

ANGUS COUNCIL

POLICY & RESOURCES – 24 OCTOBER 2023

OPTION APPRAISAL – INCH PAVILION AND BOWLING GREEN, CROFT ROAD, MONTROSE

**JOINT REPORT BY GRAEME DAILLY, DIRECTOR OF INFRASTRUCTURE AND ENVIRONMENT
AND ALISON SMITH, DIRECTOR OF VIBRANT COMMUNITIES AND SUSTAINABLE GROWTH**

ABSTRACT

The report seeks approval to dispose of the Inch Pavilion and Bowling Green at Croft Road, Montrose which is held by Montrose Common Good.

1. RECOMMENDATION

1.1. It is recommended that the Committee:

- (i) notes the best value considerations and the outcome of the options appraisal on the offers received for the purchase of the Inch Pavilion and Bowling Green, Croft Road, Montrose as detailed in the Options Appraisal at **Appendix 3 (exempt)**;
- (ii) agrees, in principle, to the sale of the Inch Pavilion and Bowling Green, Croft Road, Montrose in accordance with the preferred Option 2 (as detailed in the Options Appraisal at **Appendix 3 (exempt)**) subject to the completion of formal consultation and legal process as set out in this report;
- (iii) agrees and authorises the Director of Infrastructure and Environment to, subject to the consent of the court being obtained, proceed with and conclude the disposal where responses to the formal consultation are positive or have been resolved;
- (iv) agrees that bidders will be notified of the outcome of the Options Appraisal process following this Committee meeting; and
- (v) agrees that the following information in relation to preferred Option 2, namely name of purchaser, price and their proposed use for the site detailed in the **Appendix 3 (exempt)** will become public as part of the formal consultation process.

2. ALIGNMENT TO THE ANGUS PLAN/COMMUNITY PLAN

2.1 This report contributes as a whole to the Council Plan and the Community Plan and in particular to the following priorities:

- support Angus to achieve inclusive and sustainable economic growth, with a particular focus on the long-term potential of private and public investment opportunities in offshore renewable energy
- encourage and invest in fair work opportunities for those that live, work and study in Angus
- support and deliver programmes that help people into work
- support businesses to grow and invest in Angus through our employment land and commercial property
- be more commercial in our approach to contracts and support growth of business locally whenever possible through a community wealth building approach
- protect and enhance our natural and built environment
- take action to mitigate against climate change by delivering our Transition to Net Zero Action Plan: 2022 to 2030 and leading on the delivery of a Sustainable Energy Climate Action Plan (SECAP) for Angus to reduce area wide emissions

- engage with communities to support their ambitions to deliver on local aspirations (e.g., community asset transfer requests, community gardens, food hubs)
- enhance and restore Angus Biodiversity, corporately and with a range of stakeholders
- deliver our change programme.

3. BACKGROUND

- 3.1 Following the amalgamation of bowling clubs in Montrose the Inch Pavilion and Bowling Green was no longer required.
- 3.2 Subsequently the Pavilion was leased and is currently operating as a flower shop and generating a small income to the Montrose Common Good as the property forms part of the Common Good.
- 3.3 It was intended that the bowling green be retained to provide an extension to the neighbouring cemetery but after review of SEPA guidance it was declared that the ground conditions were unsuitable for this use.
- 3.4 Inch Pavilion and Bowling Green was declared surplus by the Policy and Resources Committee at its meeting of 31 August 2021. Accordingly, Officers have progressed options for disposal, as set out below. However, the Council is not required to accept any offer and may decide not to dispose of the property at this time.

4. CURRENT POSITION

- 4.1 The property, as shown outlined on the plan at **Appendix 1**, has been on the market through the Council's retained agents Shepherds:
<https://www.shepherd.co.uk/commercial/property/details/6992>
- 4.2 Following a closing date on 11 November 2022 several offers have been received as detailed in **Appendix 2, Part A (exempt)**.
- 4.3 Following receipt of offers, it was considered appropriate to obtain further information from all bidders, including information on proposed consideration and proposed use (and restrictions on proposed use) for the purpose of assisting Officers with the assessment of bids to inform the selection of a preferred bidder/option and for elected members to select the bid that constitutes best value.
- 4.4 The Council is required, in disposing of the site, to consider three matters:
- (1) Whether the disposal is consistent with the Council's duties under s.74 of the Local Government (Scotland) Act 1973 (the "1973 Act") and the Disposal of Land by Local Authorities (Scotland) Regulations 2010 (the "2010 Regulations");
 - (2) Whether the disposal is consistent with the Council's duties under s.1 of the Local Government in Scotland Act 2003 (the "2003 Act") and the Best Value Guidance issued by the Scottish Ministers under s.2 of that Act; and
 - (3) Whether the disposal is consistent with the Council Plan and the Community Plan.
- 4.5 In order to ingather the information needed to consider whether the disposal of the site was consistent with all of the matters set out in Section 4.4 above the Council developed an evaluation methodology. The details of that methodology are set out in the questionnaire at **Appendix 4**. Further information regarding the questionnaire is contained in Section 4.6 below.
- 4.6 A questionnaire was prepared by Council Officers and thereafter issued to those that had submitted an offer. A copy of the questionnaire is contained in **Appendix 4**. An Options Appraisal has been conducted, and bids have been assessed and appraised (based on the information contained in the Offers and on responses given to questions contained in the questionnaires) according to that methodology. Bids were scored according to objectives (i.e. criteria) and weightings that had been developed on the basis that the option that best satisfied

those objectives, as weighted, would be demonstrably consistent with the Council's duties in respect of each of the matters set out in Section 4.4 above. Members should note the objectives, weightings and rationale for the weightings which are all set out in the table contained in **Appendix 6**.

