

Agenda Item	4
Report No	CP/11/21

HIGHLAND COUNCIL

Committee: Communities and Place

Date: 12 May 2021

Report Title: Community Asset Transfer Requests

Report By: Executive Chief Officer, Communities and Place

1. Purpose/Executive Summary

1.1 The Community Empowerment (Scotland) Act introduces a right for community bodies to request to own, lease or use public sector assets at a discount on market value through a process known as Community Asset Transfer. Once a formal request is submitted, Local Authorities have 6 months to assess the application against a range of potential community benefits and determine whether to grant the request.

1.2 Following the Council's recent changes to governance of CATs, requests such as this, which relate to an asset with a market rental value of less than £10,000 pa, will ordinarily go to Area Committee for a decision by local Members. In this case, both Area Chairs have agreed the request should be decided upon by strategic committee, due to timing pressures for the projects to commence.

1.3 This report asks members to consider and agree recommendations on Community Asset Transfer (CAT) requests received and assessed over the previous 6 months. Following assessment, the report seeks:

- Approval to lease **Tougal public toilets and car park** by Morar, to **Road to the Isles Facilities Group**, at no annual charge.
- Approval to lease **Stac Pollaidh car park** to **Outdoor Access Trust for Scotland**, for £1 per annum, if asked.
- Note the decision taken by the Chair and Executive Chief Officer of Communities and Place to alter terms of the economic development burden applied to the previously approved CAT of **Acharacle Community Centre** – limiting it to five years in duration.

2. Recommendations

Members are asked to **agree** the following Community Asset Transfer requests:

- 2.1 **Lease of Tougal public toilets and car park** to Road to the Isles Facilities Group, **for no annual rental charge**. Terms of the transfer would include:
- A 25-year, registered lease is offered for no annual charge.
 - The lease will be restricted to community use, including provision of public toilet facilities and chargeable parking.
 - The lease will be on a Full Repairing and Insuring basis (the tenant will be responsible for maintenance and insurance).
 - Evidence of Planning approval for the proposed development.
 - Evidence of security of tenure over additional land adjoining the car park, as required for the proposed development.
 - Road to the Isles Facilities Group covers all reasonably incurred property and legal costs associated with the asset transfer process – both the Council's and its own.
 - Any transfer will be subject to existing burdens / conditions in the Council's title to the property (e.g. 3rd Party access rights, etc.). The Council may also impose further burdens / conditions if they consider this expedient (e.g. economic development burdens, etc). The Council will only transfer property for which it has title to do so.
 - Any other terms to be agreed by the Executive Chief Officer Communities and Place in consultation with the Chair of Communities and Place Committee.

- 2.2 **Lease of Stac Pollaidh car park** to Outdoor Access Trust for Scotland for £1 per annum, if asked. Terms of the transfer would include:
- A 25-year, registered lease.
 - The lease will be restricted to provision of car parking.
 - Evidence of security of tenure over additional land adjoining the car park, as required for the proposed development.
 - In the event that extended parking is not developed at the Stac Pollaidh site within two years of conclusion of the asset transfer, the landlord reserves the right to terminate the lease.
 - The lease will be on a Full Repairing and Insuring basis (the tenant will be responsible for maintenance and insurance).
 - Evidence of Planning approval for the proposed development.
 - Outdoor Access Trust for Scotland covers all reasonably incurred property and legal costs associated with the asset transfer process – both the Council's and its own.
 - Any transfer will be subject to existing burdens / conditions in the Council's title to the property (e.g. 3rd Party access rights, etc.). The Council may also impose further burdens / conditions if they consider this expedient (e.g. economic development burdens, etc). The Council will only transfer property for which it has title to do so.
 - Any other terms to be agreed by the Executive Chief Officer Communities and Place in consultation with the Chair of Communities and Place Committee

Members are asked to:

- 2.3
- agree to homologate the decision by the Executive Chief Officer Communities and Place in consultation with the Chair of the Communities and Place Committee to vary terms of the economic development burden within the previously agreed asset transfer of **Acharacle Community Centre**; limiting it to 5 years in duration.
 - Note the statutory timescale for responding to these transfers require consideration at the strategic committee and future community asset transfer requests can be programmed into the Area Committee cycle in keeping with the changes to the Scheme of Delegation agreed at Council in March 2021. Area

Chairs affected by the transfers included in this report have been consulted and are in agreement.

