

ANGUS COUNCIL – 22 MARCH 2018

COMMUNITY ASSET TRANSFER – POLICY DEVELOPMENT & APPLICATIONS UPDATE

REPORT BY IAN LORIMER, HEAD OF CORPORATE FINANCE

ABSTRACT

This report seeks Council approval for changes to existing Council policies for Community Asset Transfer to ensure compliance with legislation and associated guidance. The report also advises the Council of the current position in relation to applications received for Community Asset Transfer and seeks approval for 2 applications which have been fully assessed.

1. RECOMMENDATIONS

1.1 It is recommended that the Council:-

- (a) note the key points from Scottish Government guidance relating to the evaluation of Community Asset Transfer applications set out in Section 4 of this report;
- (b) approve for immediate application the refinements and clarifications to the existing Council guidance on Community Asset Transfer set out in Section 5 of this report;
- (c) approve the Community Asset Transfer assessment model set out in Section 6 and Appendix 1 for use in assessing all existing and future applications;
- (d) note the latest position (at 28 February) in relation to Community Asset Transfer applications received (Appendix 2) and concluded (Appendix 3);
- (e) approve the Community Asset Transfer applications from Brechin City Band and Arbroath Allotments Association as described in Section 8;
- (f) note the intention to provide additional training for members and officers in Community Asset Transfer legislation and processes.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN (LOIP) AND COUNCIL PLAN

2.1 The proposals set out in this report will contribute to the outcomes outlined in the Local Outcomes Improvement Plan, Locality Plans and Council Plan, which focus on the economy, people and place. Community Asset Transfer is a core part of Community Empowerment and it is important that the Council support community groups in a manner which delivers best value.

3. BACKGROUND

3.1 The Community Empowerment (Scotland) Act 2015 introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. Community bodies can request ownership, lease or other rights, as they wish through a process known as Community Asset Transfer (CAT). The Act requires those public authorities to assess requests transparently against specific criteria, and to agree the request unless there are reasonable grounds for refusal.

3.2 Community Asset Transfer is not a new concept in Angus. Angus Council introduced a policy and approach to support community groups with CAT in 2012 on a voluntary basis and a number of transfers under that voluntary approach have taken place. The Community Empowerment (Scotland) Act 2015 and associated guidance did however require some changes to the Council's existing approach and guidance and the Communities Committee approved new guidance in June 2017 (Report 183/17 refers). Further refinement to that

guidance and in particular approval of a method of evaluating applications in a manner which complies with Government guidance is however now required.

- 3.3 CAT applications are administered and assessed by the Community Asset Transfer Group (CATG) and that Group of officers from various council services makes recommendations to relevant Committees. The group meets on a 6 weekly basis in order to assess applications. No CAT decisions are made under delegated authority – all require consideration and approval by members.

4. GUIDANCE & TRAINING

- 4.1 CAT applications can be challenging for Councils to determine especially if a community group wishes to pursue transfer of an asset which the Council is already using for another purpose. The Government guidance published in January 2017 is intended to help community groups and public bodies with the assessment of applications.

- 4.2 A training/briefing session for all elected members and senior officers on the CAT legislation, guidance and process will be arranged, probably in April 2018, to support members in their decision making on future applications. There are however some key points for members to be aware of in considering this report and the policy refinements it proposes as summarised in sections 4.3 and 4.4 below.

