

## AGENDA ITEM NO 4

REPORT NO 327/19

### ANGUS COUNCIL

#### POLICY & RESOURCES COMMITTEE – 26 SEPTEMBER 2019

#### COMMUNITY ASSET TRANSFER APPLICATION – DECISION – STRATHMORE RUGBY CLUB, INCHMACOBLE, FORFAR.

#### REPORT BY IAN LORIMER, DIRECTOR OF FINANCE

#### ABSTRACT

This report seeks the Committee's decision on a Community Asset Transfer (CAT) application recently submitted regarding a Council asset.

#### 1. RECOMMENDATIONS

1.1 It is recommended that the Committee:-

- a. note the background to Community Asset Transfer (CAT) and the Council's policy and method of assessing applications as set out in Report 105/18;
- b. note the summary information on this CAT application contained in **Appendix 1**;
- c. note the outcome from the assessment process and the views of the Community Asset Transfer Group (CATG) as outlined in Section 4.5 of this report regarding this application;
- d. note that this application concerns a Common Good Asset;
- e. note the common good considerations and consultation arrangements required by legislation and the results from this as set out in Section 5 and **Appendix 2** of this report;
- f. determine whether to:-
  - (i) agree the application (with or without amendments); **OR**
  - (iii) reject the application, giving reasons for such rejection
- g. authorise, if the application is approved, the Director of Legal & Democratic Services to petition the court under section 75 (2) of the Local Government (Sc) Act 1973 for authority to dispose of the area of common good land covered by this application and conclude formal legal agreements before the transfer formally takes place and note that terms and conditions in line with the Council's agreed policy will apply;
- h. determine, if the application is approved, whether the cost of obtaining court approval is to be met by the applicant or the Forfar Common Good Fund noting the officer advice in paragraph 6.3;
- i. note that if the Committee determines under recommendation h) that the applicant should meet these costs the applicant could if they so choose abandon the CAT process;
- j. note that if the application is rejected or is agreed with significant amendments the applicant can apply for a review of that decision to the Council's CAT Decision Review Committee and ultimately appeal to Scottish Ministers; and
- k. note that, if the application is approved, officers will report back on the outcome of the court process.

## **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 (“the Act”) 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 CAT applications are administered and assessed by officers on the Community Asset Transfer Group (CATG) using the assessment model approved in Report 105/18 (Angus Council meeting of 22 March 2018).

3.3 In deciding whether to agree to or refuse the request, the Council 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

3.4 In reaching its decision the Council 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; another proposal made by the Council; continuing the existing use or disposal on the open market.

3.5 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. CAT APPLICATION – STRATHMORE RUGBY CLUB, INCHMACOBLE, FORFAR**

4.1 The above group have applied for a Community Asset Transfer for the smaller (west most) rugby pitch at Inchmacoble by Forfar Loch. The group wish to take ownership of this asset which is held on the Forfar Common Good Account. The group’s application was confirmed as valid in line with the legislation on 18 March 2019. The application has been subject to public notices and has been assessed in line with the national guidance and the Council’s assessment process.

4.2 Two objections were received stating a preference for the common good land to be leased rather than sold to the Club. Further detail on all the support responses and objections received and the applicant’s response to those objections is provided in **Appendix 2**.

4.3 A summary of the application and the applicant's proposals for the asset they are seeking to take on through CAT is attached as **Appendix 1**. Broadly, the pitch has been used as a second rugby pitch by the club for over forty years with club members landscaping the area in the 1970's to create a playing surface. The group would like to continue to use the pitch for rugby training and have an option to develop it in the future for sporting use.

4.4 The application has been assessed by the CATG using the Council's agreed assessment model. The application scored as follows:-

Community Benefit (score out of 90)	53.8
Financial Assessment (score out of 52)	24.7
Overall Assessment/ Best Value Conclusion	Likely to represent best value

4.5 Based on the above assessment the CATG recommendation is to approve the CAT application, however in line with Report 105/18, it is for members of the Committee to make the final determination on whether the application is approved or rejected. In considering their position members are reminded that the Act requires public authorities to agree requests unless there are reasonable grounds for refusal. Applicants can also apply for a review of, and ultimately appeal the Council's decision.

