**POLICY FOR DISPOSAL OR LEASE OF COMMON GOOD PROPERTY FOR LESS THAN MARKET VALUE.**

This document is designed to give officials guidance in providing advice to those **specifically** interested or involved in the disposal (sale/transfer or lease) of Common Good property in the Highland Council area for a consideration less than can be reasonably obtained.

It **supplements** the wider policy *(“Disposal of land for a consideration less than the best that can reasonably be obtained”)* adopted by the Environment, Development and Infrastructure Committee on 17 May 2018 and defines the guiding principles which should ensure that the Common Good Funds are handled with integrity and in a manner that is transparent, accountable and meets full scrutiny.

**1. INTRODUCTION**

Property and land make up part of the assets of the Highland Common Good Funds though the extent of the holdings varies considerably between the individual funds. This property is owned by the Council and, whilst it does not have a separate legal identity, it must be administered separately from other Council assets.

The manner in which Common Good Funds are administered is controlled by principles laid down in legislation and case law. Of those principles, the ones **most pertinent** to the disposal or lease of Common Good property are that:

* The principle of Best Value is applied *(Local Government in Scotland Act 2003).*
* Regard is had to the interests of the residents within the boundaries of the former Burgh to which the particular fund relates *(section 222(2) Local Government (Scotland) Act 1973 as subsequently replaced by section 15 (4) (a) Local Government etc. (Scotland) Act 1994).*
* Members of the community are involved as consultees to whom the Council has to have regard when proposing to dispose of or change the use of Common Good property *(section 104 Community Empowerment (Scotland) Act 2015).*

**2. LEGISLATIVE BACKGROUND**

A local authority’s power to dispose of land and property is covered in a number of statutory enactments with some **specific** provisions relation to Common Good property.

**2.1. Section 74 Local Government (Scotland) Act 1973 (the 1973 Act)**

A local authority may dispose of land in any manner it wishes. This section originally imposed a legal requirement that such a disposal should not be for a consideration less than can be reasonably obtained. However, this was subsequently amended by the Local Government in Scotland Act 2003 and an exception was inserted providing that regulations (***see below***) may stipulate circumstances where a disposal can be for less than best consideration. In such circumstances the authority needs to balance the benefits and disbenefits and decide if the proposal is reasonable.

**2.2. Section 75 Local Government (Scotland) Act 1973**

This section relates specifically to disposal of Common Good land and raises the question of alienable (able to be sold or transferred) and inalienable (prevented from sale or transfer) land. If there is no question about the authority’s right to alienate then section 75(1) provides that the land can be disposed of in accordance with the terms of section 74.

However if there is a question about alienability then an application must be made to the Sheriff Court or Court of Session to authorise the disposal and set any conditions which may include disposal at less than best consideration.

**2.3. The Disposal of Land by Local Authorities (Scotland) Regulations 2010 (the 2010 Regulations)**

A local authority may dispose of land at a consideration less than the best that can be reasonably obtained if the following requirements of the 2010 Regulations are met:-

* The value of the land (best consideration) is less than £10,000 (*threshold amount*) or
* The difference between the best consideration and the proposed consideration (*marginal* *amount*) is 25% or less of the best consideration.

The authority must appraise the proposed disposal (costs, benefits and disbenefits), decide whether it is reasonable and whether it is likely to contribute to the promotion or improvement of economic development or regeneration, health or social and environmental well-being.

**2.4 Community Empowerment (Scotland) Act 2015 (the 2015 Act)**

**2.4.1 Part 8** of this Act relates **exclusively** to Common Good property with **Section 104** dealing with the disposal and change of use of Common Good property. Before any decision to dispose or change the use of the property is taken a local authority must publish details about the proposals and must conduct a consultation process.

The Scottish Government has published guidance which provides details regarding timescales, publicity and consultation required to fulfil this duty. The specific duties in this regard are as follows:-

* Publish proposal to dispose/change use, notify community councils and community bodies and advertise (including putting up notices). Proposal must be available for comment for a minimum of 8 weeks.
* Receive and respond (ideally within 8weeks) to any representations and publish responses
* Take all representations into account when reaching a decision, publish decision and notify community councils, community bodies and anyone who made a representation.
* Conduct a new consultation exercise in the event of any material amendment to the proposal due to a change in circumstances or following the representations received.