4.7 The completed Options Appraisal is contained in **Appendix 3 (exempt)**.

5. PROPOSALS

5.1 The highest scoring option was Option 2 which is accordingly the preferred option. This is to sell Inch Pavilion and Bowling Green, Croft Road, Montrose in accordance with Option 2, as detailed in **Appendix 3**. The reasons for the scores given to it, and the scores given to other Options, are explained in detail in **Appendix 3 (exempt)**.

5.2 On the basis of those reasoned scores:

- (i) With regard to the Council's duties under s.74 of the 1973 Act and the 2010 Regulations, the consideration offered by Option 2 was not the highest consideration offered. However, it does exceed the valuation which has been given by a suitably qualified valuer (please refer to **Appendix 2 (Exempt)**) and accordingly constitute "best consideration" as that term is defined in section 74(2E) of that Act.

Option 2 would also, regardless of whether it constituted best consideration, satisfy the requirements of regulation 4 of the 2010 Regulations which permits a local authority to dispose of land for a consideration less than the best that can reasonably be obtained where (a) it is satisfied that the disposal for that consideration is reasonable and (b) the disposal is likely to contribute to the promotion or improvement of economic development or regeneration in respect of the whole or any part of the area of the local authority or any persons resident or present in that area.

The procedure adopted to date has appraised and compared the costs and other disbenefits and the benefits of the proposal as required by regulation 3 of the 2010 Regulations. Accordingly, the Council has satisfied the requirements that are imposed by the 1973 Act and 2010 Regulations to proceed with the disposal in terms of Option 2 either on the basis that it constitutes best consideration or on the alternative basis that the consideration under Option 2 is reasonable and it is likely to contribute to economic development.

- (ii) With regard to the Council's duties under s.1 of the 2003 Act and the Best Value Guidance issued by the Scottish Ministers under s.2 of that Act, the evaluation of Option 2 set out in **Appendix 3 (exempt)** according to the methodology set out in **Appendix 4** satisfies the Council's duty to secure best value having full regard to the guidance published by the Scottish Ministers as to how to implement that duty including in particular with regard to contributing to sustainable development.
- (iii) With regard to the Council's compliance with the Council Plan and the Community Plan, the evaluation of Option 2 set out in **Appendix 3 (exempt)** according to the methodology set out in **Appendix 4** confirms that it is consistent with the Council Plan and the Community Plan in particular with regard to the promotion of economic development and regeneration.

5.3 Reasonable enquiries have been made of bidders to ensure that the site is developed for the purpose that they have proposed and suitable measures will be included in the legal agreements for the sale of the site.

5.4 Accordingly the options appraisal undertaken confirms that the adoption of Option 2 would be consistent with the Council's duties as set out above. Further legal advice on this is included in **Appendix 2, Part B (exempt)**.

- 5.5 Section 104 of the Community Empowerment (Scotland) Act 2015 requires the Council to consult under the Act on this proposed disposal (sale) of common good property before a final decision can be taken. Committee is asked to agree to the proposed disposal in principle to allow this consultation to be undertaken.
- 5.6 In the event that responses to the formal consultation are positive or are resolved, this report seeks to give authority to the Director of Infrastructure and Environment to proceed with and conclude the disposal. In the event that the consultation results in unresolved negative responses to the proposal a further report will be brought to Committee.
- 5.7 As experienced with other Common Good assets the question of being able to sell or transfer common good property (otherwise known as alienability) must be considered. Legal advice has been sought and it has been confirmed that a question arises as to the right of the Council to sell the Inch Pavilion and Bowling Green. This means that following the public consultation and a decision made to sell the property, the Council must also apply to the court for authority to dispose of the common good asset. The application to court would fall within the delegated powers of the Director of Legal, Governance and Change. The timescale for obtaining court consent could take between 6-12 months. The sale would not be able to proceed without the court granting consent to the disposal of the common good asset. The court is entitled to impose conditions on any consent. Generally, such conditions normally relate to the Council securing the continuation of common good benefits. For example, the court could require the Council to counterbalance a loss of amenity from the disposal of common good land with the provision of equivalent amenity elsewhere, however, if consent was granted, it would be at the discretion of the court with regard to whether or not impose conditions.

6. FINANCIAL IMPLICATIONS

- 6.1 The disposal of the site will potentially generate a substantial capital receipt for Montrose Common Good. Details of the offers received are provided in **Appendix 2, Part A (exempt)**.
- 6.2 In addition, if sold, there will be a reduction in future years maintenance and/or improvement costs to the building and surrounding land.
- 6.3 In accordance with [Report No 138/21.pdf](#), Revised Common Good Fund Policy Guidelines and Administrative Procedures, the expense of going to court to seek approval to dispose of the common good asset will be fully met by the Montrose Common Good Fund and offset against any capital receipt.

7. EQUALITY IMPACT ASSESSMENT

A screening Equality Impact Assessment is attached as Appendix 5. A full EIA is not required as the report is technical and does not specifically impact on people.

8. CONSULTATION

The Chief Executive, Depute Chief Executive, Director of Finance and Director of Legal, Governance and Change were consulted in the preparation of this report.

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

- Strategic Policy Committee 3/12/13 - Report No 683/13 – Montrose Bowling Clubs
- Policy & Resources 31/08/21 - Report No 269/21 – Montrose Common Good Surplus Properties

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List of Appendices:

- Appendix 1 – Plan
- Appendix 2 – Part A Details of Offers (EXEMPT)
Part B Legal Advice (EXEMPT)
- Appendix 3 – Options Appraisal (EXEMPT)
- Appendix 4 – Questionnaire
- Appendix 5 – Equality Impact Assessment
- Appendix 6 - Objectives, weightings and rationale for weightings