4.3 General Principles

- A community transfer body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose
- A community transfer body must include in its request the reason for making the request, the benefits of the proposals, and the price they are prepared to pay.
- Once an asset transfer request has been made, the relevant authority is not allowed to transfer the property to anyone else until that request process has been completed. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else, before the asset transfer request was made.
- In deciding whether to agree to or refuse the request, the relevant authority must consider the following things:-
 - the reasons for the request
 - any other information provided in support of the request
 - whether agreeing to the request would be likely to promote or improve:-
 - economic development
 - regeneration
 - public health
 - social wellbeing
 - environmental wellbeing, or
 - whether agreeing to the request would be likely to reduce socio-economic inequalities
 - any other benefits that might arise if the request were agreed to
 - how the request relates to the relevant authority's duties under Equalities legislation
 - any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request
- The relevant authority must consider how the potential benefits of a CAT relate to the functions and purposes of the authority, and any other matters they consider relevant.
- In reaching its decision the authority must compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request, or another proposal made by the authority, or by any other person. If the relevant authority does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the property has been identified for disposal, disposal on the open market could be an alternative.
- When comparing the benefits of other proposals to the benefits of the asset transfer request, the non-financial benefits of the other proposals should be considered, where

possible, as they are for the asset transfer request. The price offered for the transfer should also be considered alongside the non-financial benefits.

- As well as assessing the benefits which the proposed CAT may deliver the Council must also assess whether the community transfer body is able to successfully deliver the project, and make it sustainable.

4.4 Price and Best Value

- There is a common misconception that community bodies will only have to pay a nominal value for any assets they are seeking to take over through CAT. **This is simply not the case** and runs counter to the Council's statutory responsibility to achieve best value.
- The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value or at a discount. The community transfer body has to state in the asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver, and the relevant authority has to decide whether to accept that price.
- All relevant authorities have a duty to secure Best Value in their operations, including when disposing of or letting property. However, it has long been recognised that best value does not always mean the highest possible price, it is a question of balancing the financial and non-financial impacts, both positive and negative, of the different options.
- The likely price of the asset is something the community transfer body will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. It will be helpful for the Council to give an indication of their expectations in terms of price at an early stage in discussions, if possible. Community transfer bodies should not assume that asset transfers will be at a nominal sum.

4.5 The above key points have been taken into account in developing the revised CAT assessment model set out in Appendix 1.

5. **POLICY REFINEMENTS**

5.1 The Guidance approved through Report 183/17 is considered to remain valid but based on experience would benefit from clarification in a couple of areas as follows:-

- (a) The Council's position in regard to costs incurred to progress an application; and
- (b) Conditions which may be applied to a CAT to protect public funds

5.2 In relation to a) above it is necessary to strike a balance which is supportive of community groups but which recognises the financial and workload pressures on the Council and its staff. It is recommended that members approve the following addition to the Council's existing guidance to clarify our position in this area:-

Fees & Charges

The Council wishes to support community groups with their applications and will accordingly only apply fees (to be discussed in advance) where absolutely necessary when it would incur additional costs as a direct consequence of an application being made or processed. The following approach will apply:-

- (a) *Provision of information the Council holds e.g. basic asset valuation, running costs, usage statistics, etc. – no charge*
- (b) *Asset valuation jointly commissioned by Council and community body – both parties pay equal share*
- (c) *Legal fees – community body meet own legal costs and legal fees incurred by the Council (capped at £500 unless exceptional circumstances apply). Community body will also meet the cost of the Council's normal other outlays associated with a change of ownership or lease*
- (d) *Other e.g. to support site investigations – any additional costs to the Council to be discussed and fee agreed with community body prior to costs being incurred.*

5.3 As highlighted in the Background section above the Community Empowerment (Scotland) Act 2015 expects public bodies to agree CAT requests unless there are reasonable grounds for refusal. This does not however diminish the Council's statutory duty to secure best value and proper stewardship of public funds and assets.

- 5.4 Each CAT application if recommended for approval would be subject to terms and conditions appropriate to that application. It is recommended that the following addition to the Council's existing guidance be made to clarify our position in this area:-

Terms & Conditions

The Council will discuss any terms and conditions it may wish to apply with the CAT applicant prior to making a recommendation to Councillors on whether to approve a CAT application. Terms & Conditions the Council may wish to apply will reflect the Council's statutory duty to achieve best value and manage public funds and assets appropriately.

