



**REPORT TO: ECONOMIC GROWTH, HOUSING AND ENVIRONMENTAL
SUSTAINABILITY COMMITTEE ON 6 OCTOBER 2020**

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT):
SITE FOR SKATEPARK, COULARDBANK, LOSSIEMOUTH**

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

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 a 25-year lease of common good land at Coularbank, Lossiemouth.
- 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 grant a 25-year lease of 0.175 hectares of land at Coularbank, Lossiemouth, to Lossiemouth Community Development Trust, a registered Scottish Charity, subject to the terms and conditions set out in section 5 of this report;**
- (ii) authorise the Legal Services Manager to apply to the Sheriff Court for consent to lease the property to the 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 lease the site, failing which the agreement will have no further effect and the statutory asset transfer process will come to an end.**

3. BACKGROUND

- 3.1 On 27 January 2020, the Trust submitted a valid asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) for a 25-year lease of 0.175 hectares of land at Coularbank, Lossiemouth, at a nominal rental for the purpose of developing a skatepark.
- 3.2 As the site at Coularbank is held on a potentially inalienable Common Good title and a 25 year lease would be considered to be a disposal, court consent would be required before the site could be leased to the Trust.
- 3.3 The Trust's request was the subject of an 8-week public consultation exercise, details of which were published on the Council's website. The redacted submissions, representations and responses are available on the Council's Committee Management System under the CAT reference number 052 at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1623/Committee/37/SelectedTab/Documents/Default.aspx>.

4. ASSESSMENT

- 4.1 The Trust is a company (SC491983) and a registered Scottish charity (SC045972), whose governing documents meet the criteria for being classed as a community-controlled body that is able to make an asset transfer request under the Act.
- 4.2 The Trust was formed to benefit the people residing or working in the area covered by Lossiemouth Community Council with the following objectives:
- The advancement of community development, including the advancement of rural regeneration, in line with the principles of sustainable development.
 - The enhancement of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended.
 - The advancement of citizenship.
 - The advancement of environmental protection or improvement.
 - The relief and prevention of poverty.
 - The relief of unemployment.
- 4.3 The Trust's governance and financial management arrangements are considered to be strong and sustainable. Best Value characteristics are evident in the Trust's proposal. Its members have the necessary skills and experience to deliver its objectives. It has demonstrated that there is community support for its proposals. It has identified funding sources to deliver its proposal. Its submission provides evidence that the needs of groups protected under the Equality Act 2010 have been considered.
- 4.4 Lossiemouth Community Council, a statutory consultee under the Act, has confirmed its support for the proposal.
- 4.5 The projected benefits relate primarily 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. These support the Local Outcome Improvement Plan priority of empowering and connecting communities.

- 4.6 In December 2019, the Council's Estates Manager advised that the estimated rental value of the site amounted to £2,275 per annum. The Trust has requested that the site be leased to them at a nominal rent equating to a discount of 100% on the estimated rental value. The impact on property markets and values of COVID-19 and its associated government restrictions remains unclear. Consequently, the valuation estimate carries a significantly higher degree of uncertainty than usual. Although the request involves a disposal at less than the best price that could reasonably be obtained, the projected benefits of the proposal are considered to be commensurate with the discount sought.

5. ASSET TRANSFER TERMS

- 5.1 If the recommendations are agreed, then the following terms would apply:
- (a) The asset comprises the area of land extending to 0.175 hectares or thereby located at Coularbank, Lossiemouth, all as shown outlined in red in **Appendix 1**;
 - (b) Discussions have taken place with the Trust and the following main lease terms and conditions are proposed:
 - (i) Period – 25 years.
 - (ii) Date of Entry – to be agreed.
 - (iii) Rent – £1 per annum, without review.
 - (iv) Use – establishment and use as a skatepark.
 - (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) Contamination – the tenant to indemnify the Council against any future claims. The Council's Environmental Health section has advised that there is no evidence of contaminative uses on this site which would affect the proposals.
 - (x) Alienation – no sub-letting or assignments without the consent of the Council.
 - (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 would be conditional upon the Sheriff Court granting the Council consent to dispose of the site by means of a 25-year lease.

5.2 The Trust 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))**

Where a 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 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.

(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.

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 accordance with the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 and section 104 of the Community Empowerment

(Scotland) Act 2015, the Trust's request was the subject of an 8-week public consultation exercise.

The land at Coularbank 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 asset transfer request were published in a local newspaper.

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 site requested is contained within an area of land that is considered to be a potentially 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

Whilst no income is currently generated from this part of the Coularbank site, and there are no alternative proposals under consideration, the Council's Estates Manager has advised that the estimated rental value of the site amounts to £2,275 per annum. The Trust has requested that the site be leased to them at a nominal rent equating to a discount of 100% on the estimated rental value. Although there would be no loss of income to the common good if the request were to be agreed, in reaching its decision the committee should consider whether the projected benefits arising from the transfer are commensurate with the requested discount.

The costs of obtaining court consent to dispose of the property would amount to a minimum of £2,000. These costs would be met by the Council. It is not possible to provide a more accurate estimate of the potential costs involved as this would depend upon whether there are any objectors to the application.

(d) Risk Implications

The risks associated with the proposal have been considered by the Trust and appropriate actions identified to mitigate these. The risk of the Trust failing are considered to be low. However, in the event of its dissolution or winding up, the site would revert to the Council.

As stated in para 4.6 of this report, 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.

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.

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.

(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, Active Schools and Sports Development Manager, 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 Allan, Cowe, Edwards and Taylor, are aware of the proposals 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 Trust's overall business case is considered to be moderate to strong. That is,

- (a) Its governance and financial management arrangements are strong 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 disposal at less than market value.**

7.3 No reasonable grounds have been identified for refusing the request.

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Background Papers: Held by author
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