

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE – 26 SEPTEMBER 2019

COMMUNITY ASSET TRANSFER APPLICATION – DECISION – FORMER TENNIS COURTS AND ASSOCIATED PARKING, LOCHSIDE LEISURE CENTRE, CRAIG O'LOCH ROAD, 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 **Appendices 2a and 2b** of this report;
- f. determine whether to:-
 - (i) agree the application (with or without amendments), **OR**
 - (ii) reject the application, giving reasons for such rejection
- g. agree that if the application is approved this be conditional on the applicant securing the full funding package required and commissioning the works;
- h. 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;
- 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. 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;
- k. 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
- l. 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 – PHEONIX (FORFAR) GYMNASTICS CLUB, FORMER TENNIS COURTS & ASSOCIATED CAR PARKING, LOCHSIDE LEISURE CENTRE, CRAIG O’LOCH ROAD, FORFAR.

4.1 The above group have applied for a Community Asset Transfer for the former Tennis Courts and Associated Car Parking, Lochside Leisure Centre, Craig o’ Loch Road, Forfar, DD8 1BT. The group wish to take ownership of the land which previously operated as tennis courts and acquire rights to use the associated car parking. Both the tennis courts and car parking are on land which is held on the Forfar Common Good Account. The group’s application was confirmed as a 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 Three objections were received from members of the public or other groups regarding this application. One provided no information and two stated a preference for the common good land to be leased rather than sold to the group. Further detail on the objections received and the applicant's response to those objections is provided in **Appendix 2A**. Detail on the support responses is provided in **Appendix 2B**.

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 club would like to take ownership of the land and demolish the former tennis courts and acquire rights to the associated parking. This would enable them to build a unit to house a purpose built gymnastics facility as there is no other venue of its kind located between Dundee and Aberdeen. Planning permission has been granted with conditions.

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)	52.8
Financial Assessment (score out of 52)	23.17
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, apart from the right to use the car park;
- Agreeing the CAT will result in the sale of an area of Forfar Country Park and that may have implications for future use of the area as a whole;
- Access rights may need to be granted over other Common Good land to enable the group to access the site they wish to purchase and use and this would require the group to bear a share of the costs of maintenance. This would be included as part of the legal agreements;
- There is a risk that the area being sought goes undeveloped if the Club are unable to secure the significant funds required to build the new facility they are planning. In light of this it is recommended that if members agree this application it is conditional on the Club securing the full funding package required and commissioning the works.

4.7 The group's offer to purchase the land in question is £500. The market value for the area subject to the CAT is estimated at £5,000 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 former tennis courts which is subject to the CAT application covered by this report sits on Common Good land. 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 Common Good land and grant access rights to car parking which sits on Common Good land.

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 entrance and exit roads to the tennis courts, on the perimeter fence of the tennis courts as well as at the caravan park notice board. The Gymnastics club also displayed the notices (physically and electronically) via local shops, etc. Notices were also displayed at the Montrose Road Centre and in the library as well as in other public venues e.g. OAP Association, Community flat, etc.
- 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 3 objections in total 2 of which concerned 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 Gymnastics Club to take over this area on a long term lease instead of outright ownership. A total of 110 messages of support on the CAT application were also received through the consultation process. **Appendix 2a** (objections) and **Appendix 2b** (support) have 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 considered these but wishes to pursue sale rather than lease for the reasons stated in Appendix 2a.

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. All local members expressed support for the CAT proposal by Forfar Pheonix Gymnastics Club, however some elected members would have preferred to know the outcome of the judicial review for Lochside Leisure Centre before making a final decision. This is on the basis that the outcome of the judicial review could impact on parking and access rights for future developments. Members are advised that without agreement from the applicant a decision on the CAT application requires to be made at this meeting of the Committee and cannot await the outcome of the judicial review which has an unknown timetable. Officers are also satisfied that consideration of the CAT application in this report can go ahead without knowing the outcome of the judicial review.
- 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 the tennis courts and granting rights to the car parking which form part of the 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 covered by 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. 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 £500 for the Forfar Common Good Fund. This compares to an estimated market value of the land for its current use of £5,000;
 - The Council would make a small saving on current maintenance of the tennis courts area and avoid future maintenance / refurbishment costs of a more significant nature;
 - The costs of maintenance for the access road, lighting and car parking areas would need to be shared between the Council and the group and this would be part of the legal agreements should members approve the CAT application;
 - The creation of the new gymnastics facility may have a negative impact on income to AngusAlive if the lets currently made by the gymnastics club are not taken up by other users or if the availability of an alternative facility affects other usage of AngusAlive facilities.
- 6.2 Costs will be incurred in seeking court approval in relation to the Common Good land affected by this CAT application. 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 will lose part of its asset base and would also 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 long term.

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 2a & 2b – Support, Objections and Applicant Responses