3. Implications

- 3.1 **Resource implications:** the recommendations, if agreed, would mean the Council foregoes potential market rental income:
- £2,000 per annum for Stac Pollaidh car park.
 - £1 per annum for Tougal Car Park and toilets – lower valuation reflects current combined running costs and anticipated liabilities around operation and maintenance.
- 3.2 Transfer of Tougal toilets would remove an ongoing operational and maintenance cost to the Council of approximately £6,500 per annum. If parking charges were to be introduced at Tougal car park, this could bring the Council up to £3,000 per annum in net profit, after maintenance and operational costs for the combined site, including the toilets. Transfer of Stac Pollaidh car park would forfeit potential profits if chargeable parking were introduced – estimated in the region of £2,000, per annum. Potential income is outlined in sections 4 and 5 of the report.
- 3.3 An officer Asset Transfer officer group including representatives from Legal, Finance, Property and Communities and Place has considered and scrutinised the CAT Requests and supporting evidence. ECOs in the Strategic Asset Management Group support the recommended community asset transfers. The requests are recommended to proceed as the wider community benefits would outweigh market rental receipts or potential income from operation of the sites by the Council. Benefits are outlined in the report.
- 3.4 **Legal implications:** Community Asset Transfer (CAT) is a legislative process set out in the Community Empowerment Act. Public bodies have the right to refuse a CAT application on the grounds that greater community benefit will arise from current or alternative use. However, community bodies have the right of review, first to the public body and then by appeal to Scottish Ministers.
- 3.5 **Community Impacts** (Equality, Poverty and Rural): Demonstrating community support for the proposed CAT is a crucial element to each asset transfer request. This is set out in each of the CAT assessments below. There are not considered to be any adverse implications from the CAT request contained in the paper.
- 3.6 One of the Council's key strategic priorities within its Corporate Plan is:
Work to invigorate local democracy and put our communities at the heart of the design and delivery of services at a local level. We will also develop the capacity of communities to decide and deliver their local priorities.
This is supported by a number of outcomes targeted at increasing engagement, increasing and encouraging community led and run services and involving more people in local decision making. The CAT programme contributes to this strategic priority.
- 3.7 **Climate Change / Carbon Clever and Gaelic Implications** - There are not considered to be any implications associated with this transfer.
- 3.8 **Risk implications:** although any CAT assessment considers sustainability, there are risks that any group could fail in the future or choose to dispose of the transferred asset. The economic development burden contained within the terms of transfer helps protect the Council, and public money, against this and the Community Empowerment Act

provides a clause which stipulates how dissolution must be dealt with to ensure any transferred asset remains in community hands, for the benefit of the community, in the event of an organisation ceasing to exist.

4. Lease of Tougal car park and public toilets to Road to the Isles Facilities Group

4.1 Background

4.1.1 Road to the Isles Facilities Group (SCIO) request a lease of Tougal toilets and car park, for at least twenty years in duration, at no annual charge. This is to redevelop and extend the existing toilets and car park (currently 17 cars and 5 motorhomes), by providing 53 additional car parking spaces across land owned by Highland Council and Traigh Estate. Anticipated profits from chargeable parking are proposed for local reinvestment by the group.

4.1.2 Market rental value of the land is £3,250 p/a, restricted to community use for toilet provision and chargeable parking.

4.1.3 Following the Council's recent changes to governance of CATs, requests such as this, which relate to an asset with a market rental value of less than £10,000 pa, will ordinarily go to Area Committee for a decision by local Members. In this case, the Area Chair has agreed the request should be decided upon by strategic committee, due to timing pressures for the project to commence.

4.2 Summary of CAT Assessment

4.2.1 **Community Benefit:** Development of improved and expanded tourist infrastructure shows clear benefits to not only the local economy, but also social and environmental wellbeing – by alleviating some of the pressures brought to the area by large numbers of visitors. In recent years, this has included complete blockages to the road network, due to extensive road-side parking. Proposals include development of infrastructure required to improve traffic management (53 new bays and introduction of chargeable parking); improvements to toilet provision, path network and accessibility of Morar Sands; investment of profits from the toilets and parking in employment of an area ranger by the group, to engage with visitors and seek to deter nuisance behaviour.

4.2.2 **Capacity to deliver:** The group already operates two former Highland Council toilets in Mallaig and at Traigh Beach under leases agreed through the CAT process. Approximately £0.5m in grant aid for capital development was secured by the group for facilities which they developed at these sites.

4.2.3 **Community support:** Neither letters of support, nor public representations were received. However, the request itself has arisen from collaboration across neighbouring Community Councils and with local elected Members of Highland Council, as part of the B8008 Working Group, which identified the Tougal site as a priority for investment in infrastructure across the area. Wider awareness raising and engagement on the proposals has been carried out through social media.

4.2.4 **Sustainability:** The group has prepared plausible financial forecasts for operation of the toilets and car park, which are based on information from Council services on potential income and actual operating costs.

4.2.5 **Resourcing:** Having already secured Coastal Communities Funding of £100k, 88% of projected funds for the overall capital works are already in place. Elements relating to the CAT request are fully funded. Under current Council operation, toilets and parking (if charging were to be introduced) are projected to generate up to £3k pa in net profit, after maintenance and operation of the combined parking and toilets. Following the proposed expansion of car parking onto additional land owned by the estate, the Facilities group project annual profit of up to £22,500, earmarked for employment of a local 'ranger', to discourage nuisance behaviour and promote access to the area.

