

PERTH AND KINROSS COUNCIL

Strategic Policy and Resources Committee 10 February 2016
 Perth Common Good Fund Committee 24 February 2016
 Auchterarder Common Good Fund Committee 24 February 2016
 Coupar Angus Common Good Fund Committee 24 February 2016

TRANSFER OF VENUES FOR CULTURE AND SPORT

Report by Senior Depute Chief Executive, ECS
 (Equality, Community Planning and Public Service Reform)

PURPOSE OF REPORT

This report asks the Committee to approve the transfer of management responsibilities for 17 cultural buildings to Culture Perth and Kinross, 2 outdoor education centres to Live Active Leisure and temporary arrangements for the occupation of office accommodation at Dunkeld Road for staff transferring to Live Active Leisure. The principles for the leases of Perth Theatre and Perth Concert Hall will be applied to the leases of these buildings as set out in the SP&R report of 2 December 2015.(Report [557/15](#) refers).

In approving these arrangements, the Committee must be satisfied that the leasing of the buildings to Culture Perth and Kinross and Live Active Leisure will achieve Best Value in using public resources to deliver key community benefits.

The Common Good Committees are asked to note these arrangements for the 5 Common Good properties identified at paragraph 2.11.

1 BACKGROUND / MAIN ISSUES

1.1 On 1 July 2015, Full Council approved the establishment of a new Trust, now named 'Culture Perth and Kinross' (CP&K) to take on the delivery remit for all cultural services currently delivered by the Council, with the exception of the Instrumental Music Service. Report 15/438 refers. With effect from 1 April 2016, CP&K will manage the following venues on behalf of the Council:

- 12 community libraries, including the 4 Community Campus libraries
- The AK Bell Library
- Perth Museum and Art Gallery
- The Fergusson Gallery
- Alyth Museum
- The William Soutar House

1.2 As part of report 15/438, the Council also approved the commissioning of Active Schools and Sports Development services from Live Active Leisure (LAL). This will take effect from 1 April 2016 and will require LAL to manage

the 2 outdoor education centres at Kinloch Rannoch and Blackwater on behalf of the Council.

- 1.3 Office accommodation at Dunkeld Road presently being used by Sports Development will continue to be available to LAL for accommodating these staff if LAL is unable to relocate staff into its own office accommodation in Perth and across localities.

Best value and the duty to achieve best reasonable consideration.

- 1.4 The Council is required to fulfil its statutory duties under Best Value as set out in Section 1 of the Local Government in Scotland Act 2003. Relevant aspects of this duty include:
- Making best use of public resources, including land and property.
 - Being open and transparent in transactions.
 - Ensuring sound financial controls are in place to minimise the risk of fraud and error.
 - Assessing the full financial consequences of decisions at an appropriate level before major financial decisions are taken or commitments entered into.
 - Demonstrating responsiveness to the needs of communities, citizens, customers and other stakeholders, where relevant.
- 1.5 The Council also has a statutory duty in terms of Section 74 of the Local Government (Scotland) Act 1973 to achieve best reasonable consideration when it disposes of its land and buildings, subject to the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which allow the Council to sell or lease land and buildings for less than best consideration where certain purposes can be achieved by doing this.

2 PROPOSALS

- 2.1 It is proposed to transfer management responsibilities to CP&K and LAL for the 19 properties listed at **Appendix 1**. The properties have been valued for transfer at figures which are below the £10,000 threshold which would trigger the requirement to carry out formal appraisals in terms of the Disposal of Land by Local Authorities(S) Regulations 2010. The annual market rent valuations have been assessed at a nominal level to reflect the restricted use for which the buildings are being transferred.
- 2.2 Although formal appraisals are not required, it is considered that the benefits which would accrue to the community as a result of the transfers outweigh any potential loss of financial return. It is also considered that in this case wider community benefits would be achieved by leasing the buildings to CP&K and LAL. Under these circumstances the Council can transfer buildings for nil or nominal rent.
- 2.3 In addition, CP&K is being established to deliver culture services which are currently delivered by the Council. CP&K will be the Council's key delivery

partner for culture services alongside Horescross Arts (HXA). It is therefore necessary to transfer management responsibility of the buildings to the new Trust. As report 15/438 identified, there are substantial non domestic rates savings to be achieved if the Trust takes on management responsibility of these buildings, enabling the Council to protect and make best use of its substantial investment in culture and avoid savings in front-line delivery.

