



REPORT TO: ECONOMIC GROWTH, HOUSING AND ENVIRONMENTAL SUSTAINABILITY COMMITTEE ON 8 JUNE 2021

SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT): FINDHORN BEACH TOILETS

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 This report invites the committee to consider an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015 for the transfer of two public toilets and the site of a former public toilet, all located at Findhorn Beach.
- 1.2 This report is submitted to the Economic Growth, Housing and Environmental Sustainability Committee following a decision of Moray Council on 17 June 2020 to agree a simplified committee structure as a result of the COVID-19 pandemic. In the case of this committee the combining of the delegated responsibilities of Economic Development and Infrastructure, Community Services (Housing and Property) and Finance (budget, capital and revenue monitoring) (para 9 of the minute refers).

2. RECOMMENDATION

2.1 The committee is invited to:

- (i) **approve the request to transfer ownership of:**
- a) the north and south public toilets, West Dunes, Findhorn, and**
 - b) the site of the former public toilet, East Beach, Findhorn,**
- to the Findhorn Village Conservation Company Ltd, all subject to the terms and conditions set out in para 5.1 of this report; and,**
- (ii) **note that, if approved and unless otherwise agreed with the Company, it will have 6 months from the date of the decision notice to submit a formal offer to purchase the properties, failing which the agreement will have no further effect and the statutory asset transfer process will end.**

3. BACKGROUND

- 3.1 On 25 January 2021, the Findhorn Village Conservation Company Ltd (the Company) submitted an asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) for the free transfer of ownership to two public toilet blocks and the site of a former public toilet, all located at Findhorn Beach as shown in **Appendix 1**.
- 3.2 The following conditions were included by the Company in its request:
- (i) The Council to hand over the septic tank serving the West Car Park (North) public convenience in working order to meet SEPA regulations and provide details of water supply connections.
 - (ii) The Council to hand over the water and sewage services serving the West Car Park (South) public convenience in working order and provide details of water and sewage connections.
 - (iii) The Council to confirm that all services to the plot of land at the East Car Park have been properly 'capped' and provide details of any drainage, water, and electricity services that remain in place.
- 3.3 The redacted asset transfer submissions are available on the Council's Committee Management System under the reference CAT/ATR/086 at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1729/Committee/37/SelectedTab/Documents/Default.aspx>.
- 3.4 The asset transfer request was the subject of a statutory public consultation. Although no representations were received during this consultation, the Company included letters of support from Findhorn and Kinloss Community Council and the Findhorn Resident's Association in its submission.

4. ASSESSMENT

- 4.1 The Company is a registered Scottish Charity (SC044408), whose governing documents meet the criteria to be classed as a community-controlled body able to request a transfer of ownership under the Act.
- 4.2 The Company was formed to benefit the community of Findhorn Village with the following purpose:
- 'To advance environmental protection or improvement including preservation, sustainable development and conservation of the natural environment, the maintenance, improvement or provision of environmental amenities for the Community and/or the preservation of buildings or sites of architectural, historic or other importance to the Community.'
- 4.3 Best Value characteristics are in evidence in the Company's proposals. Its governance and financial management arrangements are considered sound and sustainable. Its members have demonstrated through their track record of managing assets for the community that they have the necessary skills and experience to deliver the Company's objectives. It has demonstrated that

there is community support for its proposals. Its business case demonstrates that its proposals are affordable and financially sustainable.

- 4.4 The projected benefits of the requested transfer relate primarily to economic development and regeneration through enhancing visitor experience and bringing a closed public facility back into use. The likely benefits support the Local Outcomes Improvement Plan priority of developing a growing, diverse and sustainable economy in Moray.
- 4.5 A valuation by a private surveying firm, jointly commissioned by the Council and the Company, assessed the total market value of the three properties as £14,000. The Council's Estates Manager requested further evidence and explanation of the assessment of value from the private surveyor. However, this was not forthcoming. The Estates Manager considers that the estimated total market value of the three sites is more likely to lie within the range £51,000 to £96,000. The differences in opinion of value are due to consideration of potential alternative uses that do not appear to have been addressed by the private surveyor.
- 4.6 The Company has requested that the assets be transferred for nil consideration, involving a disposal at significantly less than the best price that could reasonably be obtained. Nevertheless, even using the highest estimate of market value, the projected benefits of the proposal are considered commensurate with the discount sought.
- 4.7 Given that the company has requested a free transfer of the assets, requiring the Council to agree to forego a potential capital receipt of up to £96,000, it is considered unreasonable that the Council should also be required to agree to the conditions referred to in para 3.2 above. Agreeing to these conditions could result in the Council incurring additional expenditure to ensure that the condition of building services be improved. It is considered reasonable, however, to provide the Company with an opportunity to carry out its own investigations to satisfy itself as to the current condition of the assets.

5. ASSET TRANSFER TERMS

- 5.1 If the recommendations are agreed, the following terms would apply to the transfer:
 - (i) Subjects – the assets to be transferred comprise:
 - a) Toilet Block (North), West Dunes, Findhorn,
 - b) Toilet Block (South), West Dunes, Findhorn, and
 - c) Site of former Toilet Block, East Beach, Findhorn.The locations of the sites are shown in **Appendix 1**.
 - (ii) Price – the price payable would be £nil.
 - (iii) Contamination – the Council is to transfer the property “with information” in terms of Contaminated Land legislation with the Findhorn Village Conservation Company Ltd indemnifying the Council against any future claims relating to contaminated land. A desktop

study by the Council's Environmental Health Section concluded that there are no known contaminative uses near these sites.