4.3 **Overall Summary**

4.3.1 The benefits the Facilities Group propose will arise from CAT of the asset are based on robust information. Reductions to road congestion, littering and human waste from improved toilet and parking provision would significantly benefit social and environmental wellbeing locally. Governance and financial arrangements are well evidenced and appear sustainable. Approval of the CAT is therefore regarded as likely to lead to value for money, in terms of benefit to the local community; not only the development of infrastructure to receive visitors, but their wider impact. These wider benefits to the local community extend beyond the improvement of facilities for visitors, to the positive impact these facilities will have in alleviating pressure from large numbers of tourists on a fragile, remote community. The proposal has been evaluated and the scores suggest that the request should be **agreed:**

Community Benefit: strong

Capacity to deliver: very strong

Community support: moderate - strong

Sustainability: strong

Resourcing: strong - moderate

4.4 **Recommendation**

Lease of the Tougal car park and public toilets to Road to the Isles Facilities Group. Terms of the transfer would include:

- A 25-year, registered lease offered for no annual charge.
- The lease will be restricted to community use, including provision of public toilet facilities and chargeable parking.
- The lease will be on a Full Repairing and Insuring basis (the tenant will be responsible for maintenance and insurance).
- Evidence of Planning approval for the proposed development.
- Evidence of security of tenure over additional land adjoining the car park, as required for the proposed development.
- Road to the Isles Facilities Group covers all reasonably incurred property and legal costs associated with the asset transfer process – both the Council's and its own.
- Any transfer will be subject to existing burdens / conditions in the Council's title to the property (e.g. 3rd Party access rights, etc.). The Council may also impose further burdens / conditions if they consider this expedient (e.g. economic development burdens, etc). The Council will only transfer property for which it has title to do so.
- Any other terms to be agreed by the Executive Chief Officer Communities and Place in consultation with the Chair of Communities and Place Committee.

5. Lease of Stac Pollaidh car park to Outdoor Access Trust for Scotland for £1 per annum.

5.1 Background

5.1.1 Outdoor Access Trust for Scotland (OATS) request a 25-year lease of Stac Pollaidh car park for £1 pa. This is to facilitate improved visitor access to the mountain, by development of toilets and dedicated parking for at least 65 vehicles, signage and interpretation boards, viewing points and maintenance of the adjoining hill path. The proposed development would combine land leased from both the Council and the adjoining estate to enable development of tourist facilities on a suitable scale. OATS' proposal has arisen in response to community-led efforts to facilitate infrastructural investment necessary to alleviate some of the recent negative social and environmental impacts arising from growing numbers of visitors to the area.

5.1.2 Market rental value of the land has been estimated at £2,000 p/a, restricted to community use for chargeable parking.

5.1.3 Following the Council's recent changes to governance of CATs, requests such as this, which relate to an asset with a market rental value of less than £10,000 pa, will ordinarily go to Area Committee for a decision by local Members. In this case, the Area Chair has agreed the request should be decided upon by strategic committee, due to timing pressures relating to fundraising required to secure project delivery.

5.1.4 OATS is not a "community-controlled transfer body," in terms of the Community Empowerment Act and therefore this request is not eligible as a Community Asset Transfer. The request is, however, being considered within the CAT *process*, for two reasons:

- OATS is a charitable company with a focus on delivering community benefit (explicit governing objectives relating to public benefit from enjoyment of an effective outdoor access network and associated visitor facilities);
- As for CAT Requests, Disposal of Land by Local Authorities (Scotland) Regulations require any request for transfer at below market value to evidence community benefit of a level commensurate with the level of discount requested.

5.2 Summary of CAT Assessment

5.2.1 **Community Benefit:** While OATS' national programme of activity seeks to improve public access to scenic mountains, such as Stac Pollaidh, the proposed tourist facilities are also explicitly motivated to benefit the local community by reducing extensive nuisance caused by roadside parking, littering and anti-social toileting. Once complete, the tourism facilities are also anticipated to provide part-time employment of two seasonal staff.

5.2.2 **Capacity to deliver:** Group governance is robust and the application for transfer well-articulated and evidenced. OATS has also recently overseen successful development and operation of a similar tourism infrastructure scheme at Fairy Pools on Skye, in collaboration with the local community. The Stac Pollaidh project will seek to replicate this successful approach.