- 2.4 It should be noted that the Council does not have title to Comrie Library but has been in occupation for many years and such rights as the Council has in the building will be transferred to CP&K
- 2.5 Similarly the services transferring to LAL are currently being provided by the Council and services are currently delivered from these venues. LAL is currently the Council's key delivery partner for sport and active recreation services.

Leases

- 2.6 External legal and financial advice has been obtained to determine the most appropriate type of lease for all culture and sport venues. This indicates that a clear apportionment of repair and maintenance responsibilities between the Council (as owner/landlord) and CP&K/LAL (as tenant) is required for the following reasons:
 - Advice from external legal advisers who have assisted in the setting up of arms-length organisations to deliver services for local authorities is that the Council would be almost unique if it transferred properties under full repair and insuring leases. Other councils have retained control of the buildings because they are important council assets, often iconic buildings and are widely used by the public and communities.
 - The Council as owner/landlord has a key role in maintaining the buildings
 - Whilst the Council can reclaim VAT on repair and maintenance works CP&K/LAL cannot.
- 2.7 It is therefore proposed to transfer management responsibilities for 17 culture venues and 2 Outdoor education centres based on the Heads of Terms set out in **Appendices 2 and 3**.
- 2.8 It is further proposed to make available to LAL the office accommodation for staff at Dunkeld Road under a licence to occupy based on the terms set out in **Appendix 4**.
- 2.9 As with HXA (in respect of Perth Theatre and Perth Concert Hall) a separate Property Agreement will set out in detail the respective responsibilities for the Council as owner/landlord and CP&K/LAL as tenants.
- 2.10 In line with the decision made by Full Council on 1 July 2015 in respect of new Trust models, it is proposed to complete a further review in 2017 of Trust models for culture. Meantime it is considered that current financial provision

within Council resources for repair and maintenance of these buildings is sufficient to maintain these buildings to the standards required.

Common Good Properties

2.11 Five of the venues proposed to transfer management responsibilities to CP&K are common good properties. These are :

- The Fergusson Gallery
- The William Soutar House
- Perth Museum and Art Gallery
- Coupar Angus Library (Not Town Hall)
- Auchterarder Library (not Ayton Hall, although the library is on the same site)

2.12 In the case of common good buildings, the Council has obligations in terms of section 15 of the Local Government etc. (Scotland) Act 1994 to administer those having regard to the interests of the inhabitants of the former burghs. Whilst it is noted that ownership of the properties is not transferring, the appropriate Common Good Fund Committees will be apprised of the intention to transfer management responsibilities for the properties to CP&K.

3 CONCLUSION AND RECOMMENDATIONS

3.1 It is recommended that the Strategic Policy and Resources Committee:

- (i) Approves the transfer of management responsibilities for all 19 culture and sport venues and the office accommodation at Dunkeld Road on terms set out in Appendices 2, 3 & 4 and such other terms as may be agreed by the Head of Legal and Governance Services and the Head of Planning and Development.
- (ii) Agrees to the recommendation that transferring the management responsibilities for these properties at a nominal rent is reasonable in order to enable Culture Perth and Kinross to deliver key services on behalf of the Council and to achieve wider community benefits.

3.2 It is recommended that the Perth, Auchterarder and Coupar Angus Common Good Fund Committees note the arrangements to transfer the management responsibilities for the 5 common good properties as set out in paragraphs 2.11 and 2.12 above.

