

The background of the slide features a large, light blue watermark of the City of Edinburgh coat of arms. It consists of a shield divided into four quarters: top-left shows a castle tower, top-right shows a stag's head with a cross on its forehead, bottom-left shows a three-masted sailing ship, and bottom-right shows an eagle with wings spread. Above the shield is a crown with four floral motifs. Below the shield is a ribbon with the motto 'ANE FOR A'.

Agenda Item 10

Community Asset Transfer of Bo'ness Cemetery Bothy

Falkirk Council

Title: Community Asset Transfer of Bo'ness Cemetery Bothy
Meeting: Executive
Date: 13 March 2025
Submitted By: Director of Place Services

1. Purpose of Report

- 1.1 The purpose of this report is to consider the full ownership Community Asset Transfer (CAT) of Bo'ness Cemetery Bothy to Bloomin Bo'ness.
- 1.2 The proposals contained within the report align with all of the Council's Strategic Plan priorities of supporting stronger and healthier communities.

2. Recommendations

2.1 The Executive is asked to:

- (1) Agree the full ownership Community Asset Transfer of Bo'ness Cemetery Bothy and yard to Bloomin Bo'ness at the proposed purchase price of £1, reflecting the benefits that will derive from the project;**
- (2) Agree that the Director of Place Services is authorised to prepare and include a condition in the decision notice allowing the Council the option to reacquire the property in line with the circumstances outlined in paragraph 7.16;**
- (3) Agree that the transfer will be subject to any existing burdens or restrictions in the Council's title together with a permanent right of access from the main gate to the premises;**
- (4) Agree, to grant up the sum of up to £10,742.40 from the Enablement Fund to support capital improvements to the building;**
- (5) Note that the assessments undertaken confirm that the proposals are in line with the Council's statutory obligations in terms of the Community Empowerment (Scotland) Act 2015 and The Disposal of Land by Local Authorities (Scotland) Regulations 2010; and**
- (6) Instruct and authorise the Director of Place Services to issue a decision notice and to agree and conclude all necessary legal arrangements to progress the disposal in accordance with Part 5 of The Community Empowerment Act (Scotland) 2015.**

3. Climate Change Implications

- 3.1 The transfer of Bo'ness Cemetery Bothy would have a positive impact on the Council's organisational 2030 net zero target by reducing the emissions generated from electricity, gas and water consumption by 1.3 tonnes of carbon dioxide equivalent, based on 2023 figures.
- 3.2 It is acknowledged that whilst the reduced emissions positively impact the Council's organisational targets, the facility will still generate Co2 emissions that impact the wider area emissions.
- 3.3 The investment proposals by the group include LED Lighting, which will help reduce energy consumption and emissions.

4. Background

- 4.1 Bo'ness Cemetery Bothy is located at Bo'ness Cemetery Bothy, Dundas Street, Bo'ness, EH51 0DG (Appendix 1).
- 4.2 Bloomin Bo'ness group was formed in 2021 as a community led SCIO SC043246
- 4.3 As previously reported, Falkirk Council has too many buildings that are in poor and ageing condition, not energy efficient, expensive to run and underutilised. The Audit Scotland Best Value Assurance Report (January 2022) states the Council 'needs to quickly progress the remaining key actions in the Strategic Property Review (SPR) and take decisions on its property estate to deliver best value.' Elected Members agreed in January 2024, that in the absence of an asset transfer, alternative delivery model or improved financial performance, up to 128 properties in scope of the SPR would close in phases. Prompted by the potential closure of the building as a result of the Strategic Property Review, a group of centre users established a Scottish Charitable Incorporated Organisation (SCIO) known as Bloomin Bo'ness SC043246, with the intention of bringing the facility into community ownership.
- 4.4 This report considers their application to take ownership of the property. As per the Council decision, Falkirk Council withdrew most of its operations from Bo'ness Cemetery Bothy from 1st October 2024 and subsequently have fully vacated the property. Bloomin Bo'ness are now on a Full Repair and Insuring (FRI) Licence for the area occupied from 1st October and this has been extended to cover the full bothy area and the small yard. The FRI licence is an interim measure to keep the property open until the CAT property transaction concludes.

