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**REPORT TO: MORAY COUNCIL EMERGENCY CABINET ON 10 JUNE 2020**

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT):  
LESSER BOROUGH BRIGGS, ELGIN**

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

**1. REASON FOR REPORT**

- 1.1 This report invites the Emergency Cabinet to consider a community asset transfer request for common good land at Lesser Borough Briggs, Elgin.
- 1.2 This report is submitted to the Cabinet following a decision of Moray Council on 25 March 2020 to temporarily suspend all delegations to committees as a result of the Covid-19 pandemic (para 2 of the minute refers).

**2. RECOMMENDATION**

**2.1 It is recommended that consideration be given to the following two options:**

- (i) **approves the request to grant a 99-year ground lease over the site identified in Appendix 1 to Elgin Sports Community Trust on the main terms and conditions set out in section 7 of this report and authorises the Legal Services Manager to apply to the Sheriff Court for consent to dispose of the site; or,**
- (ii) **refuses the request from Elgin Sports Community Trust for a 99-year ground lease over the site and instructs officers to assess an appropriate strategy for the disposal of the site for an alternative development/use designed to achieve the highest financial return for Elgin Common Good.**

**3. BACKGROUND**

- 3.1 On 9 April 2019, the Policy and Resources Committee declined to consider an asset transfer request made by Elgin Sports Community Trust (the community trust) for a rent-free 99-year ground lease of land at Lesser Borough Briggs, Elgin, for the purpose of developing a multi-purpose, multi-sports playing surface (para 10 of the minute refers).

- 3.2 On 19 December 2019, the community trust made a second asset transfer request for the same site, which extends to some 1.015 Hectares or thereby, as shown in **Appendix 1**. The second request was made under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act), which requires the Council to consider the request and issue a decision notice to the community trust no later than 19 June 2020.
- 3.3 The site is held on a common good title and, due to its potentially inalienable status, court consent would be required before the Council could grant a 99-year lease or otherwise dispose of its interest in the site.
- 3.4 The site, which is shown as white land within the current Local Development Plan, lies within the town centre boundary. Policy R1 'Town Centre Development' supports a mix of uses, including retail, commercial, leisure, recreation, tourism, cultural and community facilities.
- 3.5 The 'Elgin City for the Future' / Elgin Charrette indicates that the site could be used for a hotel or residential use, with the site being designated as LG04 (hotel or housing) and LG05 (hotel or housing and employment land).
- 3.6 The proposed Local Development Plan 2020 includes this site within OPP8 Lossie Green, which is designated for mixed uses, including leisure, office and/or retail. The location of the site within the defended flood plain means that any proposals involving vulnerable uses, such as housing, would require additional protections to be incorporated into the design.
- 3.7 Before agreeing to the request, the Cabinet should satisfy itself that the proposal is likely to generate benefits commensurate with the requested discount and that these are the same as, or greater than, the benefits that could be provided by the alternative proposal. The alternative proposal is the disposal of the site for a higher value use, potentially realising a capital receipt in the region of £325,000 or greater if all the available land were to be included. This receipt could be invested to generate an annual income to Elgin Common Good, which could then be made available to help fund suitable projects within the former burgh.

#### **4. ASSET TRANSFER REQUEST**

- 4.1 The community trust is a Scottish Charitable Incorporated Organisation (SC047984), whose governing documents meet the criteria for being classed as a community-controlled body. The community trust was formed with the object of advancing public participation in sport within the Elgin community. In the furtherance of this objective, the community trust proposes to develop the site for the purpose of a safe and accessible multi-purpose, multi-sports playing surface. To achieve this aim, the community trust is requesting a 99-year ground lease of the site at an initial rental of £3,000 per annum.
- 4.2 In accordance with the Asset Transfer Request (Procedure) (Scotland) Regulations 2016, the asset transfer request was the subject of a public consultation, details of which together with the responses thereto are published on the Council's website. The redacted submissions, representations and responses are available on the Council's Committee Management System [here](#).

