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**REPORT TO: POLICY & RESOURCES COMMITTEE ON 27 NOVEMBER 2018**

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST:  
PORTKNOCKIE BOWLING GREEN AND TENNIS COURTS**

**BY: CORPORATE DIRECTOR (CORPORATE SERVICES)**

**1. REASON FOR REPORT**

- 1.1 This report invites the Committee to consider an asset transfer request for a transfer of ownership of the Portknockie bowling green and tennis courts. The request is to be considered outwith the provisions of the Community Empowerment (Scotland) Act 2015.
- 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 the Portknockie bowling green and tennis courts to Portknockie Bowling and Tennis Club at nil consideration subject to the terms set out in section 6 of this report; and,**
- (ii) if approved, remit the matter to the Estates Manager and the Legal Services Manager (Property and Contracts) to complete the transfer of title.**

**3. BACKGROUND**

- 3.1 The bowling green and tennis courts at Seafeld Terrace, Portknockie, are held as part of a public trust, which provides that the land is to be used solely for the purpose of "public bowling greens, tennis courts ... and generally as an amenity ground for the use and recreation of the inhabitants of Portknockie and others in the neighbourhood."
- 3.2 Portknockie Bowling and Tennis Club (the Club) occupies the bowling green and tennis courts under a lease expiring in March 2028. The rent payable under the lease amounts to £400 per annum and is now due to be reviewed.

- 3.3 On 26 June 2018, the Club submitted a formal asset transfer request for a transfer of ownership for nil consideration, equivalent to a £50,000 discount on the purchase price. The Club has confirmed that it does not wish its request to be considered under the Community Empowerment (Scotland) Act 2015.
- 3.4 The Club is a Scottish Charitable Incorporated Organisation (charity number SC047619) with the following purposes:
- 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 residents of Portknockie.
- 3.5 There is a pre-emption right reserved to the Trustees of the Dowager of Seafield, i.e. the Council cannot sell or transfer the property without first offering to sell it to the Trustees. Consequently, a transfer of title could not be progressed without confirmation from the Trustees that they would not exercise the right.

#### **4. ASSET TRANSFER REQUEST**

- 4.1 The Club has requested a transfer of ownership of the bowling green and tennis courts to facilitate the development and upgrading of the facilities with the purpose of increasing participation in bowling, tennis and other indoor and outdoor sports. All proposed improvements would be completed to standards recommended by Sports Scotland.
- 4.2 A redacted copy of the asset transfer request is included in **Appendix 1**. The full request comprises the following documents:
- (a) Asset Transfer Request form;
  - (b) Club Constitution;
  - (c) Appendices in support of request (including Business Case)
  - (d) Site Plan
  - (e) Responses to Leaflet Distribution (including letters of support)

#### **5. ASSESSMENT**

- 5.1 The Club'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.
- 5.2 The public health benefits of the proposal relate to activities designed to help people lead healthier lives. Social wellbeing benefits are likely to 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.
- 5.3 The Club's purposes and proposals for the bowling green and tennis courts are compatible with the trust purposes and have the potential to deliver greater benefits beyond the ability of the public trust.
- 5.4 An independent assessment prepared by the District Valuer following a joint instruction from the Council and the Club determined that the market value of the property, subject to the existing tenancy, is £50,000. Agreeing to the request that the property be transferred at nil consideration would mean

agreeing to forego a potential capital receipt that could be invested to provide a trust income of £785 per annum. The likely benefits that would be provided by the Club's proposals are considered sufficient to compensate for any loss of benefits that such an income could purchase.

- 5.5 Overall, the Club's submission in support of its asset transfer request is considered to be strong. That is:
- Governance and financial arrangements are sound and sustainable;
  - Best value characteristics are in evidence in the proposal; and,
  - Projected benefits are demonstrated well and represent value for money.

## **6. TERMS OF TRANSFER**

6.1 If agreed, the following terms would apply to the transfer:

- (a) Subjects – the asset comprises the bowling green and tennis courts located in Seafield Terrace, Portknockie, the location of which is shown in **Appendix 2**;
- (b) Pre-emption – the transfer would be subject to confirmation from the Seafield Estate that it did not wish to exercise its right of pre-emption;
- (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 terms agreed with the Council's Legal Services Manager (Property and Contracts) and Estates Manager.

## **7. SUMMARY OF IMPLICATIONS**

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

As the land 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.

Transferring assets to the community supports the 10 Year Plan (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.

### **(b) Policy and Legal**

Under section 4 of the Trusts (Scotland) Act 1921, trustees have wide-ranging powers. Those include selling trust estate and granting leases provided that such acts are not at variance with the terms or purposes of the trust.

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**

An independent assessment prepared by the District Valuer following a joint instruction from the Council and the Club determined that the market value of the property, subject to the existing tenancy, is £50,000. Agreeing to the request that the property be transferred at nil consideration would mean agreeing to forego a potential capital receipt that could be invested to provide a trust income of £785 per annum. The likely benefits that would be provided by the Club's proposals are considered sufficient to compensate for the loss of benefits that such an income could purchase.

The rent payable by the Club under its existing lease amounts to £400 per annum.

### **(d) Risk Implications**

The risks of the project failing are considered to be low. Nevertheless, the Club's constitution provides that, in the event of its winding up or dissolution, any remaining assets must be used for purposes which are the same, or which closely resemble, the purposes of the Club.

**(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 impact on service delivery.

**(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 Coull, Gatt, and Shepherd, have been consulted and may make their views known at Committee.

**8. CONCLUSION**

**8.1 Overall, there is a strong case in favour of agreeing the Club's request for a transfer of ownership of the property at nil consideration.**

**8.2 The property is a public trust asset. The Club's proposals are compatible with the trust purposes and have the potential to deliver greater benefits beyond the ability of the trust.**

Author of Report: Andrew Gray, Asset Management Coordinator  
Background Papers: Held by author  
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