



**REPORT TO: SPECIAL POLICY AND RESOURCES COMMITTEE
ON 2 OCTOBER 2019**

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT):
FORRES TOWN HALL**

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1. REASON FOR REPORT

- 1.1 This report invites the committee to consider a community asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015 for the transfer of ownership of Forres Town Hall.
- 1.2 This report is submitted to the committee in terms of Sections III(B)(16) and III(B)(59) of the council's Scheme of Administration relating to the management of common good and trust property and to the consideration of community asset transfer requests.

2. RECOMMENDATION

2.1 The committee is invited to:

- (i) approve the request to transfer ownership of Forres Town Hall to Forres Area Community Trust subject to the terms and conditions set out in section 5 of this report;**
- (ii) authorise the Legal Services Manager to apply to Elgin Sheriff Court for consent to sell the property to Forres Area Community Trust; and**
- (iii) note that, if the request is approved and unless otherwise agreed with the trust, it will have 6 months from the date of the decision notice to submit a formal offer to purchase the property from the council, failing which the agreement will have no further effect and the asset transfer process will come to an end.**

3. BACKGROUND

- 3.1 On 11 April 2018, Moray Council approved transitional arrangements aimed at enabling successful community asset transfers of seven of its town halls and

community centres (paragraph 6 of the Minute refers). These arrangements included entering into short term leases with eligible groups.

- 3.2 On 2 July 2018, Forres Area Community Trust (FACT) took entry to Forres Town Hall in accordance with the agreed transitional arrangements. On 21 June 2019, FACT submitted an asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 for the transfer of ownership of the town hall for a price of £75,000 being 50% of the building's market value. As the property is held on a common good title, the request also falls to be dealt with under Part 8 of the same Act.
- 3.3 In accordance with the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 and section 104 of the Community Empowerment (Scotland) Act 2015, the asset transfer request was the subject of an 8-week 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 at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1541/Committee/5/Default.aspx>.
- 3.4 Forres Town Hall is held on a potentially inalienable common good title. Consequently, court consent would be required to transfer the asset.
- 3.5 The public consultation confirmed strong support from the local community for the requested transfer of the town hall to FACT.

4. ASSESSMENT

- 4.1 FACT's governance and financial management arrangements are considered to be strong and sustainable. Best value characteristics are in evidence in the proposal. Overall, the projected benefits are considered to be acceptable and could lead to value for money.
- 4.2 The projected benefits relate to economic development, regeneration and social wellbeing. They support the Local Outcome Improvement Plan priorities of developing a growing, diverse and sustainable economy, and empowering and connecting communities. They also support the Corporate Plan priorities of ensuring caring and healthy communities and encouraging economic development and growth.
- 4.3 The council's Estates Manager has advised that the estimated market value of the town hall could reasonably be stated as £150,000. The projected benefits of the proposal are considered to be commensurate with the requested discount of £75,000 on the market value.
- 4.4 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.

5. **TERMS OF TRANSFER**

- 5.1 If the recommendations are agreed, the following terms would apply to the transfer:
- (a) Subjects – the asset comprises Forres Town Hall, High Street, Forres;
 - (b) Price – the price payable would be £75,000.
 - (c) Existing Lease – the existing lease terms would apply until the date of the transfer;
 - (d) Fees/Expenses – each party would meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees; and
 - (e) Other Terms – any other detailed terms agreed with the council's Legal Services Manager and Estates Manager.
- 5.2 FACT will have a right to request that the council reviews its decision if the request is refused, no decision is made by 21 December 2019, or the terms of the decision differ from those requested.

6. **SUMMARY OF IMPLICATIONS**

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

Where the property is held on a common good title, the interests of the inhabitants of the 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 to take on more responsibility. The council's corporate priority of working towards a financially stable council should be taken into consideration when dealing with requests for the transfer of an asset at less than market value.

(b) Policy and Legal

On 21 March 2017, this 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.

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 Forres Town Hall 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 transferred.

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 council's Estates Manager has advised that the estimated market value of the town hall could reasonably be stated as £150,000. A sale of the building for this sum would generate a capital receipt that would be invested to provide an annual income to Forres Common Good. In reaching its decision, the committee should consider whether the projected benefits to the Forres community from the transfer are commensurate with the requested discount of £75,000.

The costs of obtaining court consent to dispose of the building would amount to a minimum of £2,000. It is not possible to provide an accurate estimate of the potential costs involved as this would depend upon whether there are any objectors to the application. If there are no objectors and the court is satisfied with the process, it could be dealt with in a few months. However, if there are objections to the proposal then a period of 18 months might be more realistic. The costs would be met from the resultant capital receipt.

(d) Risk Implications

Project risks have been considered by FACT and appropriate actions identified to mitigate these. The risks of the project failing are considered to be low. In the event of its winding up or dissolution, FACT's constitution provides that any remaining assets would transfer to another community or charitable body approved by Scottish Ministers.

The transfer requires the consent of the Sheriff Court, which has the power to refuse or grant permission either with or without conditions. If permission is refused, the Council would be unable to recover its costs. In reaching its decision, the court is likely to take into consideration the level of community support for the proposed transfer.

(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 impact on council service delivery. The proposals are projected to have a positive socio-economic impact.

(h) Consultations

The members of the Asset Management Working Group's CAT Sub-Group*, Acting Head of Housing and Property, Legal Services Manager, Property Resources Manager, Estates Manager, Principal Accountant (P. Connor), Committee Services Officer (Caroline Howie), and Equal Opportunities Officer have been consulted and comments incorporated in the report.

(*Corporate Director (Corporate Services), Head of Development Services, and Head of Financial Services.)

7. CONCLUSION

7.1 The proposed transfer is likely to contribute the priorities set out in the council's Corporate Plan and the Local Outcomes Improvement Plan

and that the projected benefits are sufficient to justify a disposal at less than market value.

7.2 It is considered that there are no reasonable grounds for refusing the request for a transfer of ownership, subject to court consent being granted.

Author of Report: Andrew Gray, Asset Management Coordinator
Background Papers: Held by author
Ref: CAT/059/ATR (2015 Act)