



REPORT TO: CORPORATE COMMITTEE ON 30 NOVEMBER 2021

**SUBJECT: COMMUNITY ASSET TRANSFER REQUEST (2015 ACT):
FISHERMEN'S HALL, BUCKIE**

**BY: DEPUTE CHIEF EXECUTIVE
(ECONOMY, ENVIRONMENT AND FINANCE)**

1. REASON FOR REPORT

- 1.1 To invite the Committee to consider an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015 in respect of the Fishermen's Hall, North Pringle Street, Buckie.
- 1.2 This report is submitted to Committee in terms of Sections III(B)(20) and III(B)(32) of the Council's Scheme of Administration relating to the management of Common Good Property and the consideration of all Community Asset Transfer requests respectively.

2. RECOMMENDATION

2.1 The Committee is invited to:

- (i) **approve the request to transfer ownership of the Fishermen's Hall, North Pringle Street, Buckie, to the Fishermen's Hall Trust subject to the terms and conditions set out in paragraph 5.1 of this report;**
- (ii) **authorise the Legal Services Manager to apply to the Sheriff Court for consent to transfer the property to the Trust; and,**
- (iii) **note that, if approved and unless otherwise agreed with the Trust, it will have 6 months from the date of the Council's Decision Notice to submit a formal offer to purchase the property, failing which the agreement will have no further effect and the statutory asset transfer process will end.**

3. BACKGROUND

- 3.1 On 14 February 2018, the Council agreed savings relating to town halls and community centres as part of its budget process. The decision was to secure community asset transfers (CAT) or, failing which, to close the facilities.

- 3.2 On 11 April 2018, the Council approved transitional arrangements aimed at enabling successful transfers of seven of its town halls and community centres (para 6 of the Minute refers). These arrangements included entering into short term leases at nominal rents with viable groups. On 1 July 2018, the Fishermen's Hall Trust (the Trust) took entry to the Fishermen's Hall in accordance with these arrangements.
- 3.3 On 12 March 2020, the Trust submitted an asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) for the free transfer of ownership of the Fishermen's Hall as shown in **Appendix 1**. As a direct consequence of the restrictions brought in later that month to combat the COVID-19 pandemic, the request was placed on hold. On 15 July 2021, the Trust provided supplementary information in order to restart the CAT process. The updated information addressed COVID-19 risks.
- 3.4 The request was the subject of an 8-week statutory consultation, details of which were published on the Council's website. The redacted asset transfer submissions, representations and responses are available on the Council's Committee Management System under the reference CAT/ATR/068 at <https://moray.cmis.uk.com/moray/CouncilandGovernance/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1798/Committee/46/SelectedTab/Documents/Default.aspx>.

4. ASSESSMENT

- 4.1 The Trust is a registered Scottish Charity (SC048459), whose governing documents meet the criteria to be designated as a community-controlled body able to request a transfer of ownership under the Act.
- 4.2 The Trust was formed to benefit the community of Buckie and District with the following purpose:
- ‘To provide and advance the accessibility of recreational facilities by owning, managing and maintaining the Fishermen's Hall, Buckie.’
- 4.3 In September 2019, following a joint instruction from the Council and the Trust, the District Valuer (DV) assessed the market value of the Council's interest in the property as £35,000. However, the Estates Manager considers this valuation to be flawed and estimates that the current market value of the property is £96,250. The higher figure has been used in relation to the assessment of this CAT request.
- 4.4 CAT requests are assessed by officers in relation to three main areas: the community body's governance and financial management arrangements; the Best Value characteristics of its proposal; and whether the related benefits represent value for money. An acceptable assessment in all three areas is necessary for an asset transfer request to be recommended for approval.

Governance and Financial Management

- 4.5 The Trust's governance and financial management arrangements are considered strong and sustainable.

Best Value Characteristics

- 4.6 Best Value characteristics are in evidence in the proposal.

Projected Benefits

- 4.7 The projected benefits of the proposal are demonstrated well and are considered to represent value for money.

Overall Assessment

- 4.8 Further details of the assessment for this asset transfer request are shown in **Appendix 2**.
- 4.9 Although a concern was raised as part of the public consultation exercise regarding bookings and communications, the Trust is recruiting a Hall Coordinator to take on responsibility for this.
- 4.10 No reasonable grounds were identified for refusing the request.

5. ASSET TRANSFER TERMS

- 5.1 If the recommendations are agreed, the following terms would apply to the transfer:
- (i) Subjects – the asset to be transferred comprises the Fishermen's Hall, 16 North Pringle Street, Buckie, as shown in **Appendix 1**.
 - (ii) Price – the price payable would be £nil.
 - (iii) Contamination – the Council is to transfer the property "with information" in terms of Contaminated Land legislation with the Fishermen's Hall Trust indemnifying the Council against any future claims relating to contaminated land. A desktop study by the Council's Environmental Health Section concluded that there are no contamination constraints affecting this property.
 - (iv) Fees/Expenses – each party to meet its own legal expenses in the processing of the transaction, including legal expenses and surveyors fees; and,
 - (v) Other Terms – any other detailed terms agreed with the Council's Legal Services Manager and Estates Manager.

6. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

Where a property is held on a Common Good title, the interests of the inhabitants of the former burgh take precedence over the Council's Corporate Plan and 10 Year Plan (LOIP). Nevertheless, transferring assets to the community supports the 10 Year Plan aim of creating more

resilient and sustainable communities and is consistent with the Corporate Plan value of promoting community empowerment as a means of supporting communities to take on more responsibility.

(b) Policy and Legal

On 21 March 2017, the Policy and Resources Committee approved the following policy statement (paragraph 5 of the Minute refers):

“Moray Council recognises the important role that the transfer of property assets can play in empowering communities and strengthening their resilience. Where appropriate, the Council will use the transfer of assets to give more control to communities and local people, inspire them to find local solutions to community needs, and as a means of helping communities become more sustainable in the long term. In determining all asset transfer requests, the Council will have regard to the guidance provided by the Scottish Government in relation to asset transfer requests made under Part 5 of the Community Empowerment (Scotland) Act 2015, whether or not such requests are made under the provisions contained in the Act.”

Section 82(5) of the Community Empowerment (Scotland) Act 2015 requires the Council to agree to any asset transfer request made under Part 5 of the Act unless there are reasonable grounds for refusing it. Section 82(7) requires the Council to include the reasons for its decision in its Decision Notice. The community body has a right under section 86 to ask the Council to review its decision where the request is refused or agreed subject to material terms and conditions that differ to a significant extent from those specified in its request.

In administering Common Good assets, the Council is required by section 15(4) of the Local Government etc. (Scotland) Act 1994 to have regard to the interests of the inhabitants of the area to which the Common Good related prior to 16 May 1975. As the subject property is a potentially inalienable Common Good asset, the Council must also obtain the consent of the Sheriff Court in terms of Section 75(2) of the Local Government (Scotland) Act 1973 before it can be transferred.

Decisions relating to assets transferred to the community at less than market value must comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which require the Council to be satisfied that the proposed transfer is reasonable and that the disposal is likely to contribute to the promotion or improvement within Moray of any of the following purposes:

- a) Economic Development,
- b) Regeneration,
- c) Public Health,
- d) Social Wellbeing, or
- e) Environmental Wellbeing.

Reasonableness in this context is taken to imply that the requested discount is the minimum necessary to allow the project to proceed and that it is commensurate with the likely benefits of the project.

(c) Financial Implications

The initial lease of the Fishermen's Hall to the Trust provided a continuation of service to the Buckie community while enabling the Council to achieve an annual saving of £47,000 in operating costs. Approval of the CAT request would secure the future of this service.

The Estates Manager estimates the market value of the Fishermen's Hall to be £96,250. Due to the property's specialist nature and current volatility in construction costs this estimate carries a higher degree of risk than normal. A sale of the property for this sum would generate a capital receipt that could be invested to provide the Buckie Common Good Fund with an annual income of £1,511. A sale at the lower figure of £35,000 would provide the fund an annual income of £550.

The Trust has requested that the property be transferred for nil consideration, involving a disposal at significantly less than the best price that could reasonably be obtained. Nevertheless, based on the higher estimate of market value, the projected benefits of the proposal are considered sufficient to justify the discount sought.

(d) Risk Implications

The Trust's submissions include a clearly laid out risk matrix that addresses the probability and likelihood of a range of risks together with details of how they intend mitigating these.

The risk of the Trust failing is considered low. However, in the event of its dissolution, its constitution provides that any remaining assets would transfer to another suitable community body or charity that has purposes closely resembling those of the Trust.

The impact of COVID-19 on property markets and thus the estimate of value for this property are currently unclear. As such, the estimate of value provided is subject to material valuation uncertainty. Consequently, a higher degree of caution should be attached to the estimate of value than would normally be the case.

There is a low risk of the presence of State Aid as the proposed service is considered to be local and, therefore, unlikely to affect intra-community trade among EU member states.

(e) Staffing Implications

There are no staffing implications arising from this report.

(f) Property

The property implications are as detailed in this report.

(g) Equalities/Socio Economic Impact

An Equalities Impact Assessment is not required as agreeing to the asset transfer request would have no adverse impact on service delivery. The proposals are projected to have a positive socio-economic impact.

(h) Consultations

The Depute Chief Executive (Economy, Environment and Finance), Chief Financial Officer, Head of Economic Growth and Development, Head of Education Resources and Communities, Legal Services Manager, Estates Manager, P. Connor Principal Accountant, Community Learning and Engagement Manager, L. Robinson Committee Services Officer, and Equal Opportunities Officer have been consulted and their comments incorporated in the report.

The Ward Members, Councillors Cowie, Eagle and Warren, are aware of the proposal and may make their views known at Committee.

7. CONCLUSION

7.1 The proposed transfer contributes to the priorities set out in the Council's Corporate Plan and the Local Outcomes Improvement Plan.

7.2 The strength of the Trust's overall business case is considered strong. That is,

- (a) Its governance and financial management arrangements are sound and sustainable,**
- (b) Best Value characteristics are in evidence in the proposal, and**
- (c) The projected benefits are demonstrated well and represent value for money.**

7.3 No reasonable grounds have been identified for refusing the request.

Author of Report:	Andrew Gray, Asset Management Coordinator
Background Papers:	Held by author
Ref:	CAT/ATR/068(2015 ACT)