

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE – 28 JANUARY 2020

APPROVAL OF LEASE – STRATHMORE RUGBY CLUB

REPORT BY THE DIRECTOR OF FINANCE

ABSTRACT

This report advises members of a procedural issue regarding a Community Asset Transfer (CAT) application and recommends the granting of a lease on the same terms as would have applied to the proposed CAT lease agreed by the Committee in September 2019.

1. RECOMMENDATION

1.1 It is recommended that the Committee:

- (i) Note the procedural issue which has now come to light as detailed in this report and that the proposed Community Asset Transfer (CAT) lease agreed by the Committee in September 2019 cannot now be legally achieved;
- (ii) Agree that a material change of circumstances has occurred to such extent that it is appropriate for the issue to be reconsidered in terms of Standing Orders;
- (iii) Note that the same end outcome can be achieved by putting in place a conventional (non-CAT) lease on the same terms;
- (iv) Revoke the previous decision of the Committee on this matter on 26 September 2019 (Report 327/19) which was to put in place a CAT lease for a duration of 99 years subject to conditions;
- (v) Note that the proposed lease as set out in this report constitutes a disposal under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 as explained in paragraph 3.6; and
- (vi) On the basis that (iv) and (v) are acceptable, approve the proposed lease as set out in this report.

2. INTRODUCTION

- 2.1 Reference is made to Report 327/19 submitted to the Policy & Resources Committee on 26 September 2019. Report 327/19 set out a Community Asset Transfer request from Strathmore Rugby Club for ownership of the smaller (west most) rugby pitch, Inchmacoble by Forfar Loch. In considering Report 327/19 the Committee noted community concerns about ownership of common good land being transferred away from the Council and agreed that the CAT requesting ownership be rejected but instead a long term lease be offered to the group instead.
- 2.2 The Committee agreed inter alia “to approve the application on the basis of a lease arrangement rather than a sale, the lease duration to be 99 years, at a lease rental and other terms to be negotiated with the applicant by the Director of Infrastructure with advice from the Director of Finance”.
- 2.3 Subsequent to the Committee’s consideration of Report 327/19 it has now been established that the applicant (Strathmore Rugby Club) was ineligible under the CAT legislation to apply for ownership of the rugby pitch at Inchmacoble by Forfar Loch and accordingly their CAT application should not, in procedural terms, have been considered further by the Council.

- 2.4 CAT legislation applies different rules for applicants where ownership is sought as opposed to a lease or other rights. To make an asset transfer request, an organisation needs to be a community transfer body. It can be either a community controlled body or a body designated by the Scottish Ministers. A community controlled body which wants to make an asset transfer request for ownership must also be incorporated as a company, a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company), with a minimum of 20 members and provision for transfer of its assets on winding up. The legislation does not require a community transfer body to be incorporated in order to make an asset transfer request for lease or other rights.
- 2.5 What this means in practice is that although the Committee ultimately rejected the CAT application for ownership in favour of a CAT lease this is not deliverable in legal terms because the original CAT application was only for ownership and ought not to have progressed any further.
- 2.6 This issue arose because of a misunderstanding of the requirements of the Act and a misinterpretation of the status of the applicant by Council officers. There is both a Strathmore Rugby Club and a Strathmore Rugby Club Community Trust. Only the Trust, because of its charitable status, would have been eligible to apply for ownership under the Act and not the Club itself which was the applicant on this occasion. Officers have added this to a list of lessons learned and will update procedures and guidance accordingly.

3. PROPOSALS

- 3.1 The Committee's view on what it wished to happen on the CAT application from Strathmore Rugby club was clear, i.e. to offer a 99 year lease with other terms to be agreed. There are 2 options to ensure the Committee's original intention can be fulfilled in a legally competent manner which are as follows:-
- a) Recommend to Strathmore Rugby Club that it submits a new CAT application to lease the rugby pitch; OR
 - b) Approve a non-CAT lease (essentially a conventional lease) on the same terms as would have been offered had a CAT lease been implemented
- 3.2 Option a) above would take time to deliver and would require a fresh consultation process (including Common Good consultation under the legislation). This is a bureaucratic and time consuming option for both the Club and Council. Option b) would, subject to the Club's agreement, allow the Committee's original intention to be delivered quickly and at a no detriment to the Club because the terms of the lease would be the same even though it would not be a CAT lease under the legislation.
- 3.3 Approval of a conventional lease on the terms below is not within the delegated authority of officers and would require approval of the Committee. Officers consider that option b) is the most pragmatic solution to this issue. Informal discussions with Club officials indicate this approach would in principle be agreeable to the Club but this would require to be formally confirmed with the Club.
- 3.4 Assuming members are agreeable to pursuing option b) above the headline terms of the lease will be:-

Landlord:	Angus Council
Tenant:	Strathmore Rugby Football Club
Property to be Leased:	Playing field, West of Inchmacoble Park, Forfar Loch Country Park, Craig O'Loch Road, Forfar
Term:	99 years
Rent:	£1 per annum if asked
Other Conditions:	The lease is conditional on the Director of Legal and

Democratic Services obtaining sheriff court approval under Section 75(2) of the Local Government (Scotland) Act 1973 for authority to lease this common good land. The costs of this process to be shared 50/50 between the Club and Common Good.

As per Angus Council's standard lease.

- 3.5 Report 327/19 noted that because the asset in question is on Common Good land it would be necessary to obtain court approval for the disposal. A long term lease such as that proposed in this report represents a disposal so it will still be necessary to go through the court process. This would have been necessary had the CAT lease proposed following consideration of Report 327/19 been able to go ahead. In line with the Committee's decision on Report 327/19 the cost of the court approval process would be shared on a 50/50 basis between the Rugby Club and the Forfar Common Good Fund.
- 3.6 The Council is required to secure best value in its activities and this includes property sales and leases. The Council can however apply the flexibility available under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 which allows the disposal of assets at less than best consideration in some circumstances including where the transfer is likely to contribute to the health or social wellbeing of residents. Consequently, it is recommended that the Committee agree to apply the aforementioned Regulations in this instance.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no additional financial implications for the Council arising from the recommendations in this report. The proposed lease is on the same terms as would have been offered had the CAT lease been able to progress. Rental income is nominal as outlined given the community benefit associated with the proposal. The proposed lease would only be implemented if court approval for the Common Good aspects has been achieved and the costs of this court process would be shared on a 50/50 basis between the Rugby Club and the Forfar Common Good Fund.

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