

## REPORT TO BANFF AND BUCHAN AREA COMMITTEE – 31 MARCH 2020

### TARLAIR PAVILION, TARLAIR, MACDUFF – ASSET TRANSFER APPLICATION

#### 1. Reason for Report/Summary

- 1.1 The Friends of Tarlair have submitted an Asset Transfer Application as set out in the Guidelines as provided by the Scottish Government Community Empowerment Act 2015: Asset Transfer. This has been deemed competent by the Banff and Buchan Asset Transfer Group based on the Guidelines discussed above.

#### 2 Recommendation

**The Committee is recommended to consider the application attached to this report, and**

- 2.1 approve the application for transfer of the Pavilion building at Tarlair, Macduff, to The Friends of Tarlair on a 99-year lease, subject to various conditions within the lease.**

#### 3 Purpose and Decision Making Route

- 3.1 Requests for Asset Transfers from community bodies are governed by the provisions of the [Community Empowerment \(Scotland\) Act 2015](#). Section 82 of that Act provides that where a valid request is made, the local authority must consider whether to agree or refuse the request.
- 3.2 The local authority must agree the request unless there are reasonable grounds for refusal. Guidance from the Scottish Government on asset transfers suggests that reasonable grounds for refusal may include “where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, where agreeing to the request would restrict the relevant authority’s ability to carry out its functions, or where another obligation on the relevant authority prevents or restricts its ability to agree to the request”. These grounds are not exhaustive and are dependent on the particular circumstances of the application.
- 3.3 The Committee must therefore determine this application in accordance with the statutory criteria as set out above and with [Aberdeenshire Council’s Asset Transfer Policy](#) as approved on 09 June 2016.

## 4 Discussion

### The Asset – The Pavillion, Tarlair

- 4.1 Part of the Category A-listed complex of Tarlair Swimming Pool, the Pavilion building dates from c.1930, but has been disused since 1995. Over the intervening period, the building has been disused and fallen into disrepair. Reports have highlighted that the building is in fair condition only, meaning that even rudimentary use of the building is not possible without significant works. The asset is currently held on the Planning and Environment account. The asset transfer request is for the pavilion only and does not extend to the full area of the site. Appendix 1 offers a plan of the site and highlights the area requested for an asset transfer.
- 4.2 The Friends of Tarlair have identified repair/refurbishment costs of around £700,000; however, that amount is based on information dating from 2016, as contained in Aberdeenshire Council's commissioned report '*Tarlair Swimming Pool – report on repair and restoration options for the pavilion*' (Addison Conservation and Design). It is reasonable to assume that with the passage of time, in terms of further deterioration of the building coupled with general inflation, that these costs will have escalated. With a gross internal area of c.180m<sup>2</sup>, these repair costs will considerably exceed the value of the building returned to good condition. Theoretically the building has a negative value due to the level of costs, but given scenarios are extremely rare where a land/property owner pays money to a purchaser in a transaction, the resale value of the Pavilion building is considered to be nil, or a nominal £1. This figure is appropriate either on a capital or annual rental basis. The value relates to the footprint of the Pavilion building together with necessary rights of access for maintenance and operation of the building. The valuation has been prepared by the Council's Property Estates team.
- 4.3 Although the application is for the pavilion only it is important to note that the ground area around the pavilion is in a low-maintained state. Planning and Environment confirms that there is no budget other than to support emergency or reactive maintenance of the site. No work has been undertaken in the pavilion for a number years. As a result, and for many years the Local Authority has seen fit to erect a sign which warns about the dangers of the site and indicates that visitors enter at their own risk. It would not be possible for visitors to the café to reach it without traversing this area. It is also important to note that public road access responsibility only sits with the Council as Roads Authority as far as the top of the hill. Vehicle access beyond this point and directly to the pavilion is under Council ownership and is the responsibility of Planning and Environment Services. The roads service confirms that they have no allocated budget or proposals to improve this access route. Essential maintenance of the road and wider aspects of the site will be considered as and when the Planning and Environment have identified budget .

