

## **Community Asset Transfer Request: St David's Brass Band SCIO**

**Report by Kevin Anderson, Executive Director, Place**

### **1 Purpose of Report**

The purpose of this report is for members to consider the Community Asset Transfer (CAT) request (**see Appendix 1**) made by St David's Brass Band, a Scottish Charitable Incorporated Organisation (SCIO), for the transfer in ownership of Vogrie Hall and adjacent ground at 33 Vogrie Road, Gorebridge, EH23 4HH from the Council to the Band. The extent of the property is shown In Appendix 2.

### **2 Background**

#### **2.1 Community Empowerment Act (Scotland) 2015**

In deciding whether to agree to or refuse a CAT request, the Council must consider the following:

- (a) the reasons for the request;
- (b) any other information provided in support of the request;
- (c) whether agreeing to the request would be likely to promote or improve:-
  - economic development
  - regeneration
  - public health
  - social wellbeing
  - environmental wellbeing, or
  - whether agreeing to the request would be likely to reduce socio-economic inequalities
- (d) any other benefits that might arise if the request were agreed to;
- (e) how the request relates to the authority's duties under Equalities Legislation; and
- (f) any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request.

In reaching its decision, the Council must compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request; another proposal made by the Council; continuing the existing use or disposal on the open market.

As well as assessing the benefits which the proposed CAT may deliver the Council must also assess whether the community transfer body is able to successfully deliver the project, and make it sustainable.

Importantly, the Act requires the Council to agree a CAT request unless there are reasonable grounds for refusing it.

A key part of the Council's financial strategy is the rationalisation of land and buildings. Council policy is to consider Asset Transfer for halls and pavilions that meet approved criteria. A transfer will reduce future financial burdens to the Council associated with these facilities.

## **2.2 St David's Brass Band SCIO**

The application is being made by St David's Brass Band SCIO registered charity SC047976. The organisation is run by a Board of Directors. St David's Brass Band SCIO have been operating for 40 years and operating out of Vogrie Hall, for the last 10 years. Membership is open to all of Midlothian and those living in the environs.

## **2.3 St David's Brass Band SCIO request**

St David's Brass Band SCIO have applied for the transfer in ownership of Vogrie Hall together with land surrounding the building as shown in Appendix 1. The proposal is to use the building and land for the provision of an expressive arts centre, with community use for benefit of Midlothian residents and those living in the surrounding area.

The application was received on 4<sup>th</sup> January 2021 and due to the Council providing critical service delivery only as per Covid 19 Guidance the application was not progressed at that time. An email was issued to this effect to the applicants. After due diligence checks, the Council validated the application on 11<sup>th</sup> October 2021. The Council has 6 months from the validation date to make a decision (i.e. by 10 April 2022).

Elected members for Midlothian South and Gorebridge and District Community Council were informed of the community asset transfer request. In addition, a notice of asset transfer request was uploaded to the Council website on 17<sup>th</sup> November 2021 and a hard copy of the document was attached to Vogrie Hall. No representations were made to the Council by the deadline date 14<sup>th</sup> December 2021.

## **3 Assessment**

An assessment panel consisting of officers met on 15<sup>th</sup> December 2021 and completed a scoring exercise against the assessment framework (**see Appendix 3**). The assessment panel requested a more detailed business plan (**see Appendix 4**) to be submitted in advance of the Community Management Assessment Group (CMAG) meeting on 25 January 2022.

Following full consideration of the panel's assessment and updated business plan, CMAG, comprising officers from Communities, Estates, Finance,

Education and Land Resources, recommended that the application be approved for the following reasons:

- the assessment panel scored 40 out of a possible 70 point score (57%) which demonstrates that the proposal is likely to achieve best value and comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, as noted in section 3.2 below;
- St David's Brass Band will provide locally accessible expressive arts and community facilities;
- the asset transfer will provide a saving to the Council in relation to the cost of repairs (£537,493) the building;
- the asset transfer would ensure that the Council's liabilities for maintenance, repair, renewal and insurance would pass to St David's Brass Band SCIO;
- the asset will be available for community use as St David's Brass Band SCIO have secured £275,000 to refurbish the building from grants and a private donation; and
- The transfer of halls and pavilions, of which Vogrie Hall is one, is part of the Council's financial strategy.

In accordance with the Council's approved governance framework, CMAG's recommendation needs to be reported to the committee to determine whether or not to approve the asset transfer.

### **3.2 Valuation and Heads of Terms for Transfer**

The building is not in a fit state of repair for use, therefore it is currently closed to the public and cannot be leased without remedial works being carried out; consequently, the Council is not receiving any income for the premises.

In terms of the 2010 Regulations, the Council may dispose of land for a consideration less than the best that can reasonably be obtained if it is satisfied that the consideration is reasonable, and the disposal is likely to contribute to any of the purposes set out below in respect of the whole or any part of the area of the Council or any persons resident or present in its area. Those purposes are the promotion or improvement of—

- (a) economic development or regeneration;
- (b) health;
- (c) social well-being; or
- (d) environmental well-being.

It is considered that the transfer for a consideration of £1000 is reasonable given the potential financial savings to the Council as indicated above and it is likely to promote or improve economic development or regeneration, health, social wellbeing and environmental wellbeing in Gorebridge and the surrounding area.

