

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE – 4 JUNE 2024

CONSULTATION OUTCOME AND NEXT STEPS – DISPOSAL OF INCH PAVILION AND BOWLING GREEN, CROFT ROAD, MONTROSE

REPORT BY GRAEME DAILLY, DIRECTOR OF INFRASTRUCTURE AND ENVIRONMENT

1. ABSTRACT

- 1.1 This report outlines the representations made in response to the formal consultation undertaken by the Council on the disposal and change of use of Common Good Property. It asks Members to have regard to these representations and thereafter, to agree to proceed with the disposal of Inch Pavilion and Bowling Green at Croft Road, Montrose, subject to the consent of the court.

2. ALIGNMENT TO THE COUNCIL PLAN AND COUNCIL POLICIES

- 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. RECOMMENDATIONS

- 3.1 It is recommended that the Committee:

- (i) notes, considers and has regard to representations made in response to the formal consultation carried out in accordance with section 104 of the Community Empowerment (Scotland) Act 2015 as detailed in this report and appendices,
- (ii) notes that any sale of Inch Pavilion Bowling Green, Croft Road, Montrose cannot proceed without the court firstly granting consent to the disposal of the common good asset; and
- (iii) agrees and authorises the Director of Infrastructure and Environment, subject to the consent of the court being obtained, to proceed with and conclude the sale of the Inch Pavilion Bowling Green, Croft Road, Montrose to Montrose Port Authority for the price of £201,750 in accordance with Report No. 296/23 approved at Policy & Resources Committee on the 24 October 2023, without further reference to Committee.

4. BACKGROUND

- 4.1 The Inch Pavilion was declared surplus and was subsequently offered for sale. The details of the offers received and the options appraisal process to select the preferred bidder are contained in Report No. 296/23 approved by the Policy & Resources Committee on 24 October 2023.
- 4.2 Following the meeting of the Policy and Resources Committee on 24 October, a formal (statutory) consultation process was undertaken in relation to the proposed sale of the site in accordance with the Council's obligations under s 104 of the Community Empowerment (Scotland) Act 2015 (the "2015 Act"). Report No. 296/23 noted that if the consultation resulted in unresolved negative responses to the proposal a further report would be brought to Committee to give consideration and regard to representations. This report has been submitted following the receipt of a number of unresolved negative responses. This report seeks to address and resolve these responses in order for Committee to make a decision.

5. CURRENT POSITION

- 5.1 Where a local authority is considering disposing of common good property or changing the use to which common good property is put, a local authority must carry out a consultation in accordance with Section 104 of the 2015 Act. A local authority is obliged to have regard to representations made in response to the consultation before deciding whether or not to dispose of or change use of common good property.
- 5.2 The formal consultation on the Council's proposed disposal of the site to Montrose Port Authority for the price of £201,750 commenced on 7 November 2023 and closed on 15 January 2024. As statutory consultees, Ferryden & Craig Community Council and Montrose Community Council were also notified directly of the public consultation. Details of the consultation process are provided in **Appendix 2**. As well as asking for representations on the Council's proposals, the consultation also invited comments. Local elected members were informed on 7 November that the formal consultation had commenced.
- 5.3 In total there were 26 individual responses to the formal consultation, with 3 supporting the proposal, 20 not supporting the proposal and 3 generally neutral and/or requesting more information.
- 5.4 All comments submitted as part of the consultation are included in full in **Appendix 2** with any content identifying the persons submitting the response removed. Members are required to consider and have regard to all of the responses received. Key themes have emerged from some of the representations made in response to the formal consultation. These are summarised in Col. 1 of the Table in **Appendix 2**. Col. 2 of the Table provides factual clarification in response to the points made under these themes and aims to inform Members in their decision-making having regard to all of the representations.
- 5.5 The majority of the responses did not support the preferred option of selling the property to Montrose Port Authority. The concerns raised in these responses have been reviewed, and clarifications and responses addressing the key themes are provided in **Appendix 2**. Having due regard and consideration to the representations, Officers consider that concerns raised can be addressed and resolved, as detailed in Col. 2 of the Table and there is no requirement to amend the Options Appraisal. This is on the basis that there are no new matters raised that affect the objectives that were set, the weighting given to objectives, the rationale for weightings, or the overall scoring of the options. The objectives, weightings and rationale for weightings is set out in the table contained in **Appendix 4**.
- 5.6 The preferred option, i.e. the sale of the site to Montrose Port Authority (which was the highest scoring option from the Options Appraisal) therefore remains the highest scoring option and is still considered to be demonstrably consistent with the Council's statutory duties, the Council Plan and Community Plan as set out in section 5 of Report No. 296/23. Therefore, having considered and having due regard to all representations, Officers recommend that the Council proceeds with the sale of the site to Montrose Port Authority, subject to obtaining consent of the court. Notwithstanding this recommendation, Members are advised that the Council is not required or obliged to accept any offer relating to the sale of the site and may decide not to dispose of the property at this time.