Where ownership is pursued the community body will take on all the risks and rewards associated with the asset, i.e. the Council will cease to be responsible for the asset. Purchasers and tenants will take on full repairing and maintenance liabilities. Tenants will have full repairing and insuring leases. The types of conditions which might apply are:

Sale

We will require the purchaser to sign an agreement, secured by a postponed standard security, requiring it to repay any discount on the price (market value), index linked, if within 20 years it:

- (a) stops being a Community Transfer Body, defined in the 2015 Act;*
- (b) sells the property (except to another Community Transfer Body which takes over the obligations for the rest of the period);*
- (c) stops using the property for the agreed use without our consent.*

Lease

The lease will impose conditions, which will apply during the whole period of the lease, such as:

- (a) the tenant will require to use the property for the agreed use;*
- (b) the tenant will require to permit the public to use the property (at reasonable cost, if any);*
- (c) The tenant will not be able to assign the lease or sub-let the property;*
- (d) The tenant will require to comply with any existing grant conditions, e.g. from Sportscotland.*

6. ASSESSMENT CRITERIA & MODEL

- 6.1 Community Asset Transfer is a demanding application process that requires the community group to submit a detailed business plan, cash flow projections, proposed capital spend, funding requirements and details on how the proposed asset transfer will benefit the community. From 2015 - 2017 the CATG has assessed and scored CAT applications against the 12 local outcomes in the Single Outcome Agreement and a best consideration evaluation matrix. However the move to the Local Outcome Improvement Plan and a need to reflect other requirements of the legislation means an updated scoring matrix is required which takes into account the valuation of the asset, community benefits, any levered capital investment such as external grant funding, savings to the Council arising from the transfer and surpluses arising from the added value activities reinvested in the community.
- 6.2 Developing a method of fairly and transparently assessing CAT applications is very challenging given the diversity of applications which may come forward. The assessment model also needs to be able to compare a CAT application with alternative uses which may be existing use by the Council or an alternative CAT application for the same asset. A model which is flexible, fair and which allows the Council to meet its best value obligations is therefore required.
- 6.2 Taking into account the requirements of the Government's CAT Guidance and using an assessment model already used by the Forestry Commission for Scotland as a starting point the CATG has developed a new model for assessing CAT applications. This model is set out at Appendix 1 and subject to the Council's approval will be added to the existing Council Guidance for CAT applicants.
- 6.3 Members are asked to approve the assessment model set out in Appendix 1 for immediate use in assessing existing (yet to be completed applications) and future CAT applications. In doing so members are advised that the assessment model will only be used to make a recommendation to members on CAT applications. Members will still make the final decisions

on all CAT applications.

7. CAT APPLICATIONS - CURRENT POSITION

- 7.1 As at 28 February 2018 there are 7 valid applications proceeding through the 6 month assessment process. Details of these applications are listed in Appendix 2. Four pre enquiry forms which may result in full applications in due course have also been received.
- 7.2 Appendix 3 lists those CAT applications which have been concluded to date for members' information. It will be obvious from both of the above appendices that community groups across Angus have been and remain very active in pursuing CAT as an option which is encouraging to see.

8. CAT APPLICATIONS FOR APPROVAL

- 8.1 Of the 7 valid applications received to date under the Council's new Guidance (October 2017) two have reached a stage where a recommendation can be made to elected members. These two applications are considered to be straightforward and have therefore been assessed using the Council's existing evaluation model not the new one proposed in Section 6 to expedite their processing.