5. Considerations

- 5.1 In taking a decision on a community asset transfer request, the Council must decide whether to agree to or refuse an asset transfer request. In doing so, it requires to consider the benefits that might arise from any other proposal. If the request is agreed to along with those that might arise from any other proposal. It also requires to consider whether the proposal before it will promote or improve:-
 - economic development
 - regeneration

- public health
- social wellbeing or environmental wellbeing or reduce inequalities of outcome which result from socio-economic disadvantage
- any other benefits that might arise

The Council must make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements. The Council must also consider other matters it considers relevant, including:-

- the functions and purposes of the authority
- any obligations that may affect its ability to agree to the request.

Proportionate and appropriate consideration requires to be given to whether the community transfer body is able to successfully deliver the project and make it sustainable, including funding and the capacity and governance of the organisation.

The Council should agree to a request unless there are reasonable grounds for refusing it. Reasons for the Council's decision are to be given to the applicant.

Community Transfer Body

- 5.2 Bloomin Bo'ness is making the request as a Scottish Charitable Incorporated Organisation (SC43246), with a suitable Community led membership and properly formed Board of Trustees, as required by Part 5 of the Community Empowerment Act (Scotland) 2015 (referred to hereinafter as "the 2015 Act").
- 5.3 In terms of Governance, the 2015 Act sets out requirements for Community Transfer Bodies (CTB). Bloomin Bo'ness constitution is consistent with the Scottish Government model SCIO template which is considered to meet the requirements of the legislation and for the Group to enter the proposed ownership arrangement.
- 5.4 The group's charitable purposes are defined in their constitution n advancement of environmental development and improvement within the town of Bo'ness, community engagement, development and education". (See their Constitution, Appendix 2)
- 5.5 The application by Bloomin Bo'ness is considered valid in accordance with the Community Empowerment Act (Scotland) 2015. A full copy of the application is included in Appendix 3.

Transfer Request

- 5.6 Bloomin Bo'ness has applied for full ownership of Bo'ness Cemetery Bothy and associated yard at a discounted price of £1 reflecting the benefits that will accrue from their proposals. The proposed disposal will include a right of vehicular and pedestrian access over the internal cemetery road from Dundas Street.
- 5.7 The District Valuer carried out an independent valuation and has advised that the valuation of the facility is £22,500.
- 5.8 Accordingly, the transaction will fall within the scope of s11 of the Local Government (Scotland) Act 2003 which amends s74 of the Local Government (Scotland) Act 1973 allowing local authorities to dispose of land for less than best consideration but only in certain circumstances.

- 5.9 The Disposal of Land by Local Authorities (Scotland) Regulations 2010 sets out the procedure. This requires the Council, before deciding in favour of such disposal, to appraise the benefits and any dis-benefits of the proposal. The benefits of the proposals and the assessment of these are set out below.

Proposals

- 5.10 Activities: The group wish to progress the redevelopment of the Bo'ness Cemetery Bothy. By seeking full purchase of the building, the bothy will enable the charity to have a safe and secure premises to continue to carry out their present work and to develop future projects within Bo'ness. A Full Copy of the Business Case has been included under Appendix 4.
- 5.11 Infrastructure improvements: To upgrade and improve the property, Bloomin Bo'ness application to the Enablement Fund will be prioritised for energy efficiency measures. The group have asked for PVC door and LED Baton light fittings.

Local Consultation

- 5.12 The Trustees have actively engaged with members of the local community in developing their plans. This has included a Facebook poll that attracted over 2,000 responses which were overwhelmingly positive and supportive. The applicants have also collaborated with the local litter picking group and consulted with CVS Falkirk, Falkirk Council Officers. Further details are set out in section 3.4 of the Business Plan (Appendix 4).

