

PORTPATRICK VILLAGE HALL – COMMUNITY ASSET TRANSFER - DECISION

1. Purpose of Report

This report outlines the process to be applied when considering the two competing Community Asset Transfer applications for Portpatrick Village Hall, and the various decision options available to Members.

2. Recommendations

Members are asked to:

2.1 note the Procedure to be followed in considering the two competing Community Asset Transfer applications for Portpatrick Village Hall, as detailed at paragraph 3.4;

2.2 consider the recommendations made by Wigtown Area Committee detailed in paragraphs 3.71 and 3.72;

2.3 note the various decision options available to Members following their considerations, as detailed at paragraph 3.8; and

2.4 agree to transfer the Portpatrick Village Hall to one of the Community Transfer Bodies making request, or agree not to transfer to either Community Transfer Body, as detailed in paragraph 3.8.

3. Considerations

3.1 Community Asset Transfer arrangements

3.1.1 The Communities Committee agreed our Council's Community Asset Transfer (CAT) Strategy and Procedure at its meeting in March 2017. Since that date there have been 28 successful CAT applications from across the region – 12 in 2017/18, 11 in 2018/19 and 5 in 2019/20 to date, with another 50 in progress. There is therefore significant experience and expertise in following the Procedure across Elected Members, Officers from across Council Departments, and community groups.

3.1.2 Scottish Government CAT Guidance lays out that where multiple requests for the same property have been received, ideally, all community transfer bodies interested in a particular property would work together to submit a single request, but this is not always practical.

3.1.3 The Scottish Government advises that a CAT application should be judged on the benefits it will deliver within that community. However, authorities may also take into account the impact on other groups, such as any loss of facilities, and any wider benefits or potential for conflict. Members should be satisfied that any recommendation of transfer to a community transfer body will be of advantage to the community at large and will not engender division and conflict within that community.

3.1.4 When considering applications, Members have the following information available to them. This information is available to Members in the appendices and background papers to this report:

- Business Plans & Wigtown Area Committee Reports
- Portpatrick Harbour Community Benefit Society – Appendix One & Two
- Portpatrick Community Development Trust – Appendix Three & Four
- Supporting documentation including:
- Community Representations – Background papers
- Outcomes of the Officer Panel – Background papers
- Officer reports to Wigtown Area Committee – Background papers

3.1.5 Members of this Committee also have available to them the recommendations and reasoning of the local Area Committee for each CAT application, as detailed in paragraphs 3.16 and 3.17.

3.1.6 Our Council's CAT Procedure incorporates the seven Best Value themes in the Scottish Government's Guidance to local authorities:

- Economic Regeneration
- Regeneration
- Public Health
- Social Wellbeing
- Environmental Wellbeing
- Reducing inequalities of outcome
- Any other benefit (dis-benefit) that may arise through the alternative use of the asset.

3.1.7 In terms of benefits and disbenefits, the Community Empowerment (Scotland) Act 2015: asset transfer guidance for local authorities says:

'There are often differences of opinion within communities, and you should not expect unanimous support for a proposal. However, one of the intended benefits of community ownership and community-led activity is to increase community cohesion and resilience. A scheme that attracts substantial opposition and causes division in the community may not have a net benefit. It could also result in fewer people becoming involved or using the services'.

3.2 Background to Portpatrick Village Hall

3.2.1 As part of our Council's 2014/15 Budget Portpatrick Village Hall was identified as one of the ten facilities that should transfer to community management or community ownership as part of the Community Facilities Review in 2014/15.

3.2.2 Since that time, work has taken place within the community, and most recently between 2017-19, with the Community Council, to develop a suitable vehicle for transfer. However, this was not achieved. There has been and continues to be, as evidenced by the

large number of representations significant division within the Community.

3.2.3 Two competing Community Asset Transfer (CAT) applications have been submitted and validated by the Council:

- Portpatrick Harbour Community Benefit Society (PHCBS)
- Portpatrick Community Development Trust (PCDT)

3.2.4 In line with the Scottish Government guidance (see para 3.2) the Community Planning and Engagement Unit has worked with both applicants and attempted to bring them together to submit one joint request. This has to date been unsuccessful.

3.3 Title of the Hall

The Council can only transfer what it has title to. Legal Services advises that the Council has title to the majority of the asset. The plan, detailed in background papers, shows the current extent of Council ownership as delineated by the black line. The title for the small part of the property not owned by the Council, as delineated by the red line, could in future, be finalised with the Keeper of Registers and may need to be negotiated with Portpatrick Bowling Club.

3.4 Procedure for dealing with CAT applications for Portpatrick Village Hall

3.4.1 Consideration of multiple CAT requests for the same asset is rare and therefore advice on how best to proceed has been secured from our Council's Legal Services, Community Ownership Support Service (COSS) and the Development Trusts Association Scotland (DTAS).

3.4.2 Members are also advised that, on advice from DTAS, competing applications that are received in close order should be dealt with evenly and fairly to avoid one group being advantaged by their application being 'proceeded further'. Both applications were considered for recommendation at the same meeting of the Wigtown Area Committee and are now being considered for decision at the same agenda item at this Committee.