- 4.4 Acknowledging this situation and that the creation of the café will increase visitor numbers to the area then the Friends of Tarlair group and Aberdeenshire Council will have to work together to ensure each party offers the correct information to visitors. To safeguard both parties, written guidance produced by the Planning and Environment team will be provided for visitors to the site and warning signs will continue to be displayed at appropriate places to be on full public view. The lease contract will also clarify areas of responsibility for Friends of Tarlair in this regard.
- 4.5 Given the fact that the Tarlair Pavilion is in an exposed site right on the coast, there is a risk that with challenging winter weather and new impacts of climate change, the site could easily be adversely impacted creating unplanned-for financial outlay. The business plan is weak in its ability to offer strong capital and revenue funding to upgrade and maintain the building. It is however noted that the group will aim to access grant funding for the initial capital works' which will be based on up-to-date tender costs, rather than previous estimates.

#### The Asset Transfer Request

- 4.6 On 11 October 2019, the Banff and Buchan Area Manager received a valid Asset Transfer Request for the Pavillion at Tarlair to be utilised as a café, open to the general public. It is important to note that once an Asset Transfer Request has been received a Local Authority is precluded from selling, leasing or 'otherwise disposing' of the Asset in terms of S84(2) of the Community Empowerment (Scotland) Act 2015 if the property subject to the transfer request has not been advertised for sale or lease prior to receipt of the request. At this time there is no competing interest in this property.
- 4.7 The Friends of Tarlair are a registered charity SC045727 and as such are eligible to apply for a lease via an Asset Transfer Request. A copy of the Asset Transfer Request, including supporting documentation is attached as Appendix 2 of this report.
- 4.8 The Asset Transfer Request was considered by The Banff and Buchan Asset Transfer Group, a multi-disciplinary, cross service group chaired by the Area Manager. This group provided formal feedback to the Friends of Tarlair on 03 December 2019 and set a deadline for responses and additional information of 09 January 2020. This deadline was met, and the Banff and Buchan Asset Transfer Group met again on 21 January 2020 and 14 February 2020 to discuss the request. The Group agreed to recommend approval of the request but noted the following considerations.
- 4.9 The Friends of Tarlair have confirmed it is prepared to pay £2 per annum over a 99 year lease term. The Friends of Tarlair have not intimated that they have sought an independent resalerental valuation of the pavilion.
- 4.10 The Area Project Officer and the Business Development Executive have worked with the group over a long period to provide information to allow the group to formulate its submission. The group is committed, enthusiastic and optimistic as to their ability to regenerate the building and operate it as a café.

- 4.11 Further recognition is given to The Friends of Tarlair group as they have carried out various care-taking tasks over several years on a voluntary basis such as clearing the area surrounding, and adjacent to the pavilion, of litter and marine detritus. They have also been vigilant in reporting to Aberdeenshire Council acts of vandalism at the site and responsive repairs.
- 4.12 The Friends of Tarlair clearly state in their application that they have engaged in various fund-raising activities, such as holding an Annual Gala on the site and will actively continue to do so in addition to the running of the café to support the long term sustainability of the asset. This event is operated with permission from Aberdeenshire Council and the group have confirmed that they have Public Liability Insurance in place to protect their interest and the public who attend the café.
- 4.13 Although the business plan has been assessed as competent it should be noted that the footprint of the pavilion is small and therefore restricts the number of covers which can be accommodated. It is therefore unlikely, given the value of the unit sales envisaged and the opening hours indicated, that a sufficient level of profit can be generated to maintain the site as the group asserts. Therefore, alternative funding packages would be required which are not specifically detailed in the business plan that directly supports the ongoing operation of the café.
- 4.14 The pavilion is in need of considerable maintenance and improvement in order for it to be utilised as a catering establishment. The group confirm their intention to apply to various funding sources, including Historic Environment Scotland (HES) to make the immediate capital improvements.
- 4.15 Given these highlighted points, it is the advice of the Legal Team that the 99-year lease should be expressly conditional on the group securing 100% of the required capital funding. The group will need additional insurance over and above the Public Liability insurance in place for the proposed refurbishment works to be carried out. The works carry an inherent risk to the Council too, as the refurbishment is being carried out on one of Aberdeenshire Council's buildings. This refurbishment work will need to be declared to our own insurers and an additional cost paid for the increased risk to the building, depending on the value of the works to be undertaken and proposed timescale for completion. The Lease would be restricted to the pavilion and possibly a small area surrounding that for maintenance and rights of access. While the exact route is still to be agreed, a defined right of access from the nearest adopted road (c.300m to the west) will have to be granted. While it is possible that the lease will need to make reference to other parts of the site Friends of Tarlair have no rights or obligations concerning those. Given the long length of the lease, and the complex nature of the refurbishment project, the lease should include milestones set against dates, so that the tenant is obliged to carry out the works in a reasonable timescale, otherwise the Council would be able to take back the property.