Benefits

- 5.13 This proposal assists with the delivery of the Falkirk Council Plan objective – “More communities taking over the places where they meet” as expressed in the Council Plan 2022-2027, within the objective of “Deliver stronger and healthier communities”. The proposed Ownership Transfer also assists Bloomin Bo'ness to deliver the outcomes of Scottish Government's National Performance Framework objective that “*We live in communities that are inclusive, empowered, resilient and safe*”.
- 5.14 The application form and business plan form (see Appendices 3 and 4) also identify the following key benefits:

Economy: The economy of the area will be enhanced through tourism of the historic town. The operations led from this site will bring more people to the town creating a boost in the town's economy. The group have created an application of their various gardening sites that people can download to help easily locate the groups works. This will contribute to increased footfall for local businesses and amenities in the area and encourage future seasonal visits.

Regeneration: The proposal carries a positive economic regeneration perspective that will be fulfilled by an already successful group. The group plan to create physical improvements within Bo'ness including a community garden and any future innovations that may be initiated. Through its activities the group offers volunteering opportunities, skills development and the improved health and wellbeing for participants.

Public Health: Access to recreational activities such as community gardening are demonstrated by the group. They provide core activities of community gardening which will bring about physical and mental health improvements to the participating persons.

Social Wellbeing: The group will foster community spirit and engagement by encouraging locals in the group's activities. The activities provided by the groups will combat social isolation and provide better physical and mental health outcomes within the area. There is also an effect on non-participants by providing a welcoming and environment for all residents of the town.

Environmental / Climate Change: The activities of the group will be enhanced by using this asset as a place to store, build and socialise equipment for environmental improvements. Their activities are entirely environmental and will improve biodiversity. The group have applied for Enablement Funding to improve the energy efficiency of the building.

Tackling Inequality: The group are clear in their constitutional objectives that all activities are open to any individual who may wish to participate, regardless of their protected characteristics, economic status or other factor.

Enablement Fund

- 5.15 Community Transfer Bodies have the right to apply to Falkirk Council's Enablement Fund for larger capital renewals which support the viability of the CAT for properties identified by the SPR.
- 5.16 Officers recommend that up to £10,742.40 is granted, to allow the following capital improvements to the property.

Item	Amount (up to incl VAT)
LED Baton Lighting	£ 700
PVC External Door and fixtures	£1595
Landscaping / Yard Surfacing Works	£8,447.40
Total	£10,742.40

- 5.17 These figures represent the estimated costs and will be verified through obtaining quotations nearer the time of works proposed to commence. The group will continue to research and apply for third-party match funding to go towards funding these works. If successful, this would reduce the amount of Enablement funding required and the group will inform the Council promptly to allow funds to be reallocated in a timely manner.
- 5.18 The group will be required to undertake an appropriate procurement process by obtaining competitive quotes prior to release of enabling funds in line with the process below.
- 5.19 Following a positive decision notice, the Enablement Funding will only be released once the property transaction is finalised and the building has been transferred by lease or ownership to the group.

- 5.20 The awarding of Enablement Funds will be administered within the SPR team. Groups will procure and manage the works themselves and submit invoices to the SPR team. Invoices will be checked and paid to the groups, who will then be responsible for paying the contractors.
- 5.21 Groups must obtain quotes or estimates that are inclusive of VAT, as the amount agreed by Executive will be final and cannot be increased.

Assessment of Proposals

- 5.22 An assessment has been undertaken in accordance with the Council's process for reviewing CAT applications. This includes a quantitative evaluation to consider the financial benefits of the application, and a qualitative evaluation of the application to consider key elements including links to national and local priorities, community benefits, sustainability and governance arrangements. The Community Asset Transfer Working Group and other relevant officers have provided their input.
- 5.23 This assessment is undertaken to satisfy the Council's statutory obligations under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and Part 5 of the Community Empowerment Act (Scotland) 2015.

