



REPORT TO: POLICY & RESOURCES COMMITTEE ON 27 NOVEMBER 2018

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT):
MARINE PARK, LOSSIEMOUTH**

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1. REASON FOR REPORT

- 1.1 This report invites the Committee to consider an asset transfer request made under the Part 5 of the Community Empowerment (Scotland) Act 2015 for a transfer of ownership of Marine Park, Lossiemouth.
- 1.2 This report is submitted to Committee in terms of section III(B)(16) of the Council's Scheme of Administration relating to the management of Common Good and Trust property and section III(B)(29) relating to asset management and the property disposal programme.

2. RECOMMENDATION

2.1 The Committee is invited to:

- (i) **approve the request to transfer ownership of Marine Park to Action Marine Park at nil consideration subject to the terms set out in section 6 of this report; and,**
- (ii) **note that, if the asset transfer request is agreed by this Committee, Action Marine Park will have 6 months from the date of the decision notice within which to submit a formal offer to purchase the property, failing which the agreement will have no further effect and the asset transfer process will come to an end.**

3. BACKGROUND

- 3.1 Marine Park is held as a public trust, which provides that the park is to be used for the purposes of a playing field for public recreation for the benefit of the inhabitants of the former burgh and the public generally.
- 3.2 Action Marine Park (AMP) has leased the tennis courts within the park since 1 March 2015. AMP enjoys a 100% rental discount valued at £1,500 per annum in relation to this lease. This allowed the charity to completely refurbish the tennis courts, bringing them back into beneficial use.

- 3.3 On 29 May 2018, AMP submitted an asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 for ownership of Marine Park at nil consideration, equivalent to a £65,000 discount on the purchase price.
- 3.4 AMP is a community-controlled Scottish Charitable Incorporated Organisation (charity number SC043530) with the following purposes:
- The advancement of education;
 - The advancement of public participation in sport; and,
 - The provision and organisation of recreational facilities and activities.
- The above purposes are carried out with the object of improving the conditions of life for the inhabitants of Lossiemouth and its environs.
- 3.5 AMP meets the requirements of a community transfer body as set out in the Community Empowerment (Scotland) Act 2015 and is eligible to make an asset transfer request under Part 5 of that Act.

4. ASSET TRANSFER REQUEST

- 4.1 AMP has requested a transfer of ownership to facilitate bringing the whole park back into beneficial use. Its proposals include the development of a pavilion with toilets, putting green, sensory garden, and children's play area. All facilities are intended to be fully accessible and provide a benefit to disabled people.
- 4.2 A redacted copy of the asset transfer request is included as [Appendix 1*](#). The full request comprises the following documents:
- (a) Asset Transfer Request form;
 - (b) Status update regarding grass cutting;
 - (c) AMP constitution;
 - (d) Financial Statements/Cash Flow 2013-17;
 - (e) Financial Statements/Cash Flow update 24-Apr-2018;
 - (f) Asset site plan;
 - (g) Business Plan;
 - (h) Equality and Diversity Policy
 - (i) Consultation/Survey Results by Mackenzie Consulting; and,
 - (j) Framework Study by NB Planning and Architecture.

***Due to its size paper copies will be available by request only.**

- 4.3 A redacted copy of the collated responses following public consultation and Action Marine Park's comments thereon is included as **Appendix 2**.
- 4.4 AMP has asked for a transfer at nil consideration with the condition that the Council continues to cut the grass in Marine Park at its own expense for a minimum period of three years following the transfer. The costs of grass cutting currently amount to £5,000 annually. There is no upper time limit attached to the requested condition.

5. ASSESSMENT

- 5.1 AMP's submission makes a strong case that there will be benefits in relation to public health and social wellbeing, and a moderate case that there will be benefits in relation to regeneration. The public health benefits relate to activities designed to help people lead healthier lives. Social wellbeing

benefits can arise from activities that bring people together. Regeneration benefits come from making an area a better place in which to live and work, including increased access to social and leisure facilities.

- 5.2 AMP's purposes and proposals for the park are compatible with the trust purposes and have the potential to deliver greater benefits beyond the ability of the public trust.
- 5.3 The Council's Estates Manager has advised that the estimated market value of the land, taking into account the restrictions on the use of the land in terms of the Trust, is in the region of £65,000. Agreeing to the request would mean agreeing to forego a potential capital receipt that could be invested to provide a trust income of £1,020 per annum. The likely benefits that would be provided by the AMP proposal are considered sufficient to compensate for any loss of benefits that such an income could purchase.
- 5.4 As part of the process of preparing for the 2019/20 budget setting process, the Council has considered a range of measures including ceasing to carry our grounds maintenance on land not owned by the Council and reducing the level of grass cutting in Council owned parks, unless sponsorship can be found to maintain the current level of maintenance. Agreeing to the AMP proposal would oblige the Council to continue to carry out grass cutting indefinitely on land that it no longer owned at an annual cost of £5,000. This is contrary to the budget proposals approved to be considered and would increase the level of savings to be found elsewhere when the budget is set.
- 5.5 AMP's governance and financial management arrangements are considered to be sound and sustainable (strong) and Best Value characteristics are evidenced in its proposals (strong). When looking at the projected benefits, the Committee should consider the proposal from two perspectives. From the public trust perspective the projected benefits are demonstrated well and represent value for money (strong). However, from a Council perspective the projected benefits (in relation to grass cutting) demonstrate questionable value for money (weak).
- 5.6 If the requested condition relating to grass cutting was removed then the proposal would support the Corporate Plan priority of working towards a financially stable Council. In that event, the projected benefits from both perspectives would be considered strong.