4.6 Specific points to note in this application and its assessment include:-

- The group is not requesting any additional rights;
- The group already maintain and use the area of ground in question

4.7 The group's offer to purchase the land in question is £2,000. The market value for the area subject to the CAT is estimated at £15,000 based on current use.

## 5. COMMON GOOD CONSIDERATIONS

5.1 This CAT application is one of the first the Council has received which involves the proposed transfer of an asset held on the Common Good Account. The Community Empowerment (Sc) Act 2015 ("the Act") requires additional consultation measures to be taken where there is a proposed change of use or disposal affecting a Common Good asset.

5.2 Section 104 of the Act sets out the requirements in relation to Common Good assets. This part of the legislation means that where a local authority is considering:-

- (a) disposing of any property which is held by the authority as part of the common good, or
- (b) changing the use to which any such property is put

it must publish details about the proposed disposal or change of use. The details may be published in such a way as the local authority may determine but in any event it must notify local community councils and any community body that is known by the authority to have an interest in the property. The local authority must invite those bodies to make representations in respect of the proposals.

In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to:-

- (a) any representations made by the community council(s) and other community bodies with an interest; and
- (b) any representations made by other persons in respect of its proposals

5.3 The land which is subject to the CAT application covered by this report sits on the Forfar Common Good. Although the proposed CAT would continue to see the land being used for leisure purposes, it would constitute a disposal and therefore there was a requirement to consult in line with the requirements of Section 104.

- 5.4 The Council is required to notify the public of CAT applications whether they involve Common Good assets or not. In line with the legislation the CAT application in this report was therefore the subject of two simultaneous consultations, firstly to obtain public views on the CAT application itself and secondly on the proposal to sell the land to the Rugby Club.
- 5.5 The approach to consultation was multi-layered and involved the following:-
- Local Communities Officers attended the Forfar Community Council meeting of 18 April 2019 to explain and discuss the common good aspects of the CAT application. Hard copies of information was provided at the meeting and also provided electronically afterwards.
  - Public notices - were displayed on lamp posts on the access road to the rugby ground, all lamp posts along the length of the rugby pitch (on the adjacent path around the loch) as well as at the cricket club and access to the loch path leading from the cricket club and at the caravan park. The rugby club also promoted the public notices through their social media platforms as well as via other more traditional methods
  - Social Media – the Communities Team Facebook page was used to publicise the public notices
  - TellmeScotland Website – was used to publicise the CAT application and share consultation responses including objections

#### Objections

- 5.6 As indicated in paragraph 4.2 there were 2 objections regarding the proposed transfer of ownership of Common Good land which approval of the CAT application as submitted would result in. Those objections indicated a preference for the Rugby Club to take over this area on a long term lease instead of outright ownership. A total of 13 messages of support on the CAT application were also received through the consultation process. **Appendix 2** has further detail.
- 5.7 One of the objections was from the Forfar Community Council (which is a formal consultee under the Act) and the other was from an individual. Both expressed a preference for long term lease rather than sale of Common Good land. The applicant has indicated a preference for ownership of the land but offered to include a clause within the terms of sale to enable the Common Good to buy back the land if it was deemed the club was no longer delivering community benefits, if it wound up or if the use changed to an extent it was deemed to be no longer delivering community benefits. Such provisions may be difficult to enforce in practice but they demonstrate the Club's willingness to listen and seek to address the concerns raised.
- 5.8 Although the application is for ownership the Committee could if it wished agree the CAT on the basis of a long term CAT lease. This would still represent a disposal requiring court approval but may address concerns raised and avoid court approval being opposed. The applicant could still ask for a review of the Council's decision and thereafter appeal to Scottish Ministers if the Council chose this option. Members may also wish to consider other aspects in the objections regarding how the Common Good Fund could be protected under a lease scenario by applying specific conditions.
- 5.9 Local members have been consulted regarding the Common Good aspects of this CAT application and all are supportive of it.
- 5.10 Although the CATG recommendation is to approve the application as being likely to represent best value the Group make no specific recommendation on the merits or otherwise of selling this piece of Common Good land. It is ultimately for the Committee to make the decision regarding the CAT application and the Common Good aspects of it having heard the views of local members. The Committee can chose to agree the application with or without amendments or reject it.
- 5.11 Officers consider the Common Good land which is subject to this CAT application to be inalienable and this means if the CAT application is approved by members the transfer will require approval from the Sheriff Court or Court of Session by way of a petition under Section 75 (2) of the Local Government, etc. (Scotland) Act 1973. This will delay matters and will incur costs and could be expensive, particularly if opposed.