Quantitative Evaluation

- 5.24 Volunteer hours: The group has stated that Trustees and Volunteers jointly work 3796 hours a year at a monetary value of £51,824 per annum.
- 5.25 Direct savings to the Council: Upon transfer of the property, an annual revenue saving of £3,378 on running costs will be delivered and reflects savings required associated with the SPR.
- 5.26 It should be noted that the combined value of the group's volunteer hours, (£51,824 annually) and the direct savings to the Council, (£3,378 annually) exceeds the market value of the property to Falkirk Council which is estimated at £25,000

Qualitative Evaluation

- 5.27 The assessment by the Community Asset Transfer Working Group of the business plan and the impacts of the proposed ownership transfer are set out in the Assessment Criteria at Appendix 5.
- 5.28 The group's business plan was judged to be Very Strong
- 5.30 Governance arrangements are strong, and Best Value characteristics are evidenced and contained throughout the overall approach. Related projected benefits are considered robust and there is a clear demonstration of value for money, sustainability of proposals, suitability of uses, governance and effective management.

6. Consultation

- 6.1 Notification of the request was posted on the Community Asset Transfer section of the Council website and in a publicly accessible location near the property. This ensured the public was duly informed about the Community Transfer

Body's intentions and could make representations regarding the Community Asset Transfer request.

- 6.2 The Trustees have undertaken extensive engagement with users and the local community on their proposals.
- 6.3 Officers across services were provided with the opportunity to comment on the proposals and their comments were taken into consideration during the assessment process.
- 6.4 Local members have been advised of the proposals and in advance of Executive a briefing of all Councillors was provided.

7. Implications

Financial

- 7.1 The Community Asset Transfer will deliver the SPR saving of £3,378 associated with the property, as agreed by Council January 2024.
- 7.2 The Community Asset Transfer of the building will also reduce the overall total backlog in maintenance for Falkirk Council and subsequent capital expenditure required. As identified in the condition survey undertaken, the total backlog maintenance is estimated at £30,029.36
- 7.3 The Council in foregoing the capital receipt requires ensuring that there is compliance with s11 of the Local Government in Scotland Act 2003 which amends s74 of the Local Government (Scotland) Act 1973 allowing local authorities to dispose of land for less than best consideration but only in certain circumstances and the Disposal of Land by Local Authorities (Scotland) Regulations 2010. The proposal is following assessment considered to be compliant with benefits of the transfer and the activities proposed greatly outweighing the disbenefit of foregoing the capital receipt.
- 7.4 The Council has to consider whether the Subsidy Control Act 2022 applies. This Act sets out a four limbed test which all must be met for the provisions to apply.
- 7.5 An inventory of equipment being transferred to group will be provided as part of the conclusion of the Community Asset Transfer and will be checked against relevant subsidy control requirements
- 7.7 The Enablement Fund request is contained within the existing SPR financial model and will be provided through the General Services Capital Programme.

Resources

- 7.8 Proposals outlined in the report will be managed within existing Property, Legal, Finance and SPR staff resources.

Legal

- 7.9 Human Resources have been consulted and as the centre is not staffed there are no staffing issues. No employees worked within the building being considered for Community Asset Transfer in this report and therefore no TUPE considerations apply.

- 7.10 In terms of the 2015 Act a Decision Notice must be issued to the group advising of Council's decision to agree or refuse the request, and the reasons for that decision, by 17th June 2025.
- 7.11 Legal documents pertaining to the conveyance to facilitate the ownership transfer of the asset will be required and the CTB has 6 months from the date of the Decision Notice to make a formal offer to the Council.
- 7.12 Both parties will meet their own legal fees and associated costs. The cost of outlays such as copy deeds, property searches, plan reports, coal mining reports, property enquiry certificates and others will be met by Bloomin Bo'ness SCIO