6. TERMS OF TRANSFER

- 6.1 For the reasons set out above, the requested condition that the Council continue to cut the grass for a minimum of three years after the transfer should be refused. With this condition removed, a transfer at nil consideration for the proposed purposes would be in keeping with the trust purposes.
- 6.2 If agreed, the following terms would apply to the transfer:
 - (a) Subjects – the asset comprises the area of land known as Marine Park located off Stotfield Road, Lossiemouth, the approximate boundaries of which are shown in **Appendix 3**;
 - (b) Existing Lease – the existing lease terms would apply until the date of the transfer;

- (c) Fees/Expenses – each party would meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees; and,
 - (d) Other Terms – any other terms agreed with the Council’s Legal Services Manager (Property and Contracts) and Estates Manager.
- 6.3 AMP will have a right to request that the Council reviews its decision if the request is refused, no decision is made by 29 November 2018, or the terms of the decision differ from those requested.

7. SUMMARY OF IMPLICATIONS

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

As Marine Park is a public trust asset, the trust purposes take precedence over the Corporate Plan and the 10 Year Plan (LOIP). The trust purposes are set out in the body of the report. Transferring the asset at nil consideration would be in keeping with the trust purposes.

Grounds maintenance is currently carried out by the Council at its own expense, i.e. it is not a cost to the public trust. The Corporate Plan and LOIP must be considered in relation to this aspect of the proposal. Transferring assets to the community can support the LOIP aim of creating more resilient and sustainable communities with less need for universal services provided by the public sector. It is also consistent with the Corporate Plan value of promoting community empowerment as a means of supporting communities take on more responsibility. However, a key priority of the Corporate Plan is to work towards a financially stable Council. The AMP condition that the Council would continue to carry out grass cutting at Marine Park for an indefinite period but for not less than three years after transfer is inconsistent with that priority.

(b) Policy and Legal

Under section 4 of the Trusts (Scotland) Act 1921, trustees have wide powers. Those powers include selling trust estate and granting leases provided that such acts are not at variance with the terms or purposes of the trust. As the Feu Charter is silent on selling or granting leases, the Moray Council as trustees has the power to transfer Marine Park to a community group for the purposes of a playing field for public recreation.

Marine Park 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 proposed transfer were published in a local newspaper. In addition and in accordance with the requirements of section 7 of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016, details were published on the Council’s website - http://www.moray.gov.uk/moray_standard/page_109940.html.

On 21 March 2017, this 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.”

Typically, assets transferred under Community Asset Transfer arrangements are transferred at less than market value. Such disposals must comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which requires that the Council must be satisfied that the proposed transfer is reasonable and that the disposal is likely to contribute to at least one of the following purposes:

- a) Economic Development,
- b) Regeneration,
- c) Public Health,
- d) Social Wellbeing, or
- e) Environmental Wellbeing.

There is a low risk of State Aid arising from this report as the intervention is unlikely to affect trade between EU Member States.

(c) Financial Implications

AMP has occupied the tennis courts under a lease since March 2015 with the benefit of a 100% rental concession valued at £1,500 per annum. The Council's Estates Manager has advised that the estimated market value of the park is in the region of £65,000. If the trust was able to realise a capital receipt of this amount, it would generate a trust income of £1,020 per annum. The likely benefits that would be provided by the AMP proposal are considered sufficient to compensate for the loss of benefits that such an income could purchase.

If the request was to be agreed with the condition that the Council continue to carry out grass cutting then the council would be obliged to incur ongoing revenue costs of £5,000 for a minimum of three years after the transfer and thereafter until such time as AMP choose to take over responsibility. Removing this condition would result in revenue savings of £5,000 with effect from the date of transfer.

(d) Risk Implications

Project risks have been considered by AMP in its business plan. The risks of the project failing are considered to be low. Nevertheless, AMP's constitution provides that, in the event of its winding up or dissolution, any remaining assets would transfer to another community or charitable body that has purposes which resemble closely the purposes of AMP.

(e) Staffing Implications

All work required in transferring the asset can be accommodated within existing staffing resources.

(f) Property

The property implications are set out in the body of the report.

(g) Equalities/Socio Economic Impact

An Equalities Impact Assessment is not required as agreeing the recommendations would have no adverse effect on service delivery. The proposals include the installation of play equipment that would be suitable for children with physical and sensory impairments.

(h) Consultations

Consultation has taken place with the Asset Management Working Group's CAT Sub-Group*, Head of Housing and Property, Legal Services Manager (Property and Contracts), P Connor Principal Accountant, Estates Manager, Community Support Manager, Democratic Services Manager, and Equal Opportunities Officer. All comments have been incorporated in the report.

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

Local Ward Members, Councillors Allan, Cowe, Edwards, and Patience, have been consulted and may make their views known at Committee.

8. CONCLUSION

8.1 With the removal of its condition relating to grass cutting, there is a strong case in favour of agreeing AMP's request for a transfer of ownership at nil consideration.

8.2 Marine Park is a public trust with no other assets or source of income other than the park itself. AMP's proposals are compatible with the trust purposes and have the potential to deliver greater benefits beyond the ability of the trust.

8.3 The Council currently covers the cost of all grounds maintenance within the park. With the removal of the requested condition, agreeing the transfer to AMP provides a financial benefit to the Council while protecting and improving the amenity of the park for the benefit of the local community.

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Background Papers: Held by author
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