3.4.3 The Council's Legal Services are supportive of our approach to dealing with two competing CAT applications at the point of decision making.

3.4.4 The advice of DTAS is as follows:

- An Officer Panel is established to evaluate each application independently.
- Where multiple requests have been received for the same asset, these must be dealt with and progressed sequentially, in date order, by Committee i.e. the date at which the requests have been validated. (The PHCBS request was validated on 7 July 2019 and the PCDT request validated on 1 August 2019 and therefore this is the order they are presented in this report) Both competing requests are to be considered at the same Committee meeting.
- Committee can only agree to transfer the asset to one of the competing Community Transfer Bodies (CTB), or agree not to transfer the asset to either CTB.

Where the decision is not to transfer to either or both CTB's the reasoning for this decision must be made clear.

- Members are asked to consider the benefits and disbenefits that both requests are proposing will be delivered to the local community of Portpatrick.
- Where, following Members consideration, it is agreed by Committee that transferring the asset to either CTB would attract substantial opposition and cause division in the community and dis-benefit to the community, Members can refuse both CAT requests. In cases where CATs are refused the reasons for doing so must be made clear.
- On the advice from DTAS, should Members agree to the transfer of the asset to PHCBS, they cannot then consider the transfer to the PCDT.
- Should Members agree not to transfer the asset to the PHCBS, this CTB then have a right of appeal irrespective of Members any decision on the PCDT request.
- Should the decision be to transfer the asset to PCDT, this can only be done so on the proviso that any appeal potentially put forward on the decision against PHCBS's request is concluded before the transfer of the asset to PCDT can be transacted and concluded. The timescales for the full appeals process can be lengthy.

3.5 Officer Panel Advice

3.5.1 The Officer Panel was established with representation from Community Assets and Community Planning and Engagement and its advice is included in each respective CAT report. Key issues in the assessment were:

- Engagement with stakeholders and the local community
- Vision and impact - the positive difference which would be made for local people
- Sustainability and financial planning

3.5.1 When assessing each Business Plan and any relevant supporting documentation, the Panel gave careful consideration to the content of each respective business plan in order to establish the potential benefits and disbenefits proposed by each applicant in line with the Council's Procedure and particularly the seven Best Value themes detailed in the Scottish Government's advice to local authorities as per paragraph 3.5. The outcomes of the Office Panel in respect of each request are detailed in the appended Area Committee reports. (**Appendix 1 & 3** respectively)

3.6 Current management of the Village Hall

3.6.1 The asset is in the ownership of our Council. Under the current Service Level Agreement Portpatrick Community Council takes bookings, opens, closes and cleans the facility, while our Council continues to take the income and pay for all costs associated with the building.

3.7 Wigtown Area Committee 4 September 2019 - Recommendation & Extract of Minutes

3.7.1 Portpatrick Harbour Community Benefit Society – Recommendation of Wigtown Area Committee:

Decision

NOTED

5.1 the Portpatrick Harbour Community Benefit Society's Business Plan and supporting documentation as detailed in Appendix 1, Appendix 1a and Appendix 1b – 1i of the report for the Community Asset Transfer of the Portpatrick Village Hall;

5.2 the options available to our Council as detailed in paragraph 3.19 of the report;

5.3 **AGREED** to recommend to Finance Procurement and Transformation Committee option 2, that being not to recommend the transfer for reasons of a low score as detailed at 3.12 of the report and also due to the division in the local community and also **AGREED** to recommend Portpatrick Village Hall remains open and in ownership of Dumfries and Galloway Council until an alternative arrangement can be agreed; and

5.4 **FURTHER AGREED** that officers explore the potential for both Portpatrick Harbour Community Benefit Society and Portpatrick Community Development Trust to seek mediation through national organisations to reduce division with the local community.

3.7.2 Portpatrick Community Development Trust – Recommendation of Wigtown Area Committee 4 September 2019:

Decision

NOTED

6.1 the Portpatrick Community Development Trust's Business Plan and supporting documentation as detailed in Appendix 1 and Appendix 1a for the Community Asset Transfer of the Portpatrick Village Hall;

6.2 the options available to our Council as detailed in paragraph 3.20;

6.3 **AGREED** to recommend to Finance Procurement and Transformation Committee option 2, that being not to recommend the transfer for reasons of the exceptionally high number of representations opposed to this community asset transfer request, evidencing division in the local community and also **AGREED** to recommend that Portpatrick Village Hall remains open and in the ownership of Dumfries and Galloway Council until an alternative arrangement can be agreed; and

6.4 **FURTHER AGREED** that officers explore the potential for both Portpatrick Community Development Trust and Portpatrick Harbour Community Benefit Society to seek mediation through national organisations to reduce division within the local community.