- 4.3 Elgin Community Council has confirmed its support for the proposal. The public consultation confirmed that the local community supports the community trust's request for a 99-year ground lease of the site for the purpose of developing a multi-purpose, multi-sports playing surface. The consultation related solely to the community trust's proposal, as required by the relevant legislation, so did not include details of an alternative proposal.
- 4.4 The community trust has received offers of charitable donations from two major engineering companies to undertake and otherwise assist with the design and construction of the facility. One of the companies has offered to underwrite the entire building cost. These offers are time limited and only available while the companies are carrying out major runway improvements at RAF Lossiemouth. The works to extend runway 05/23 are expected to be completed in November 2020, with the remainder of the resurfacing works expected to continue into Spring 2021.
- 4.5 To carry out their proposals, the community trust also requires land from the adjacent Elgin City Football Club (the football club). The football club has confirmed its agreement to lease the additional land to the community trust at a nominal annual rental of £1 for the duration of the project. The lease from the football club would match the duration of any lease agreed between the Council and the community trust. In the event of the community trust's lease of the common good land coming to an end, then its lease of the additional land would also cease with that land reverting to the football club.
- 4.6 The community trust has stated that indications of demand from various organisations, such as Elgin City's Community Football Programme, Elgin City FC, Moray Rugby Club Juniors and Welfare Football teams represent a minimum usage of 30 hours per week.

## **5. ALTERNATIVE PROPOSAL**

- 5.1 An independent valuation undertaken by the District Valuer in May 2018 assessed the market value of the site as £325,000. This valuation was based on the assumption that the highest and best uses that might achieve planning permission would be commercial, such as offices or retail, or some form of light industry/business use.
- 5.2 The valuation was reviewed by the District Valuer in February 2020, taking into account more recent advice in relation to the inclusion of more vulnerable uses, such as residential, on the site. The market value of the site was confirmed as remaining at £325,000.
- 5.3 The Estates Manager advised that, based on the District Valuer's valuation and subject to the same assumptions and risks, increasing the extent of the site to include all available common good land within the defended flood plain had the potential to increase the capital receipt to £360,000.
- 5.4 In providing the independent valuation, the District Valuer cautioned that it was highly speculative given the lack of good comparable transactional evidence and it being based on various assumptions and risks. Since then, these risks have been greatly exacerbated as a result of actions taken by government to mitigate the effects of the Covid-19 pandemic. At this stage,

the impact on the property market and values is unclear. Consequently, it is very difficult to predict how readily the site could be disposed of on the open market for an alternative development. The Council would be well advised to wait until property market conditions become clearer before deciding on proposals and timescales for an alternative development/use of the land.

- 5.5 Before an alternative development could be progressed, more detailed proposals would need to be prepared for the larger site in accordance with the local Development Plan. These proposals would then be the subject of a statutory public consultation before being taken to the court for consent to dispose of the site.
- 5.6 Court consent would be required before the Council could grant a 99-year lease over the site or otherwise dispose of its interest. Any agreements entered into prior to such consent being granted would need to be conditional upon this being in place. As a result of the Covid-19 pandemic, the courts are currently only dealing with urgent business. Applications for consent to dispose of common good property do not meet the criteria for consideration by the courts at the present time. No timescale has yet been determined by the courts for reinstating normal business.

## **6. ASSESSMENT OF REQUEST**

- 6.1 The strength of the community trust's business case, submitted in support of its asset transfer request, is considered to be moderate. That is,
- (a) Its governance and financial management arrangements are acceptable,
  - (b) It has considered Best Value in preparing its proposal, and
  - (c) Projected benefits are acceptable and could lead to value for money.
- 6.2 The projected benefits relate to: regeneration through increasing potential access to leisure facilities; public health through encouraging public participation in sport leading to healthier lifestyles; and, social wellbeing through encouraging activities that bring people together leading to the creation of a stronger community spirit.
- 6.3 The Council's Estates Manager considers the proposed initial annual rent of £3,000 to be reasonable for the restricted use involved in the community trust's proposals. Based on this rent, and taking into consideration the increased risks caused by the proposed development extending into a site owned by the adjacent football club, the capital value of the proposed lease is estimated to lie between £25,000 and £30,000. Due to current property market conditions and the associated increased risks set out in section 5 of this report, this estimate carries a significantly higher degree of uncertainty than usual. However, it is clear that the pro
- 6.4 osal involves disposal at significantly less than the best that could reasonably be obtained, entailing a discount of over 90%.
- 6.5 The community trust refers in their business case to the Facilities Planning model prepared by **sportscotland**. Although the latest information from this model relates to 2017, the data used for synthetic pitches was based on research carried out in 2007. Since then there has been an increased interest

in the use of synthetic pitches. However, the level of demand is believed to have decreased as direct a result of Covid-19 and the timescale for a recovery is highly uncertain.