Risk

- 7.13 The facility is in a poor condition and requires further investment. Transferring the asset to Bloomin Bo'ness to invest and develop it will reduce statutory compliance requirements, maintenance and condition costs and reputational risks to Falkirk Council. Financial risks and all responsibilities associated with the property will transfer to Bloomin Bo'ness.
- 7.14 A key risk is that should the asset transfer not go ahead, and in the absence of another asset transfer interest, the facility will close in accordance with Strategic Property Review. This will result in a reduction capacity for the Bloomin Bo'ness Group to perform their regenerative activities in the area.
- 7.15 There is a risk that upon transfer The Bloomin Bo'ness group are unable to manage it properly and it is lost to the community. This is considered a low risk, given the group's established activities and experience and following appraisal by officers there is confidence in their capacity and leadership.
- 7.16 The Scottish Government Guidance on community asset transfer notes that the constitution of a CTB requires to include provision that its surplus funds or assets must be applied for the benefit of the community. A CTB eligible for ownership requires to have provision that on winding up any surplus property, after the satisfaction of liabilities, passes to another charity or community body. This means that any property acquired by asset transfer cannot be used or sold for the private profit of the members of the group. Notwithstanding that, it is proposed that the Council due to the sensitive nature of the property being located within a cemetery retains the option to take the property back in certain circumstances. In the event that (1) the property is to be sold or otherwise disposed of by The Bloomin Bo'ness Group, (2) the Group is wound up or (3) The Bloomin Bo'ness Group no longer use the property for the use proposed by them or a use which is substantially the same, the Council will be entitled to the option of first right of refusal to reacquire the property. Such right to reacquire the property shall be for the same price for which it was transferred by the Council to The Bloomin Bo'ness Group or such other price as is considered reasonable in all of the relevant circumstances by the Director of Place Services. The right of first refusal to reacquire the property shall not, however, operate in the event of a sale, disposal or transfer by/from The Bloomin Bo'ness Group to another charitable body which has objectives which are substantially the same as those of Bloomin Bo'ness and which would result in the property continuing to be used for a use which is substantially the same as the use proposed by The Bloomin Bo'ness Group. It is important to note that external funders to

organisations may seek security for their funding and the Director of Place Services should be authorised to negotiate and, as appropriate, agree such arrangements where they impact on the Council. Any transfer back to the Council would most likely involve discussion with the Office of the Scottish Charity Regulator (OSCR). The property would then be anticipated to be processed in line with Surplus Property Procedures having regard to discussions with OSCR.

Equalities

- 7.17 In line with the approach adopted through the Strategic Property Review an Equality and Poverty Impact Assessment was prepared with reference to the closure of the facility, showing a variety of negative potential impacts.
- 7.18 Approval of the Community Asset Transfer as set out in this report will ensure the facility remains available to local groups and will mitigate any potential impact on Equalities. As a result, the Community Asset Transfer will not disproportionately disadvantage any person or group of persons identified as potentially having a protected characteristic. (See EPIA Appendix 6)

Sustainability/Environmental Impact

- 7.19 A sustainability assessment is not required.

8. Conclusions

- 8.1 Bloomin Bo'ness wish to undertake a community-led transformation of Bo'ness Cemetery Bothy. They are requesting full ownership of the building, at the cost of £1. The group has costed plans for capital works to upgrade the facility including improving energy efficiency and have provided a robust Business Plan including a 5-year financial forecast. (See Appendix 7)
- 8.2 The proposal includes a request to the Council's Enabling Fund for £10,742.40 to undertake capital improvements works to the property to assist with the future sustainability of the facility.
- 8.3 The transfer of the facility will support community empowerment, enable future investment and deliver significant local benefits. The group's activities are in alignment with the Council Plan 2023 – 2027.
- 8.4 A full assessment of the proposals has concluded that the group have strong leadership, the business plan is comprehensive, viable and sustainable.
- 8.5 Officers are satisfied that the proposal is compliant with legal requirements on the disposal of assets at less than market value. The council will realise an annual revenue saving of £3,378 through transferring the property which is in line with the approved SPR savings.
- 8.6 The transfer of the property will support community empowerment, enable future investment and deliver significant benefits including positive health and wellbeing outcomes.

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Appendices:

Appendices all available via link [Bo'ness Cemetery Bothy](#)

- Appendix 1- Bo'ness Cemetery Bothy Location Plan
- Appendix 2- Bloomin Bo'ness Constitution
- Appendix 3- Asset Transfer Full Request Form
- Appendix 4- Bloomin Bo'ness Asset Transfer Business Plan
- Appendix 5 - Assessment Criteria Form
- Appendix 6- Equality and Poverty Impact Assessment
- Appendix 7- Five-year Financial Forecast

List of Background Papers:

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:

None