Author

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Approved

Name	Designation	Date
John Fyffe	Senior Depute Chief Executive, ECS (Equality, Community Planning and Public Service Reform)	28 January 2016

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	YES
Corporate Plan	YES
Resource Implications	
Financial	YES
Workforce	
Asset Management (land, property, IST)	YES
Assessments	
Equality Impact Assessment	YES
Strategic Environmental Assessment	YES
Sustainability (community, economic, environmental)	
Legal and Governance	YES
Risk	
Consultation	
Internal	YES
External	
Communication	
Communications Plan	

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 The proposals support the delivery of the Perth and Kinross Community Plan aim for a vibrant and successful area by supporting a local Community group seeking to retain a surplus Council asset as a community facility.

Corporate Plan

- 1.2 The Council's Corporate Plan 2013 – 2018 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:
- i) Giving every child the best start in life
 - ii) Developing educated, responsible and informed citizens
 - iii) Promoting a prosperous, inclusive and sustainable economy
 - iv) Supporting people to lead independent, healthy and active lives
 - v) Creating a safe and sustainable place for future generations.
- 1.3 This report relates to ii), and iii) above.

2. Resource Implications

Financial

- 2.1 There will be a recurring saving to the Council of approximately £332,000 from 1 April 2016 due to the cession of Non Domestic Rate charges attributable to the 17 culture and 2 sport venues for which management responsibility will transfer to CP&K and LAL from April 2016.
- 2.2 It is considered that current financial provision within Council resources for repair and maintenance of these buildings is sufficient to maintain these buildings to the standards required.

Asset Management (land, property, IT)

- 2.3 Property Services and Estates have contributed to the preparation of this report. The disposal appraisals were completed with input from Legal Services in capacity as Assessment officer, Legal and Estates.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 This section should reflect that the proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:
 - (i) Assessed as **not relevant** for the purposes of EqIA

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 This section should reflect that the proposals have been considered under the Act and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Legal and Governance

- 3.5 The Head of Legal and Governance Services has been consulted in the preparation of this Report. Officers from Legal Services have participated in officer working groups.

Legal Services have advised throughout on the legal implications of the proposal, including the requirements of the duty to achieve Best Value.

4. Consultation

Internal

- 4.1 The Director (Education & Children's Services), the Director (Environment), the Head of Finance and the Head of Legal and Governance Services have been consulted in the preparation of this report.

5. APPENDICES

- Appendix 1 List of Properties.
- Appendix 2 Culture Properties Heads of Terms – Draft
- Appendix 3 Outdoor Education Centres Heads of Terms – Draft
- Appendix 4 Dunkeld Road Heads of Terms - Draft

LIST OF 19 PROPERTIES

	Ownership	Market Rental Value [per annum]	Restricted Use Value
Culture Perth and Kinross			
Libraries			
A K Bell Library	PKC	£1	£1
Alyth Library	PKC	£3,500	£1
Auchterarder Library	PKC	£7,500	£1
Birnam Library	Birnam Arts	£3,000	£3,000
Blairgowrie Library	PKC	£1	£1
Breadalbane Library	PKC	£1	£1
Comrie Library	Unkown	£3,500	£1
Coupar Angus Library	PKC	£1	£1
Loch Leven Library	PKC	£1	£1
North Inch Campus Library	PKC	£1	£1
Pitlochry Library	PKC	£1	£1
Scone Library	PKC	£9,000	£1
Strathearn Library	PKC	£1	£1
Museums and Galleries			
Alyth Museum	PKC	£1	£1
The Fergusson Gallery	PKC	£1	£1
Perth Museum & Art Gallery	PKC	£1	£1
Soutar House	PKC	£6,000	£1
Live Active Leisure			
Outdoor Education Centres			
Blackwater	PKC	£5,400	£1
Kinloch Rannoch	PKC	£5,400	£1