- 6.6 Some of the benefits claimed by the community trust relate to projects targeted specifically at youths in the at risk category. This project does not relate to this category of user, so the projected social benefit of £4.2M (para 90 of the business case) should be ignored in determining this application. Nevertheless, the overall projected benefits are considered to be acceptable and could lead to value for money.
- 6.7 Scottish football was suspended indefinitely with effect from 13 March this year. The Chairman of Elgin City football club stated publicly that the football club “will be finished in 3 months” if the UK government’s furlough scheme is not extended beyond June. While the scheme has now been extended until the end of October, from August employers will be expected to contribute to payments with further details awaited. The impact of these changes on the football club is not yet clear. The current uncertainty regarding a future restart date for Scottish football is a further factor that could jeopardize the implementation of a lease from the football club to the community trust.
- 6.8 There are no contractual protections within the community trust’s proposal to ensure that the facility is made available to community-based groups. Protections of this nature are typically included in leases of leisure facilities granted by the Council where the rent payable is less than the market rent and would be recommended for inclusion in this lease if approved.
- 6.9 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.

## **7. ASSET TRANSFER TERMS**

7.1 If the asset transfer request is agreed, the following terms would apply:

- (a) The asset comprises the area of land extending to 1.015ha or thereby located at Lesser Borough Briggs, Elgin, all as shown outlined in red in **Appendix 1**;
- (b) Discussions have taken place with the community trust and the following main lease terms and conditions would be proposed:
- (i) Period – 99 years.
  - (ii) Date of Entry – to be agreed.
  - (iii) Rent - £3,000 per annum, subject to review every 5 years.
  - (iv) Use – community sports and recreation.
  - (v) Maintenance/repair – tenant’s responsibility.
  - (vi) Insurance – tenant’s responsibility.
  - (vii) Planning – the tenant to obtain planning consent and building warrant for its proposals.
  - (viii) Development – the tenant to complete its development within timescales to be agreed.

- (ix) Alienation – no sub-letting or assignments without the consent of the Council.
  - (x) Termination – the Council would have the right to terminate the lease at any time in the event of the community trust’s lease from the football club coming to an end.
  - (xi) Fees – each party would meet its own professional fees and expenses in concluding the transaction.
  - (xii) Other terms - any other detailed terms and conditions that may be agreed with the Council’s Legal Services Manager and Estates Manager.
- (c) Agreement to the transfer would be conditional upon:
- (i) the Sheriff Court granting the Council consent to dispose of the site by means of a 99-year ground lease;
  - (ii) the football club agreeing to enter into a 99-year ground lease with the community trust in respect of the additional land on terms and conditions to be approved by the Council’s Legal Services Manager and Estates Manager; and,
  - (iii) the community trust’s ongoing booking and charging arrangements being approved by the Council in order to ensure the availability of the facility to community-based organisations.

## **8. SUMMARY OF IMPLICATIONS**

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

As the property is a Common Good asset, the interests of the inhabitants of former Burgh take precedence over the Council’s Corporate Plan and 10 Year Plan (LOIP). Nevertheless, transferring assets to the community supports the 10 Year 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 take on more responsibility. The proposed transfer has links to the Corporate Plan priority of encouraging the development of caring and healthy communities.

### **(b) Policy and Legal**

On 21 March 2017, the Policy and Resources Committee approved the following policy statement (para 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.

Section 104 of the Community Empowerment (Scotland) Act 2015 requires that before taking any decision to dispose of a Common Good property the Council must first publish details of the proposed disposal. In publishing these details, the Council must:

- (i) notify the relevant community council and any community body that is known to have an interest in the property, and
- (ii) invite those bodies to make representations in respect of the proposals.

In deciding whether or not to dispose of the property, the Council must have regard to any representations made, whether by those invited or by some other relevant party.

In administering Common Good assets, the Council is required by section 15(4) of the Local Government etc. (Scotland) Act 1994 to have regard to the interests of the inhabitants of the area to which the common good related prior to 16 May 1975. As the land at Lesser Borough Briggs is considered to be an inalienable common good asset, the Council must also obtain the consent of the Sheriff Court in terms of Section 75(2) of the Local Government (Scotland) Act 1973 before it can be disposed of.

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:

- (i) Economic Development,
- (ii) Regeneration,
- (iii) Public Health,
- (iv) Social Wellbeing, or
- (v) 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.

The land at Lesser Borough Briggs is classed as public open space. In accordance with the requirements of section 27 of the Town and Country Planning (Scotland) Act 1959, details of the requested asset transfer were published in a local newspaper.