Subject to detailed legal terms and conditions, the proposed heads of terms for a transfer in ownership to St David's Brass Band SCIO are:

- the consideration is £1000.00;

- the date of transfer or entry is to be agreed;
- the property shall be used as an expressive arts centre which includes use for band rehearsals, concerts and competitions and providing additional community facilities for the benefit of Midlothian residents and those living in the surrounding areas and for no other purpose unless with the written consent of the Council;
- the Band be required to obtain all necessary statutory consents (including planning consent and building warrants) for any changes to the existing building and the proposed use;
- the Band be responsible for any rates, insurance and utility charges applicable to the property and for keeping the building in a good and substantial repair;
- the Band repair and refurbish Vogrie Hall in accordance with the phased approach detailed in their application within a reasonable time;
- the Band be required to pay the Council 100% of the uplift in value in the event that a planning permission alternative to the proposed use is granted in the future;
- the transfer is subject to the current lease which the Council has with Scottish Power for the substation sited within the curtilage of Vogrie Hall. Scottish Power has a lease with the Council until 13<sup>th</sup> October 2038;
- certain provisions be included as title conditions as outlined in section 4.2 below; and
- the Band pay the Council's in house legal fee of £1000 plus reasonable disbursements.

## **4 Report Implications**

### **4.1 Resource**

St David's Brass Band SCIO has suggested an asset transfer value of £1,000. Members will wish to consider whether the benefits of the proposed expressive arts centre with additional community facilities to be provided to Midlothian residents and the wider community together with the financial savings offers best value.

St David's Brass Band SCIO have secured £275,000 in funding to refurbish the building from grants and a private donation which would not be available through the Council.

### **4.2 Risk**

If the transfer is not agreed, the Council will continue to incur the maintenance, utility and rates for the building. The proposed transfer of ownership would remove maintenance, repair, renewal and reinstatement liabilities for the Council and place these on St David's Brass Band SCIO.

Estates currently value the site at a market value of £100,000.

In the event that members agree the transfer for a nominal consideration of £1000.00 this would need to be subject to a condition that the use of the property must be restricted in all time coming to the sole purpose of an expressive arts centre which includes use for band rehearsals, concerts and competitions and additional community facilities on a not for profit basis. It is

considered necessary in order protect the Council's interest to include this condition in the disposition to be granted in favour of St. David's Brass Band as an economic development burden (EDB) under section 45 of the Title Conditions (Scotland) Act 2003. It is generally accepted that the legislation allows a broad approach to the securing of economic benefit. The asset transfer would promote social inclusion/cohesion in the community which is vital for the economic future of Midlothian.

It is also recommended that as an added protection an overage provision is inserted into the disposition in favour of St. David's Brass Band as the Council is fulfilling its obligation to obtain best value from the transfer of the asset at a nominal value. The provision would provide that in the event of any sale for an alternative use, the Council would receive a 100% of the uplift in value, i.e. the difference in value between the land as an expressive arts and community centre and the value with the proposed change of use.

Lastly, it is also recommended that the EDB provide that the Band shall, in all time coming keep the property (a) in good and substantial condition and repair and will, as and when necessary, reinstate and rebuild the property, all in accordance with good building practice and all applicable legislation and regulation; and (b) insured with a reputable insurance provider against all normal commercial risks to the sight and reasonable satisfaction of the Council.

#### **4.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- Community safety
- Adult health, care and housing
- Getting it right for every Midlothian child
- Improving opportunities in Midlothian
- Sustainable growth
- Business transformation and Best Value
- None of the above

#### **4.4 Key Priorities within the Single Midlothian Plan**

The assessment has confirmed that the asset transfer will deliver improved learning and health outcomes.

#### **4.5 Impact on Performance and Outcomes**

This asset transfer will have a positive impact through co-production on the performance and outcomes of the authority.

#### **4.6 Adopting a Preventative Approach**

This asset transfer will provide limited preventative programmes of activity.

#### **4.7 Involving Communities and Other Stakeholders**

The applicant received 148 responses to a community survey and numerous letters of support from community organisations

The community council and elected members were notified of the application and no objections or queries were raised.

#### **4.8 Ensuring Equalities**

A full Integrated Impact Assessment has been considered for this asset transfer and concludes that it will have no negative impact on equalities. This is included in Appendix 5.

#### **4.9 Supporting Sustainable Development**

This asset transfer will have limited impact on sustainable development in Midlothian.

#### **4.10 Digital Issues**

There are no digital issues arising from this report.

### **5 Recommendations**

It is recommended that the committee agree to transfer ownership in Vogrie Hall and adjacent grounds to St David's Brass Band SCIO subject to:

1. the conditions referred to in sections 3.2 and 4.2 of this report; and
2. such other reasonable legal terms and conditions as the Executive Director, Place may consider necessary in order to protect the Council's interest.

**24 February 2022**

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**Appendix 1:** St David's Brass Band SCIO Asset Transfer Request

**Appendix 2:** Maps of building and land highlighted in yellow

**Appendix 3:** St David's Brass Band SCIO Assessment Framework

**Appendix 4:** St David's Brass Band SCIO revised business plan

**Appendix 5:** Integrated Impact Assessment