the casting vote.

#### 2.11 **The Decision:**

The Review Panel decision will either-

- Confirm the original decision, indicating in a new decision notice why they have confirmed the decision.
- Modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision.

2.12 The Panel's decision will be communicated in writing to all parties within 5 working days.