- 4.16 The cost benefit analysis undertaken as part of the asset transfer application process, detailed in Appendix 3, highlights a notional benefit of £16,303 per annum, which equates to a project life notional benefit of £399,188. The notional benefit is in excess of the estimated value of the asset of £262,000 and therefore on this basis the project is deemed to be financially viable. It should be noted that, as the asset transfer is on a lease basis, the Council will retain ownership of the asset but that additional insurance as referred to in 4.15 will require to be covered by the Friends of Tarlair. The increase in cost of cover does not impact materially on the viability of the transfer.
- 4.17 The Officer's recommendation is that this Application should be approved because, under the Scottish Government Guidelines within the Community Empowerment Act 2015: Asset Transfer, there are no reasons why a recommendation should be made otherwise. However, although the application and its contents are in line with these guidelines, the description of competence does not fully relate necessarily to the officer's recommendation as there are various issues, detailed above which may cause challenges in relation to the start-up and sustenance of the project.

## 5 Council Priorities, Implications and Risk

- 5.1 This report helps to deliver:

Council Priority 1: Support strong, sustainable, diverse and successful economies

Council Priority 3: Providing the best life chances for all our children and young people by raising levels of attainment and achievement.

Council Priority 5: Encourage active lifestyles and promote well-being with a focus on obesity and mental health.

- 5.2 The table below shows whether risks and implications apply if the recommendation is agreed.

Subject	Yes	No	N/A
Financial	x		
Staffing		x	
Equalities		x	
Fairer Scotland Duty			x
Town Centre First			x
Sustainability		x	
Children and Young People's Rights and Wellbeing			x

- 5.3 An equality impact assessment is not required because the project, when delivered will not have a differential impact on any of the protected characteristics.

- 5.4 There is the potential that enabling the asset transfer would have a positive impact on revenue budgets by removing the Council's obligation to keep the pavilion, as a listed structure, wind and water tight.
- 5.5 Aberdeenshire Council solicitors will work on the conveyancing of the building which will have a short-term impact on staffing but this will end once the lease is concluded.
- 5.6 The sustainability implications are that, by enabling the community to have a long-term lease of the pavilion, the Council would enable the partly derelict building to be brought back into use, subject to the applicants successfully securing the required funding and required planning permission.
- 5.7 The following risk has been identified as relevant to this matter on a Corporate Level:

ACRORP006 Reputation Management - Not leasing the building to the Friends of Tarlair could be seen in the community in a negative light as they believe they have a clear and evidenced use for the facility.

The following risk has been identified as relevant to this matter on a Strategic Level:

BSSR004 Community Empowerment - Unrealistic community expectations of what the Act means and what the Council can support.

## **6. Scheme of Governance**

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report. They are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 6.2 The Committee is able to consider and take a decision on this item in terms of Section B.9.6 of the List of Committee Powers in Part 2A of the Scheme of Governance as this determines the granting of the transfer of an asset to a community group and the terms and conditions of the transfer.

## **LAURENCE FINDLAY, DIRECTOR OF EDUCATION AND CHILDREN'S SERVICES**

Report prepared by Angela Keith, Interim Area Manager, Banff and Buchan  
Date: 16 March 2020

### **List of Appendices**

- Appendix 1 Site Plan  
Appendix 2 Application Form and supporting documents, Business plan, financial forecast, accounts and constitution.  
Appendix 3 Cost Benefit Analysis