Brechin City Band – Application for 19-21 City Road Brechin

- 8.2 Brechin City Band has been recorded as being in existence since at least 1850 and has been resident at 19-21 City Road, Brechin since 1949. The Band currently rehearse weekly and fulfil numerous community based engagements throughout the year. The building houses a library of music dating back to the 1800's and many instruments which the Bandsmen are eligible to play.
- 8.3 Brechin City Band's CAT application seeks to transfer ownership of the building at 19-21 City Road from the Council to the Band in order to enable them to improve and up-grade the building. This will not only benefit the rehearsal and storage facilities for the band but will also improve the outside of the building seen from the street. Improved facilities will have an impact on encouraging more children and adults to take part in playing and will also enable the group to have a concert space for performances to the community.
- 8.4 In assessing the proposal against the policy and its positive contribution towards local outcomes, the CATG is of the opinion that this proposal will bring benefits to the local community and the transfer of the asset will enable re-development of building in disrepair. The asset value has been assessed by the Council's housing and estates staff to have a £nil value given the scale of repair work required.
- 8.5 Based on the community benefits which will be achieved and the existing asset value and costs to repair the building the CATG recommendation is to agree the CAT application with a nominal fee of £1 being paid by the Band to the Council. The transfer will be subject to appropriate terms and conditions in line with existing policy (as amended in this report).

Arbroath Garden Allotments Association – Application for Allotments, Brechin Road, Arbroath

- 8.6 The Arbroath Garden Allotment Association has been governing allotment provision for at least half a century. Brechin Road is the main allotment site in Arbroath. It is overseen by a committee of 12 drawn from its membership. The site is owned by the Housing Revenue Account and Ministerial consent for the transfer is expected to be required if the Council gives its approval.
- 8.7 The Arbroath Garden Allotment Association CAT application seeks a long term lease of the allotments from the Council to the association in order to enable them to continue the availability of allotment gardens to the general public that will enable people to benefit from the cultivation of their own produce. It will enhance an established community to benefit from the social aspect of allotmenting as well as ensuring continuing access to this community asset.
- 8.8 In assessing the proposal against the policy and its positive contribution towards local outcomes, the CATG is of the opinion that this proposal will bring benefits to the local community.

8.9 Based on the community benefits which will be achieved and the existing asset value the CATG recommendation is to agree the CAT application with an annual rent of £15 being paid to the Council for 99 years. The rent would be payable 5 yearly. The transfer will be subject to appropriate terms and conditions in line with existing policy (as amended in this report).

9. FINANCIAL IMPLICATIONS

9.1 Approved community asset transfers at less than open market rent or capital receipt levels reduce revenue and capital income to Angus Council, although the Council's maintenance responsibility and associated expenditure is removed.

9.2 In terms of the Disposal of Land by Local Authorities (Scotland) Regulations 2010, the council can dispose of a property at less than the best which can be achieved by considering and comparing the benefits and dis-benefits of the proposal. The council must satisfy itself that the reduction is considered reasonable and that it is likely to contribute to economic development or regeneration, health, social wellbeing or environmental wellbeing. It is considered that the 2 applications recommended for approval in this report contribute to the health and social wellbeing of the local community and the transfers support individuals in their own communities with good quality services.

9.3 Complying with the CAT legislation including considering applications made and supporting community groups to develop their plans takes up a significant amount of officer time. At present the requirements of the CAT legislation are being met with input from a number of officers across the Council but this is not a sustainable solution and doesn't provide a single point of contact for community groups. A temporary 2 year post to support CAT work has funding in place and will shortly be advertised.

10. RISKS

10.1 The following are risks for consideration:-

- Community group may be unsuccessful in funding applications
- The community group may not develop its activities as outlined in its proposals

10.2 These risks can be mitigated to an extent by the detailed scrutiny of CAT proposals and assessment of these in terms of financial requirements and financial sustainability. Terms and conditions will apply to provide some safeguards against community bodies failing to deliver their proposals after transfer.

11. EQUALITIES

11.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required. Equalities considerations are however part of the assessment model recommended for adoption (Appendix 1).

12. CONSULTATION

12.1 The Chief Executive, Strategic Directors and Head of Legal & Democratic Services have been consulted in the preparation of this report.

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report 622/12 – Community Asset Transfer Policy
- Report 525/13 – Update Community Asset Transfer Policy
- Report 210/15 - Community Asset transfer update.
- Report 395/16 – Community Asset Transfer update
- Report 183/17 – Community Asset transfer update

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