5.12 The criteria for agreeing to a CAT application are not necessarily the same as for the disposal of common good assets. The latter must be for the benefit of the citizens of the former burgh which is different to the presumption in favour of a CAT unless there are reasonable grounds to refuse. Accordingly, members and eventually the court in determining the petition will need to decide if the proposal is to the benefit of the Forfar Common Good and its citizens. It is possible that the court could reject the petition even though under CAT legislation the proposal is approved by members.

## **6. FINANCIAL IMPLICATIONS**

6.1 The financial impact on the Council/Common Good has been taken into account in the assessment of the application. The main points of note are as follows:-

- Sale of the asset requested would generate a small capital sum of £2,000. This compares to an estimated market value of the land of £15,000;
- There are currently no maintenance costs to the council as the group already maintain this piece of ground. No rent is paid to the Common Good in light of this arrangement.

6.2 Costs will be incurred in seeking court approval to sell (or lease) this piece of Common Good land. These are difficult to estimate as the Council has no recent history of making an application such as this. Assuming approval could be obtained through the Sheriff Court, an unopposed application could be conservatively estimated at between £3,000 and £5,000. Costs will rise significantly if there are objections and an opposed application could be conservatively estimated at between £10,000 and £15,000. If approval is required through the Court of Session, an opposed application could cost up to £25,000 and possibly more. If it is unopposed then it could be conservatively estimated at between £10,000 and £15,000. With this in mind if Members approve the transfer they are asked to consider whether the costs should be borne by the applicant (as a condition of the transfer) or the Forfar Common Good Fund. The likely costs and who will pay these may impact on the application proceeding if agreed.

6.3 In deciding which party should meet the costs of the court approval process members will wish to bear in mind that these costs will significantly outweigh the capital receipt (purchase) value offered by the applicant. The Common Good Fund would incur a net cost if it is to meet the court approval costs. Such a negative impact on the Common Good Fund could only be justified if members are satisfied that this is outweighed by the non-financial benefits from the application proceeding. It should also be borne in mind however that the applicant may not be in a position to meet the costs of the court process especially since these wouldn't be known with certainty at the outset. The applicant could abandon the CAT process at any point if they so choose.

## **7. RISKS**

7.1 There are no significant risks beyond those outlined elsewhere in this report and those associated with a community group being sustainable over the length of the proposed lease/purchase.

7.2 There is a risk of costs being incurred through the court process for disposal of a common good asset which results in a rejection by the court. These costs would be incurred by either the Common Good Fund or the applicant depending on the Committee's view of recommendation h) in this report. Costs will be incurred regardless of the outcome of the court process and would be payable even if the CAT could not go ahead because of the court's decision.

## **8. CONSULTATION**

8.1 The Chief Executive and Directors of Legal & Democratic Services and Infrastructure 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 105/18 – Community Asset Transfer Policy Development & Applications Update

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List of Appendices

Appendix 1 – CAT Application

Appendix 2 – Support, Objections and Applicant Responses