### **(c) Financial Implications**

The community trust has offered to pay an initial rent of £3,000 per annum, which is considered appropriate for the restricted use involved in its proposal. The inclusion of a provision in the lease to review the rent payable every five years would help maintain the real value of the

income. The rent offered equates to an investment return rate of 0.93% on the £325,000 market value of the site.

Prior to the lockdown, a capital receipt of £325,000 would have provided Elgin Common Good with a 1.57% return on investment, delivering an annual income of £5,100. Currently, likely rates of return are significantly lower, bringing them more into line with the 0.93% rate provided by the proposed rent. However, the investment market will recover in time, leading to increased rates of return in the future.

The capital value of the proposed lease has been estimated to lie in the range £25,000 to £30,000 which equates to a discount of over 90% on the assessed market value of the site. Both the value of the lease and the market value of the site carry a significantly higher level of uncertainty than usual as a result of the Covid-19 pandemic.

The market value of site required for the alternative proposal set out in section 5 of this report has been estimated to amount to £360,000. However, achieving a capital receipt of this level is dependent upon the property market recovering to pre-pandemic levels.

#### **(d) Risk Implications**

The community trust can seek an internal review by the Council if its request is refused, the request is agreed but on terms and conditions that are significantly different from those requested, or no decision notice is issued by 18 June 2020.

The request was made before the beginning of the Covid-19 pandemic. Consequently, it does not address any of the risks and uncertainties associated with the pandemic and its aftermath.

The community trust's proposals are dependent upon obtaining a lease over additional land held by the football club. With Scottish football currently suspended indefinitely with no agreed return date, there is a risk that the football club will not survive long enough to implement a lease. The community trust's business case also relies on guaranteed minimum usage by the various organisations, all of which are currently affected by the same uncertainties as all other sports operations. Lower than anticipated demand may impact on the ability of the community trust to achieve financial sustainability.

The lockdown is likely to result in lowered demand for sports facilities even after restrictions begin to be lifted. This increases the risk that this facility would be in direct competition with Council facilities, potentially leading to a loss of revenue to the Council.

In the event of the community trust's operation failing after it has developed the site, the land would revert to the Council. However, part of the development would be located on land held by the football club, rendering the development unusable without a further agreement being reached with the football club. There is a risk that, even with a provision in the football club–community trust lease to the effect that the Council



would have the option of leasing the site from the football club, the Council could have little protection if the community trust fails.

At present, court actions are limited to urgent matters and the community trust's proposal does not meet the criteria for consideration by the Sheriff Court. Even if successfully lodged, it is likely that this case would be sisted, i.e. the proceeding would be suspended, as is the case with all other Council cases currently in court. Consequently, there is a significant risk that a lease could not be implemented in sufficient time to allow the contractors to complete the development before they leave the area on completion of the runway extension at RAF Lossiemouth.

It is impossible to accurately predict how long it will take for the local property market to recover, which means that there is a risk that it could be several years before an acceptable alternative proposal comes forward to develop this site for a higher value use and provide a capital receipt to Elgin Common Good. Achieving a sale price at the same level as the market valuation is dependent upon property markets recovering to their pre-Covid-19 levels.

**(e) Staffing Implications**

Progression is dependent upon the availability of staff resources. These are currently limited as a result of the Council's response to Covid-19.

**(f) Property**

The property implications are 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 impact on Council service delivery.

**(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, Legal Services Manager, Estates Manager, P. Connor Principal Accountant, D. Brodie Community Support Officer, Democratic Services Manager, Active Schools and Sports Development Manager, and Equal Opportunities Officer have been consulted and comments incorporated in the report.

Elgin City North and Elgin City South ward members have been and may make their views known at the meeting.

**9. CONCLUSION**

- 9.1 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. If it is considered that the likely benefits of the community trust's proposal are greater than the likely**

**benefits of the alternative proposal set out in section 5 of this report then the asset transfer request.**

**9.2 The alternative proposal has the potential to provide Elgin Common Good with a capital receipt of up to £360,000. This would be dependent upon the current lockdown restrictions easing and the property market recovering to pre-Covid-19 levels.**

**9.3 If it is-considered that the likely benefits of the alternative proposal set out in section 5 of this report are greater than the likely benefits of the community trust's proposal, then the request can be refused.**

Author of Report: Andrew Gray, Asset Management Coordinator  
Background Papers: Held by author  
Ref: CAT/060/ATR(2015 Act)