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**REPORT TO: MORAY COUNCIL EMERGENCY CABINET ON 12 AUGUST 2020**

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT):  
CULLEN COMMUNITY AND RESIDENTIAL CENTRE**

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

**1. REASON FOR REPORT**

- 1.1 This report invites the Emergency Cabinet to consider a community asset transfer request for Cullen Community and Residential Centre.
- 1.2 This report is submitted to the Cabinet following a decision of Moray Council on 25 March 2020 to temporarily suspend all delegations to committees as a result of the Covid-19 pandemic (para 2 of the minute refers).

**2. RECOMMENDATION**

**2.1 It is recommended that the Emergency Cabinet:**

- (i) approves the request to transfer ownership of Cullen Community and Residential Centre to the Three Kings Cullen Association subject to the terms and conditions set out in section 5;**
- (ii) remits the matter to the Estates Manager and Legal Services Manager to complete the transfer of title; and,**
- (iii) notes that, if the request is approved and unless otherwise agreed with the Association, 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 11 April 2018, Moray Council approved transitional arrangements aimed at enabling successful community asset transfers of seven of its town halls and community centres (para 6 of the Minute refers). These arrangements included entering into short term leases with eligible groups. On 1 September 2018, the Three Kings Cullen Association (the Association) took entry to Cullen Community and Residential Centre (the Centre) in accordance with the agreed transitional arrangements.

- 3.2 Cullen Library occupies part of the building that houses the Centre. Prior to the lockdown, the library opened on a part time basis three days a week for a total of 12 hours. At the time of writing, Moray library services remain closed with planning having commenced for a phased resumption of services.
- 3.3 On 3 January 2020, the Association submitted an asset transfer request under the Community Empowerment (Scotland) Act 2015 (the Act) for the transfer of ownership of the Centre, including the section occupied by the library, for a price of £35,000. The request included an offer to lease the library back to the Council for a period of 20 years at a nominal rental for the purpose of maintaining a library service.
- 3.4 In accordance with the Asset Transfer Request (Procedure) (Scotland) Regulations 2016, the asset transfer request was the subject of a public consultation, details of which together with the responses thereto were published on the Council's website. The redacted asset transfer submissions, representations and responses are available on the Council's Committee Management System at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1619/Committee/35/SelectedTab/Documents/Default.aspx>

#### **4. ASSESSMENT**

- 4.1 The Association is a company limited by guarantee without share capital (SC597960) and a registered Scottish Charity (SC048529), whose governing documents meet the criteria for being classed as a community-controlled body that is able to request a transfer of ownership under the Act. The Association was formed to benefit the communities of Cullen and Deskford with the following objectives to the extent that these are consistent with furthering sustainable development:
- (i) The advancement of community development (including the advancement of rural regeneration) principally within the community.
  - (ii) To provide recreational facilities at Cullen Community Centre for the benefit of all members of the public, with priority given to the community, and to organise community recreational activities.
- 4.2 Best Value characteristics are in evidence throughout the Association's proposal. Its members have the relevant skills and experience to deliver its objectives. It has demonstrated that there is wide community support for its proposals. Its governance and financial management arrangements are sound and sustainable. It has made arrangements to secure the necessary resources to deliver its objectives and to monitor the achievement of these. The Association has appropriate Equalities policies in place and has taken into consideration the needs of its community following extensive consultation.
- 4.3 The projected benefits of the requested transfer relate primarily to social wellbeing, covering a range of activities intended to bring people together, encourage learning, support cultural activities, and create a stronger community spirit. The proposal is also projected to deliver some economic development and regeneration benefits through protecting existing jobs,

creating new job opportunities, increasing visitor numbers to the local community, and increasing the utilisation of an under-used facility.

- 4.4 During the lockdown, the Association prepared a detailed risk and recovery plan for the re-opening of the centre. The plan identifies the actions taken and arrangements established to address the hygiene, cleaning and social distancing requirements of reopening. The plan shows a clear understanding of the implications of Covid-19 for re-opening with the arrangements put in place being well thought through. The plan is contained within the supplementary submission made by the Association on 23 June 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/1619/Committee/35/SelectedTab/Documents/Default.aspx>.
- 4.5 In January 2020, the Council's Estates Manager advised that, based on uses permitted under the existing Moray Local Development Plan, the estimated market value of the Centre was £205,000 and that if planning consent for residential purposes could be obtained then the estimated market value of the property would increase to £400,000. The impact of the government's response to Covid-19 on property markets and values remains unclear. Consequently, these valuation estimates carry a significantly higher degree of uncertainty than usual. However, 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 83% on the estimated market value of £205,000. Taking into account the offer of a rent-free lease of the library back to the Council, the overall projected benefits of the proposal are considered to be commensurate with the requested discount.
- 4.6 The Association has received an offer of finance from the Scottish Land Fund for the purchase of the Centre and to help cover the costs of appointing a development officer. This offer will be withdrawn if no decision is made by the Council on the asset transfer request by 24 August 2020.
- 4.7 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.
- 4.8 The strength of the Association's overall business case, submitted in support of its asset transfer request, 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) Projected benefits are acceptable and could lead to value for money.
- The lower assessment of moderate relates to the projected benefits only and is a direct result of the greater degree of uncertainty caused by the impact of Covid-19 and the ongoing lockdown.