3.8. Decision of the Finance, Procurement & Transformation Committee

Following consideration of the information presented by each competing CTB, the recommendations of Wigtown Area Committee and the outcome of the Officer Scoring Panel, Members are now asked to choose from the following options available to them:

Option	Decision
1	Agree a Community Asset Transfer to the Portpatrick Harbour Community Benefit Society for the nominal sum of £1; the asset and all future costs associated with it would therefore sit with the Society from the date of transfer onwards.
2	Agree a Community Asset Transfer to the Portpatrick Community Development Trust is made for the nominal sum of £1; the asset and all future costs associated with it would therefore sit with the Trust from the date of transfer onwards.
3	Agree to not transfer, for reason to be made clear, the Portpatrick Village Hall to either CTB.

3.9 Disposal at less than best consideration

3.9.1 Should the Committee conclude that option 1 or option 2 would be the best way to proceed, the requirements stated in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, would need to be met. These regulations require that where the capital value of the land is greater than £10,000, but the proposal is to dispose of the land for less than 75% of the capital value, our Council is required to:-

- appraise and compare the costs and other disbenefits and the benefits of the proposal;
- be satisfied that the disposal for that consideration is reasonable; and
- agree that the disposal is likely to contribute to any of the purposes of economic development or regeneration; health; social well-being; or environmental well-being; in respect of the whole or any part of the area of the local authority or any persons resident or present in that area (references to “well-being” are to be construed as for the purposes of Section 20 of the Local Government Scotland Act 2003(2)). If the proposed terms of disposal do not meet the criteria for these regulations, then disposal at less than best consideration is not permitted.

3.9.2 Members are advised that both transfer requests have been made at less than best consideration, and for a nominal fee of £1. It is therefore in the gift of Members to consider and apply mechanisms which protects the discount applied to any transfer that is agreed. The ‘clawback’ mechanisms available to Members are:

- A) Where a reduced price for the asset has been agreed in recognition of the benefits to be delivered, the community body may be required to repay the difference in price if the benefits are not delivered; or
- B) Where the price was based on lower valuation for particular use, conditions may be imposed to return any increase in value to the authority, if the use of the property is changed or the expected benefits are not delivered; or

C) If the property itself is important to the community, for example due to its heritage or location, arrangements may be made to enable the authority to recover the property if it is no longer used by the community body for the agreed purpose (or the community body is wound up).

3.9.3 These clawback mechanisms can be achieved by Standard Security and a Minute of Agreement. Members are advised that when considering and applying any clawback mechanism, it must be done with clear justification and not be excessive in nature. Scottish Government Guidance to Local Authorities states at paragraph 14.12 that 'Any mechanism used to protect the relevant authority's interests must be appropriate and proportionate'.

4. Governance Assurance

The Corporate Management Team and specialist national advisers have been consulted in the preparation of this report and are in agreement with the content of the report.

5. Impact Assessment

As this report does not propose a change in policy, the formal adoption of a plan, policy or strategy it is not necessary to complete an Impact Assessment.

Author(s)

NAME	DESIGNATION	CONTACT DETAILS
Jamie Ferguson	Community Development and Empowerment Manager	01387 260247

Approved by

NAME	DESIGNATION
Derek Crichton	Director Communities

Appendices 4

Appendix 1 – Portpatrick Harbour Community Benefit Society Business Plan

Appendix 2 – Wigtown Area Committee Report (Item 5) Proposed Asset Transfer to Portpatrick Harbour Community Benefit Society

Appendix 3 – Portpatrick Community Development Trust Business Plan

Appendix 4 – Wigtown Area Committee Report (Item 6) Proposed Asset transfer to Portpatrick Community Development Trust

Background Papers

Community Asset Transfer Strategy and procedure – Communities Committee 7 March 2017 (Item 6)

<https://dumfriesgalloway.moderngov.co.uk/CeListDocuments.aspx?CommitteedId=148&MeetingId=1028&DF=07%2f03%2f2017&Ver=2>

Conditions on sale or transfer of Council Assets Under the Community Empowerment (Scotland) Act 2015 or For Less than Market Value – Policy & Resources Committee 14

March 2019 (Item 5)

<https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=138&MID=4462>

Portpatrick Village Hall – Community Asset Transfer Procedure – Wigtown Area

Committee 4 September 2019 (Item 4)

[https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=135&MId=4578&Ve
r=4](https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=135&MId=4578&Ve
r=4)

Portpatrick Village Hall Proposed Transfer to Portpatrick Harbour Community Benefit
Society – Wigtown Area Committee 4 September 2019 (Item 5)

[https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=135&MId=4578&Ve
r=4](https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=135&MId=4578&Ve
r=4)

Portpatrick Village Hall Proposed Transfer to Portpatrick Community Development Trust –
Wigtown Area Committee 4 September 2019 (Item 6)

[https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=135&MId=4578&Ve
r=4](https://dumfriesgalloway.moderngov.co.uk/ieListDocuments.aspx?CId=135&MId=4578&Ve
r=4)

[Asset Transfer under the Community Empowerment \(Scotland\) Act 2015 – Guidance for
Relevant Authorities](#)