



REPORT TO: MORAY COUNCIL ON 27 SEPTEMBER 2023

SUBJECT: COMMUNITY ASSET TRANSFER – GRANT PARK, FORRES
BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To invite Council to consider options in relation to an asset transfer request made in respect of Trust land within Grant Park, Forres.
- 1.2 This report is submitted to the Council in terms of Sections (III) (B) (20) and (32) of the Council's Scheme of Administration relating to the management of Common Good and Trust property and to the consideration of all Community Asset Transfer requests respectively.

2. RECOMMENDATION

- 2.1 **The Council is invited to consider the following options in relation to an asset transfer request made by Forres Skate Park Initiative in respect of Trust land within Grant Park, Forres:**
- (i) to decline the request for a minimum 25-year rent-free lease for the purpose of developing a permanent wheeled sports facility (skatepark) of concrete construction in Grant Park; or**
 - (ii) to agree the request in principle and instruct officers to invite Grant Park user groups and the wider Forres community to submit representations in respect of the proposed development, bringing a report back to the Council for final determination**
- 2.2 **The Council is invited to note that any future transfer would be subject to planning permission for the proposed use being achieved.**

3. BACKGROUND

- 3.1 Forres Skate Park Initiative (FSPI) (SC049947), a Scottish Charitable Incorporated Organisation, has submitted an asset transfer request to the Council as Trustee of Grant Park, Forres, for a minimum 25-year rent-free lease of an area within the park for the purpose of developing a permanent wheeled sports facility (skatepark) of concrete construction. Details of the proposed development are shown in **Appendices 1, 2 and 3.**

- 3.2 The Council has discretion as to whether it is willing to consider community asset transfer requests for Trust land but can only consider proposals that are consistent with the terms and purposes of the Trust.
- 3.3 Under the 1923 Declaration of Trust, Grant Park is to be held for the benefit of the inhabitants of the Burgh of Forres. The Academy Sports Ground “is to be set aside for the use and benefit of children attending public schools in Forres” with the remainder to be used as a public park and recreation ground, including cricket ground, and to be available for tennis courts, bowling green, putting green and any other recreation. The proposed skatepark use would come under the category of “other recreation”.
- 3.4 The site identified by FSPI is located in a well-used area of high visibility within the Grant Park and Cluny Hill Designed Landscape, the Forres Conservation Area, and the Cluny Hill Special Landscape Area. The site is covered by an ENV1 (public parks and gardens) designation in the Moray Local Development Plan, which means that there is a presumption against a change of use of the site to anything other than its current use. The park is considered an important asset to Forres and is particularly sensitive to inappropriate development. The historic environment impacts are potentially significant.
- 3.5 The advice from Development Management is that any application for planning consent in respect of FSPI’s proposed development would need to include a significant amount of supporting information, including a habitat survey, biodiversity statement/plan, tree surveys and impact assessments for flood risk, drainage, landscape/visual, noise and heritage. FSPI would be expected to demonstrate that it had considered other locations and provide an explanation as to why these had been discounted. These requirements are site related and make the site costly to develop and introduces risk in terms of satisfying planning policy and achieving planning permission. An asset transfer should not take place until planning permission has been achieved.
- 3.6 FSPI has stated that it carried out an initial on-line consultation in 2021 followed by a consultation with park users in 2022 and a further public consultation thereafter. These consultations indicated support for the development of a skatepark in Forres. However, anecdotal evidence suggests that a significant proportion of the Forres community may have been unaware of these consultations. At the time of writing, 48 unsolicited written representations objecting to the proposed development had been submitted to the Council by a mix of park user groups and members of the wider community. A number of the representations cited concerns related to the issues discussed in paragraphs 3.4 and 3.5 above, with some suggesting alternative locations within Forres.
- 3.7 There is insufficient confidence that the claimed support for the proposed development is fully representative of the views of park user groups and the wider Forres community. For this reason, if the Council is minded to consider the asset transfer request further, it is strongly recommended that park user groups and the wider Forres community be invited to submit representations in respect of the proposed development before the request is determined.

3.8 The area affected by the proposed development is currently used by visiting funfairs. One of the funfair operators has indicated that they would not be able to operate to their full capacity within the remaining space in the event of the proposed development proceeding. This could result in it becoming necessary for them to seek an alternative location with a consequential loss of income to the Trust.

4. SUMMARY OF IMPLICATIONS

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

Where Trust property is concerned, the Council is not acting in its capacity as a local authority but in its capacity as Trustee under and in terms of the Trust. Consequently, any proposals must be considered in relation to the trust purposes only. The Grant Park trust purposes are set out in the body of the report.

(b) Policy and Legal

The asset transfer provisions of the Community Empowerment (Scotland) Act 2015 do not apply to Trust property.

Under Section 4 of the Trusts (Scotland) Act 1921, trustees have wide powers. These powers include granting leases provided that they are not at variance with the terms or purposes of the Trust.

The proposed use will require planning permission, a preliminary enquiry has been carried out identifying a number of issues to be addressed by any future planning application.

(c) Financial Implications

The area affected by the proposed development is currently used by visiting funfairs, which have provided the Trust with an annual income as detailed below:

Financial Year	Income
2018/2019	£3,997
2019/2020	£1,362
2020/2021	£636
2021/2022	£1,325
2022/2023	£2,308

The financial implications arising from the proposed development would be dealt with in a further report if the Committee is minded to consider FSPI's request further.

(d) Risk Implications

There is a risk of reputational damage to the Council if it was to proceed to determine the asset transfer request without first seeking the views of park user groups and the wider Forres community.

There is a risk in terms of the cost associated with the information needed to support a planning application and ultimately approval of any future application.

(e) Staffing Implications

There are no staffing implications arising from this report. Any consultation exercise would be undertaken using existing staff resources.

(f) Property Implications

There are no property implications arising directly from this report. Any such implications arising from the proposed development would be dealt with in a further report.

(g) Equalities/Socio Economic Impact

There are no equalities or socio-economic issues arising directly from this report. Any impacts resulting from the proposed development would be dealt with in a further report.

(h) Climate Change and Biodiversity Impact

There are no climate change or biodiversity implications arising directly from this report. Any impacts resulting from the proposed development would be dealt with in a further report.

(i) Consultations

The Depute Chief Executive (EEF), Chief Financial Officer, Head of Economic Growth and Development, Acting Head of Education Resources and Communities, Legal Services Manager, Sport and Culture Service Manager, Open Space Manager, Property Asset Manager, Asset Manager (Commercial Properties), S. Souter Senior Accountant, L. Macdonald Senior Planning Officer, Community Learning and Engagement Manager, Democratic Services Manager, and the Equal Opportunities Officer have been consulted and their comments incorporated in the report.

The Forres Ward Members, Councillors Scott Lawrence, Paul McBain, Kathleen Robertson and Draeyk van der Hørn, are aware of the proposed development and may make their views known at Council.

5. CONCLUSION

5.1 The Council has full discretion as to whether it is willing to consider community asset transfer requests for Trust land and can consider any proposals that are consistent with the terms and purposes of the Trust.

5.2 Due to the importance of Grant Park to the Forres community, its sensitivity to inappropriate development, its location within the Grant Park and Cluny Hill Designed Landscape, the Forres Conservation Area, and the Cluny Hill Special Landscape Area, it is recommended that if the Council is minded to consider the asset transfer request further, park user groups and the wider Forres community are first invited to submit representations in respect of the proposed development.

Author of Report:
Background Papers:
Ref:

Andrew Gray, Asset Management Coordinator
Held by author
SPMAN-1293228629-944