## **5. ASSET TRANSFER TERMS**

- 5.1 If the recommendations are agreed, the following terms would apply to the transfer:

- (a) Subjects – the asset comprises Cullen Community and Residential Centre, Seafield Road, Cullen, including that part of the premises occupied by the Council for the purposes of delivering a library service;
- (b) Price – the price payable would be £35,000.
- (c) Existing Lease to the Association – the existing lease terms would apply until the date of the transfer;
- (d) New Lease to the Council – the transfer would be conditional upon the Association agreeing to lease the library back to the Council on the following main terms and conditions:
  - (i) Period – 20 years from date of entry (to be agreed).
  - (ii) Break – option to break at any time in the Council's favour on giving 6 months written notice to the Association.
  - (iii) Rent – £1 per annum, if asked, with no review.
  - (iv) Use – library and associated services.
  - (v) Maintenance/repair – the Association would be responsible for maintaining common services and keeping the premises wind and watertight and the Council for maintaining the interior of the library. Major repairs affecting the library would require to be agreed with the Council prior to them being carried out.
  - (vi) Insurance – the Association would insure the building and recharge the Council a proportion of the premium in accordance with the agreed service charge percentage.
  - (vii) Service Charge – the Council would pay a monthly service charge in respect of common services, including utilities, repairs and maintenance, but not upgrading or renewal without the Council's consent, with costs apportioned according to the gross internal floor area of the main building, excluding outbuildings. This would mean that the Council's share of common costs would be 12.71%. Services supplied by the Association exclusively to the library would be recharged at 100%. The element of the Council's service charge liability relating to repairs and maintenance would be capped at £3,000 per annum.
- (e) Fees/Expenses – each party would meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees; and,
- (f) Other Terms – any other detailed terms agreed with the Council's Legal Services Manager and Estates Manager.

5.2 The Association will have a right to request that the Council reviews its decision if the request is refused or the terms of the decision differ materially from those requested.

## **6. SUMMARY OF IMPLICATIONS**

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

Transferring assets to the community supports the 10 Year Plan (LOIP) 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 take on more responsibility. The proposed transfer has links to the Corporate Plan priority of encouraging the development of caring and healthy communities.

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

On 21 March 2017, the Policy and Resources 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.”

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.

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:

- (i) Economic Development,
- (ii) Regeneration,
- (iii) Public Health,
- (iv) Social Wellbeing, or
- (v) 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 Association has offered to pay a price of £35,000 for a transfer of ownership of the Centre. The Council's Estates Manager advised that the estimated market value of the Centre was £205,000 based on uses

permitted under the existing Moray Local Development Plan. On this basis, the request involves a discount of £170,000 on the market value. However, the Association is offering to lease the library back to the Council for a period of 20 years at a nominal rental, equating to a concession valued at £2,000 per annum based on the proposed lease terms and conditions. Assuming the lease continues for the full 20-year term, the capital value of this concession is estimated to be £14,050. When the value of the proposed rental concession is taken into consideration, the value of the overall discount amounts to £155,950.

The property-related revenue costs of operating the library would remain largely unchanged as a result of agreeing to the requested transfer.

In reaching its decision, the Cabinet should consider:

- (i) the likelihood of the current library location continuing to meet the Council's service delivery requirements for the full duration of the proposed lease, and
- (ii) whether the projected benefits arising from the transfer are commensurate with a requested discount lying between £155,950 and £170,000.

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

The risks associated with the proposal have been considered by the Association and appropriate actions identified to mitigate these. Although the asset transfer request was made before the beginning of the Covid-19 pandemic, its supplementary submission includes a detailed risk and recovery plan that shows a clear understanding of the implications of Covid-19 for re-opening with the arrangements put in place considered to have been well thought through.

The risk of the Association failing are considered to be low. However, in the event of its winding up or dissolution, its constitution provides that any remaining assets would transfer to another community body or, failing which, to the Scottish Ministers or to such Scottish charitable body as the Scottish Ministers may direct.

As stated in para 4.5 of this report, the impact of the coronavirus on property markets and the estimates of value of this property are currently unclear. As such, the estimates of value provided in this report are subject to material valuation uncertainty. Consequently, they are less certain and a higher degree of caution should be attached to the estimates of value than would normally be the case.

Based on the last condition survey carried out by the Council this property has significant backlog repairs and maintenance and in terms of the service charge proposals the Council's share could potentially amount to around £60,000. In order to mitigate the Council's risk to large bills over which it has little control it is proposed that the service charge element relating to repairs and maintenance be capped at £3,000 per annum.

**(e) Staffing Implications**

There are no direct staffing implications arising from this report. However, progression of the proposed transfer is dependent upon the availability of staff resources, which are currently limited as a result of the Council's response to Covid-19.

**(f) Property**

The property implications are detailed in the main body of the report.

**(g) Equalities/Socio Economic Impact**

An Equalities Impact Assessment is not required as agreeing to the asset transfer request would have no impact on Council 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, Acting Principal Librarian, Legal Services Manager, Estates Manager, P. Connor Principal Accountant, D. Brodie Community Support Officer, Democratic Services Manager, and Equal Opportunities Officer have been consulted and comments incorporated in the report.

Keith and Cullen ward members have been consulted and may make their views known at the meeting.

**7. CONCLUSION**

**7.1 The proposed transfer is likely to contribute to the priorities set out in the Council's Corporate Plan and Local Outcomes Improvement Plan.**

**7.2 The strength of the Association'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.**

**7.3 There are no reasonable grounds for refusing the request for a transfer of ownership.**

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Background Papers:	Held by author
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