6. PROPOSAL/NEXT STEPS

- 6.1 Having regard to representations made in response to the formal consultation and the information set out in this report and its Appendices, Members are asked to consider if they wish to proceed with the disposal of the site.
- 6.2 In making their determination, Members must note the Options Appraisal information previously provided in Report No 296/23 and contained in **Appendix 3 (EXEMPT)**. The process ensures that the reasons for choosing a particular option are well-informed and are clearly articulated and that they address among other things, the need to secure best value in the use of Council assets including land, buildings and financial resources.
- 6.3 As set out in section 5.7 of Report No 296/23, if Members wish to proceed with the disposal, the Council must apply to the court for authority to dispose of the common good asset. The application to the court would fall within the delegated powers of the Director of Legal, Governance and Change. Based on previous experience 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.
- 6.4 All four elected members for the Montrose and District ward were consulted and two conveyed their support with the recommendations of this report, while two conveyed they did not support.

7. FINANCIAL IMPLICATIONS

- 7.1 The disposal of the site to the preferred bidder, Montrose Port Authority, will generate a capital receipt of £201,750 for Montrose Common Good. This offer was not the highest bid however following the Option Appraisal the offer received from Montrose Port Authority was the highest scoring option. As noted in Report No 296/23, whilst Montrose Port Authority's bid was not the highest consideration offered it does exceed the valuation which has been given by a suitably qualified valuer and accordingly constitute "best consideration" as that term is defined in section 74(2E) of the Local Government (Scotland) Act 1973. Montrose Port Authority's bid would also, regardless of whether it constituted best consideration, satisfy the requirements of Regulation 4 of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 which permit 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. In addition, as outlined in Report No 296/23, the proposed disposal is also consistent with:

- (i) the Council's duties under s.1 of the Local Government in Scotland Act 2003 and the Best Value Guidance issued by the Scottish Ministers under s.2 of that Act; and
- (ii) the Council Plan and the Community Plan

As noted in section 5.5 above, having regard to consultation responses, Officers consider there to be no new matters raised that affect the objectives that were set, the weighting given to objectives, the rationale for weightings, or the overall scoring of the options as part of the options appraisal process.

- 7.2 If sold, there will be a reduction in future years maintenance and/or improvement costs to the building and surrounding land, which are currently funded from the Montrose Common Good.
- 7.3 In accordance with Report No 138/21 - 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. Assuming that there will be capacity within our own in-house legal team to progress the court procedure, it is estimated that legal costs would be in the region £1,500 – £2,500 plus outlays (such as court lodging fees etc). This would be on the basis that there are no complications with the court process. If the legal work is required to be outsourced, the legal costs would likely be higher.

8. RISK MANAGEMENT

- 8.1 The risks associated with each option are contained in **Appendix 3 (EXEMPT)**. In addition to the risks identified against each option taking the request for disposal of the Common Good asset to court will result in the opportunity for challenge and possible refusal. This will be mitigated by the processes that the Council has employed to date regarding the disposal of the site.

9. ENVIRONMENTAL IMPLICATIONS

- 9.1 There are no environmental implications directly affecting the Council arising from the recommendations of this Report

10. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY

- 10.1 An Equality Impact Assessment has been carried out and is contained in **Appendix 1**.

11. CONSULTATION (IF APPLICABLE)

- 11.1 The Directors of Vibrant Communities & Sustainable Growth, Finance and Legal, Governance & Change have been consulted in the preparation of this report.

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

- 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
- Policy & Resources 24/10/23 - Report No. 296/23 – Option Appraisal-Inch Pavilion and Bowling Green, Croft road, Montrose

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List of Appendices:

Appendix 1 – Equality Impact Assessment

Appendix 2 – Details of Consultation

Appendix 3 – Options Appraisal (EXEMPT)

Appendix 4 – Objectives, weightings and rationale for weightings