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

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

**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 the transfer of title to Findochty Town Hall.
- 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 the property known as Findochty Town Hall to Findochty Town Hall, 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 transfer the property to the Charity; and,**
- (iii) note that, if the request is approved and unless otherwise agreed with the Charity, it will have 6 months from the date of the decision notice to submit a formal offer to purchase the property, 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 14 February 2018, the Council agreed savings relating to town halls and community centres as part of its budget process. The decision was to secure community asset transfers (CAT) or, failing which, to close the facilities.
- 3.2 On 11 April 2018, the Council approved transitional arrangements aimed at enabling successful transfers of seven of its town halls and community centres (para 6 of the Minute refers). These arrangements included entering into short term leases at nominal rents with eligible groups. On 1 November 2018, Findochty Town Hall (the Charity) took entry to Findochty Town Hall (the property) in accordance with these arrangements.
- 3.3 On 18 February 2020, the Charity submitted an asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) for the transfer of ownership of the property for nil consideration.
- 3.4 As Findochty Town Hall is held on a potentially inalienable Common Good title, court consent would be required before the property could be transferred.
- 3.5 The request was the subject of an 8-week public consultation, 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 073 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 Findochty Town Hall is a registered Scottish Charitable Incorporated Organisation (SC048650), whose governing documents meet the criteria for being classed as a community-controlled body able to request a transfer of ownership under the Act.
- 4.2 The Charity was formed to benefit the communities of Findochty, Moor of Scotstown, Moor of Findochty, Westerton, Bawds and Law Hillock with the following purpose:
  - 'Providing recreational facilities or organising recreational activities with the aim of improving the conditions of life for the people for whom the facilities or activities are mainly intended.'
- 4.3 The Charity achieved the KeyStone Award in December 2019, having met the required standards of governance and management.
- 4.4 Best Value characteristics are in evidence in the Charity'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. Its governance and financial management arrangements are sound and sustainable. It has secured the necessary resources to deliver its objectives and monitor the achievement of these. It has appropriate Equalities policies in place and has taken into consideration the needs of its community.

- 4.5 Findochty Community Council, a statutory consultee under the Act, has confirmed its support for the proposal.
- 4.6 The projected benefits of the requested transfer relate primarily to social wellbeing, covering a range of activities intended to reduce social isolation, bring people together and create a stronger community spirit. These benefits support the Local Outcome Improvement Plan priority of empowering and connecting communities.
- 4.7 During the lockdown, the Charity prepared a risk assessment and recovery plan for the re-opening of the property. The plan demonstrates an understanding of the implications of COVID-19 for re-opening. The plan is contained within the supplementary submission made by the Charity on 27 July 2020, a copy of which is available on the Council's Committee Management System at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1623/Committee/37/SelectedTab/Documents/Default.aspx>.
- 4.8 In February 2020, the Council's Estates Manager advised that the estimated market value of the property amounted to £87,000. The Charity has requested that the property be transferred for nil consideration. The impact of COVID-19 and its associated government restrictions on property markets and values remains unclear. Consequently, the valuation estimate carries a significantly higher degree of uncertainty than usual. It is clear that the request involves a disposal at significantly less than the best price that could reasonably be obtained, equating to a discount of 100% on the estimated market value of £87,000. 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, the following terms would apply to the transfer:
- (a) Subjects – the asset comprises the Town Hall, 22 Station Road, Findochty, as shown outlined in red in **Appendix 1**;
  - (b) Price – the price payable would be £nil.
  - (c) Existing Lease to the Charity – the existing lease terms would apply until the date of the transfer;
  - (d) Court Consent – agreement to the transfer would be subject to the Sheriff Court granting the Council consent to dispose of the asset.
  - (e) Contamination – the Council is to transfer the property “with information” in terms of Contaminated Land legislation with the Findochty Town Hall Group 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 within 50 metres.
  - (f) Fees/Expenses – each party would meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees; and,

- (g) Other Terms – any other detailed terms agreed with the Council’s Legal Services Manager and Estates Manager.

5.2 The Charity 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.

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 Findochty Town Hall 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**

The property is currently leased to the Charity at a concessionary rent. Under the terms of the lease, the Charity is responsible for meeting all costs incurred. It has now requested a free transfer of the property, which the Estates Manager has estimated to have a market value of £87,000. A sale of the property for this sum would generate a capital receipt that would be invested to provide an annual income to the Common Good. In reaching its decision the committee should consider whether the projected benefits arising from the transfer are commensurate with the requested discount of £87,000.

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 Charity and appropriate actions identified to mitigate these. Although the asset transfer request was made before the lockdown, the Charity's supplementary submission includes a risk assessment and recovery plan that shows an understanding of the implications of COVID-19 for the re-opening of the property.

The risk of the Charity failing are considered to be low. However, in the event of its dissolution, its constitution provides that any remaining assets would transfer to another community body or charity with purposes closely resembling its own.

As stated in para 4.7 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. 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 local Ward Members, Councillors Cowie, Eagle and Warren, 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 Charity's overall business case is considered to be 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 disposal at less than market value.**

**The lower assessment of moderate relates to the projected benefits and is a direct result of the greater degree of uncertainty caused by the impact of COVID-19 and the ongoing lockdown**

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

Author of Report:	Andrew Gray, Asset Management Coordinator
Background Papers:	Held by author
Ref:	CAT/073/ATR(CEA)