- (iv) The Council will provide the purchaser with information on the existence of all services to the best of its knowledge and belief.
- (v) The purchaser will satisfy itself as to the existence, condition and suitability of all services.
- (vi) Fees/Expenses – each party would meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees; and,
- (vii) Other Terms – any other detailed terms agreed with the Council's Legal Services Manager and Estates Manager.

5.2 The company will have a right to ask the Council to review its decision if the request is refused or the terms differ materially from those requested.

6. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

Transferring assets to the community supports the Local Outcomes Improvement Plan (LOIP) aim of creating more resilient and sustainable communities and is consistent with the Corporate Plan value of promoting community empowerment as a means of supporting communities to take on more responsibility. The likely benefits support the LOIP priority of developing a growing, diverse and sustainable economy in Moray.

(b) Policy and Legal

On 21 March 2017, the Policy and Resources Committee approved the following policy statement (paragraph 5 of the Minute refers):

“Moray Council recognises the important role that the transfer of property assets can play in empowering communities and strengthening their resilience. Where appropriate, the Council will use the transfer of assets to give more control to communities and local people, inspire them to find local solutions to community needs, and as a means of helping communities become more sustainable in the long term. In determining all asset transfer requests, the Council will have regard to the guidance provided by the Scottish Government in relation to asset transfer requests made under Part 5 of the Community Empowerment (Scotland) Act 2015, whether or not such requests are made under the provisions contained in the Act.”

Section 82(5) of the Community Empowerment (Scotland) Act 2015 requires the Council to agree to the asset transfer request unless there are reasonable grounds for refusing it.

Assets transferred to the community at less than market value must comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which requires the Council to be satisfied that the proposed transfer is reasonable and that the disposal is likely to contribute to the promotion or improvement within Moray of any of the following purposes:

- a) Economic Development,
- b) Regeneration,
- c) Public Health,
- d) Social Wellbeing, or
- e) Environmental Wellbeing.

Reasonableness in this context is taken to imply that the requested discount is the minimum necessary to allow the project to proceed and that it is commensurate with the likely benefits of the project.

(c) Financial Implications

The Estates Manager considers that the estimated combined total market value of the three sites lies within the range £51,000 to £96,000. Although capital receipts are currently being used to fund Transformation spend, a capital receipt at this level could be used to reduce annual borrowing costs by between £972 and £1,830. The lowest of these two figures is close to the £980 annual budgeted cost of continuing to operate the one remaining toilet open to the public. Transferring the assets at a discount of £51,000 would be considered cost neutral to the Council while a discount of £96,000 would be considered the equivalent of foregoing an annual budget saving of £858. In reaching its decision, the committee should consider whether the projected benefits arising from maintaining and enhancing public toilet provision in the area would be commensurate with the requested discount.

(d) Risk Implications

The risk of the Company failing are considered low. However, in the event of its dissolution, its Articles of Association provide that any remaining assets would transfer to another suitable community body approved by the Office of the Scottish Charity Regulator and Scottish Ministers.

The impact of COVID-19 on property markets and the estimate of value for this property are currently unclear. As such, the estimate of value provided is subject to material valuation uncertainty. Consequently, a higher degree of caution should be attached to the estimate of value than would normally be the case.

There is a low risk of the presence of State Aid as the proposed service is considered to be local and, therefore, unlikely to affect intra-community trade among EU member states.

(e) Staffing Implications

There are no staffing implications arising from this report.

(f) Property

The property implications are as detailed in this report.

(g) Equalities/Socio Economic Impact

An Equalities Impact Assessment is not required as agreeing to the asset transfer request would have no adverse impact on service delivery. The proposals are projected to have a positive socio-economic impact.

(h) Consultations

The Depute Chief Executive (Economy, Environment and Finance), Chief Financial Officer, Head of Economic Growth and Development, Head of Education Resources and Communities, Head of Housing and Property, Legal Services Manager, Estates Manager, P. Connor Principal Accountant, Acting Community Support Manager, L. Rowan Committee Services Officer, and Equal Opportunities Officer have been consulted and comments incorporated in the report.

The Ward Members, Councillors Alexander, Creswell, Feaver and McLean, are aware of the proposal and may make their views known at Committee.

7. CONCLUSION

7.1 The proposed transfer contributes to the priorities set out in the Council's Corporate Plan and the Local Outcomes Improvement Plan.

7.2 The strength of the Company's overall business case is considered moderate to strong. That is,

- (a) Its governance and financial management arrangements are sound and sustainable,**
- (b) Best Value characteristics are in evidence in the proposal, and**
- (c) The projected benefits are acceptable, could lead to value for money, and are sufficient to justify a transfer at less than market value.**

7.3 No reasonable grounds have been identified for refusing the request. However, as the request is for a transfer at nil consideration, it is not considered reasonable that the Council should also be required to incur additional expenditure in order to facilitate the transfer.

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