- 5.2.3 **Community support:** Letters of support have been provided by the Community Council and local tourism association. These reflect OATS' constructive approach to local engagement - developing the proposal in collaboration with key community groups, Highland Council and the local estate. A project steering group has been formed, with representation from the Community Council, tourism association and community development company. The project has support in principle from Polly Estate, which owns adjacent land onto which the car park would be extended to realise improvements of a scale necessary to respond to local pressures.
- 5.2.4 **Sustainability:** Clear proposals for the operation and maintenance of the car park are in evidence and supported by plausible five-year financial projections and outline business plan. OATS anticipate a significant net operating profit (c. £119k over 5 years), following redevelopment, which the Company propose to reinvest in both the local path network and OATS' national programme of access projects. OATS has offered Highland Council a board position, which may facilitate a Highland 'perspective' in future governance of the asset.
- 5.2.5 **Resourcing:** Being at an early stage of project development, no funds have yet been secured for the proposed capital project, which is estimated to require up to £1m of investment (including work on the path network). However, plausible sources of grant aid have been identified, including Round 4 of the Rural Tourism Infrastructure Fund, for which applications are administered by the Council on behalf of Visit Scotland. OATS has a track record of successful fundraising for capital projects and has also identified funding for initial project development costs, including the use of some of its own unrestricted reserves.

5.3 Overall Summary

- 5.3.1 The benefits the Facilities Group propose will arise from the CAT of the asset are based on robust information. Reductions to road congestion, littering and human waste from improved toilet and parking provision would significantly benefit social and environmental wellbeing, locally. These wider benefits to the local community extend beyond the improvement of facilities for visitors, to the positive impact these facilities will have in alleviating pressure from large numbers of tourists on the road network, natural environment and local community. Realisation of this benefit to the area currently depends on the coordinating role of OATS; unlocking security of tenure over additional land from the adjoining landed estate; and providing project governance with appropriate guiding input from a steering group of community representatives.
- 5.3.2 Governance and financial arrangements are well evidenced and appear sustainable. Benefits arising from transfer and the associated development appear both robust and demonstrable value for money, in terms of potential reduction to recent negative impacts on social and environmental wellbeing associated with large numbers of tourists to the area. The proposal has been evaluated and the scores suggest that the request should be **agreed**:

- 5.3.3 *Community benefit: strong*
Capacity to deliver: very strong
Community support: strong
Sustainability: very strong
Resourcing: moderate

- 5.4 **Recommendation Lease of Stac Pollaidh car park to Outdoor Access Trust for Scotland for £1 per annum, if asked.** Terms of the transfer would include:

- A 25-year, registered lease.
- The lease will be restricted to provision of car parking.
- Evidence of security of tenure over additional land adjoining the car park, as required for the proposed development.
- In the event that extended parking is not developed at the Stac Pollaidh site within two years of conclusion of the asset transfer, the landlord reserves the right to terminate the lease.
- The lease will be on a Full Repairing and Insuring basis (the tenant will be responsible for maintenance and insurance).
- Evidence of Planning approval for the proposed development.
- Outdoor Access Trust for Scotland covers all reasonably incurred property and legal costs associated with the asset transfer process – both the Council's and its own.
- Any transfer will be subject to existing burdens / conditions in the Council's title to the property (e.g. 3rd Party access rights, etc.). The Council may also impose further burdens / conditions if they consider this expedient (e.g. economic development burdens, etc). The Council will only transfer property for which it has title to do so.
- Any other terms to be agreed by the Executive Chief Officer Communities and Place in consultation with the Chair of Communities and Place Committee.

6 Acharacle Community Centre – Terms of Economic Development Burden

6.1 At its meeting of 19th of August 2020, the Council's Community & Place Committee agreed to transfer Acharacle Community Centre to Acharacle Community Company. The Community Company has successfully secured funding for purchase and project development costs from the Scottish Land Fund (SLF) for the approved CAT to upgrade and safeguard continuation of the Centre. During conveyancing, SLF funding for purchase was found to be conditional on no real burden of more than five years in duration being imposed on title to the property. To enable the purchase to proceed with support from SLF, the Community Company requested that the Economic Development Burden agreed as a condition for CAT be limited to five years in duration.

6.2 Officers from Policy, Property Estates and Legal met to consider the request. The request was deemed reasonable in this case because of a pre-existing burden which preserves community use contained within the title deed of the land; capital receipt achieved for the Council from transfer; and support from the local community, Members and the strategic committee. The request has no negative impact on the surrounding area or other Council assets.

6.3 The Committee Chair, along with the Executive Chief Officer of Communities and Place, approved this amendment under the terms of the initial transfer, given that it is a minor adjustment to the original request. It was agreed the amendment would be reported to the next sitting of this committee.

6.4 Recommendation

Members are asked to note the decision by the Chair of Communities and Place and Executive Chief Officer Communities and Place to **agree to vary terms of the Economic Development Burden within the previously agreed asset transfer of Acharacle Community Centre; limiting it to 5 years in duration. This was agreed as part of the terms of transfer.**

Date: 16/04/21

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