Main Heads of Terms for Libraries & Museum/Art Galleries

Lease Duration: -	30 years
Date of Entry:	1 st April 2016
Rent: -	£1 per annum, if asked.
Use: -	The subjects shall be used for the provision of public library services and associated programmes, visual and applied arts, heritage and culture services.
Rates: -	The Tenant shall be responsible for the payment of rates, or for applying for rates relief, as appropriate.
Maintenance: -	<p>The Landlord shall be responsible for keeping the subjects in a good state of condition and repair.</p> <p>The Tenant shall be responsible for all internal decoration and minor repairs.</p> <p>The Landlord and Tenant shall enter into a Property Agreement incorporating a Schedule of Maintenance Responsibilities.</p>
Insurance: -	<p>The Landlord shall be responsible for insuring the Building.</p> <p>The Landlord shall be responsible for insuring the contents within the Museum/Art Gallery as detailed in the Service Level Agreement.</p> <p>The Tenant shall be responsible for insuring the contents within the Library as detailed in the Service Level Agreement.</p> <p>The Tenant shall be responsible for obtaining Public Liability Insurance and Occupiers Liability Insurance for no less than £5,000,000.</p>
Alienation: -	The Tenant shall not assign, sub-let or grant securities over the leased subjects without the consent of the Council as Landlord. However, the Tenant shall be permitted to enter into Hire agreements with third parties.
Termination:	The Landlord, at their sole discretion, may call upon the Tenant to remove any buildings or erections constructed by the Tenant on the Subjects at the expiry of the Lease.

- Outgoings; - The responsibility for payment of utility charges and connection charges in respect of the subjects shall be detailed in the Property Agreement.
- The Tenant shall be responsible for keeping the subjects in a clean and tidy condition, the removal of all refuse and for all operational staffing costs.
- Alterations: - The Tenant shall not to carry out alterations to the leased subjects without the prior consent of the Landlord and all necessary statutory and other consents.
- Statutory Conditions: The Tenant shall comply with all Acts of Parliament, Statutory Notices and Legislation.
- Other Conditions: Such other terms and conditions as the Head of Property, the Head of Planning and Regeneration and the Head of Legal and Governance Services consider appropriate.
- Variations to Terms:
- Community Campus: The Schedule of Maintenance Responsibilities agreed in the Property Agreement shall reflect those set out in the Public-private Partnership Agreement.
- Birnam Institute: The agreement of Let between the Birnam Institute and PKC will be assigned to Culture Perth & Kinross (CPK) on the same terms and conditions. CPK shall enter into any further agreements with the Birnam Institute.

Main Heads of Terms for Outdoor Centres

Lease Duration:	30 years
Date of Entry:	01 April 2016
Rent:	The tenant shall pay an initial Base Rent of £1 per annum. After the end of Year 3 a profit sharing agreement will be entered into at a percentage share of the Net profit, as detailed in the annual accounts for the property, to be agreed between the parties.
Use:	The subjects will be used for the provision of hostel facilities in line with the current use as set by Education and Children Services and for no other purpose whatsoever. In the event that the Tenant ceases to use the subjects for the approved use then the lease will terminate with immediate effect and the Subjects shall revert to the Landlord.
Rates:	The Tenant will be responsible for the payment of rates or for applying for rates relief, as appropriate
Maintenance:	<p>The Landlord shall be responsible for keeping the subjects in a good state of condition and repair.</p> <p>The Landlord will be responsible for the soft and hard landscaping within the Subjects.</p> <p>The Tenant shall be responsible for all internal decoration and minor repairs.</p> <p>The Landlord and Tenant shall enter into a Property Agreement incorporating a Schedule of Maintenance Responsibilities.</p>
Insurance:	<p>The Landlord shall be responsible for insuring the Building.</p> <p>The Landlord shall be responsible for insuring the contents within the Outdoor Centre as detailed in the Service Level Agreement.</p> <p>The Tenant shall be responsible for obtaining Public Liability Insurance and Occupiers Liability Insurance for no less than £5,000,000.</p>

Alienation:	The Tenant shall not sub-let the whole or part of the Subjects nor assign the lease of the Subjects in whole or in part. The Tenant will be permitted to enter into a Hire Agreement of the Subjects to third parties and keep the income generated by such Agreements.
Termination:	The Landlord, at their sole discretion, may call upon the Tenant to remove any buildings or erections constructed by the Tenant on the Subjects at the expiry of the Lease.
Outgoings:	<p>The responsibility for payment of utility charges and connection charges in respect of the subjects shall be detailed in the Property Agreement.</p> <p>The Tenant will arrange for, and pay for, the removal of all rubbish and refuse.</p> <p>The Tenant will be responsible for all operational costs including staff.</p> <p>The Tenant will be responsible for all costs involved in marketing the Subjects.</p>
Alterations:	The Tenant will require the Landlord's prior written consent to carry out any alterations or additions or extensions on the Subjects.
Statutory Conditions:	The Tenant will comply with all Acts of Parliament, Statutory Notices and Legislation.
Other Consents:	Such other terms and conditions as the Head of Property, the Head of Planning and Regeneration and the Head of Legal Services consider appropriate.
Services Connections:	The Landlord will be responsible for all water and sewerage, electricity, gas and telephone connections.
Other Conditions:	Such other conditions as might be agreed between the parties The Landlord and the Tenant shall enter into a Property Agreement incorporating a Schedule of Maintenance Responsibilities.
Costs:	Each party will bear their own legal and surveying expenses

incurred in connection with the granting of this lease.

Special Note: **These Heads of Terms are not intended to form part of any legally binding contract and are expressly subject to completion of formal legal missives in accordance with Scots Law.**

Ref: Outdoor Centres draft MLH

Date: 02/12/2015

Revision:

PERTH & KINROSS COUNCIL

LICENCE TO OCCUPY

SUBJECT TO PERTH & KINROSS COUNCIL APPROVAL

Subjects:	79 Dunkeld Road, Perth.
Landlord:	Perth & Kinross Council
Landlord's Agents:	Head of Planning & Development Pullar House, Kinnoull Street Perth, PH1 5GD
Landlord's Solicitor:	Head of Legal and Governance Services Blackfriars Development Centre, North Port, Perth, PH1 5LU
Tenant:	Live Active Leisure
Tenant's Solicitors:	To be advised
Lease Duration:	1 year
Date of Entry:	1 April 2016
Rent:	£1 per annum if asked.
Extent of Subjects:	The extent of the subjects are shown outlined in red.
Use:	The subjects will be used as Office accommodation and for no other purpose whatsoever. In the event that the Tenant ceases to use the subjects for the approved use, the lease shall terminate with immediate effect and the subjects shall revert to the Landlord.
Repairs:	<p>The Landlord will be responsible for keeping the subjects in a good state of condition and repair throughout the duration of the lease. Any repairs or improvements will be at the Landlords sole discretion.</p> <p>The Tenant accepts the property as being fit for their purpose and will be responsible for all internal decoration and minor internal maintenance works and repairs.</p>
Insurance:	The Landlord will be responsible for the insurance of the

Building and shall re-charge the Tenant the appropriate premium.

The Tenant will be responsible for insuring the contents within the subjects, as detailed in the Service Level Agreement.

The Tenant will be responsible for obtaining Public Liability Insurance, including occupiers liability insurance for no less than £5,000,000 (Five Million Pounds).

**Ground
Maintenance:**

The Landlord will be responsible for maintaining the garden ground in a neat and tidy condition at all time during the lease.

Alienation:

The Tenant will not assign or sub-let the whole or part of the subjects to another party.

**Right to Early
Termination:**

The Landlord and Tenant have the right to terminate the lease at any time giving the other party a minimum of 2 months prior written notice.

Outgoings:

The Tenant will be responsible for the payment of rates, or for applying for rates relief, as appropriate. The Landlord will be responsible for water and sewerage charges, electricity charges, gas charges standing charges, telephone charges in respect of the leased subjects.

The Tenant will be responsible for, keeping the leased subjects in a clean and tidy condition, the removal of all refuse and the operational staffing costs. The Tenant will comply with all Acts of Parliament, Statutory notices and Legislation.

Other Conditions:

The Tenant shall not carry out any alterations to the property without the prior written consent of the Landlord.

The Landlord & Tenant shall enter into a Property Agreement incorporating a Schedule of Maintenance Responsibilities. Such other conditions which may be agreed between the parties.

Costs:

Each party will bear their own costs incurred with the granting of this lease.

Special Note:

This schedule does not form part of a contract.

Reference;

Cultural Trust Hot's

Date;

8/12/2015