**Disposal** occurs where the asset is transferred out of the hands of the local authority. This can result from a sale, a long lease (exceeding 10 years) or other arrangement giving a third party ascertainable rights of beneficial occupation.

***Guidance relating to Common Good consultations under section 104 is available on the Council web site.***

**2.4.2 Part 5** of the 2015 Act relates to Asset Transfer Requests and Common Good property can be subject to such requests. A community body can request ownership, lease or other rights and has to state how much it is prepared to pay together with the benefits the project will deliver. If less than market value the community transfer body (local authority) must consider whether the proposed benefits justify the proposed discount which will be accounted for as a gift. When making a decision the authority must consider the factors contained in the 2010 regulations together with whether the proposal will reduce inequalities of outcome from socio-economic disadvantage. If an Asset Transfer Request relates to Common Good property then the unique nature of such property will be a factor in how the request proceeds – the need to consult under Part 8 and/or possible need to apply to the Court if the land is inalienable.

***Guidance relating to Asset Transfer Requests is available on the Council web site.***

**3. GOVERNANCE**

**3.1. Sale**

All elected Members of the Highland Council are responsible for the management of the Common Good Funds in relation to determining and delivering investment policy, including the purchase and disposal of assets, subject to the administration of these funds being delegated to City/Area Committees or to Officers in terms of the Council’s Scheme of Delegations.

The current Scheme of Delegations delegates powers to the City of Inverness Area Committee and the local Area Committees to purchase and dispose of Common Good assets up to 10% of the value of the particular fund, such value taken from that given in the most recent set of audited accounts.

Anything over and above 10% is a decision reserved for the Highland Council.

The position with regard to Asset Transfer Requests is that, in the normal course, these are referred to the Environment, Development and Infrastructure Committee; however given the unique nature of Common Good property and the wider implications in respect of the fund of any reduction in property holdings, any such decision involving a permanent disposal (sale) pursuant to an asset transfer of Common Good land or property should be reserved to the Highland Council subject to the power delegated to Area Committees detailed above.

**3.2. Leases**

The Scheme of Delegations delegates the power to the Head of Development and Regeneration to approve any leases which fall under the 2010 Regulations (***see above***) after consultation with Ward Members. The Head of Development and Regeneration is also delegated the power to agree a lease extension at less than market value, on the same terms and conditions to a community group where a rent reduction has previously been granted, subject to consultation with Ward Members.

The Inverness Common Good Fund Sub-Committee also has full delegated powers to decide upon all applications for lease, assignation of lease, rent review or any other tenancy related matter where the Director of Development and Infrastructure has seen fit not exercise his delegated powers.

**4 COMMUNITY CONSULTATION – *the first step.***

When the Council is proposing to dispose (or change the use) of Common Good property, and before making any decision about whether or not to proceed, it must **first** conduct the consultation process outlined at **paragraph 2.4.1. above.** The Council must have regard to any representations received when making the decision about whether or not to go ahead with the proposal.

**5. INFLUENCING FACTORS**

As well as the principle of Best Value, a local authority also needs to ensure that regard is had to the interests of the residents within the boundaries of the former Burgh to which the particular fund relates. Therefore the requirements of the 2010 Regulations are very pertinent when considering leasing Common Good property at a below market value. A balancing exercise must take place between the need to generate income for the particular Common Good fund and the need to support the community which might be achieved by a reduced/nominal rent. Also the question of whether such an arrangement falls within the Community Empowerment consultation provisions needs to be considered. The decision must be clearly reasoned and reflect the fact it has been taken following application of the legislation, regulations and policy. This will ensure that the decision taken bears full scrutiny.

There are occasions when agreements have been reached to “lease” Common Good property for no rent but in exchange for the tenant being responsible for all maintenance, insurance etc. Whilst this may fall short of a formal lease arrangement, the agreement should still be embodied in a Terms of Agreement document reflecting the position and signed by relevant officers. If this is a new arrangement then consideration must be given as to whether this falls under the Community Empowerment legislation duty to consult. Again this will ensure the decision taken and arrangements made will bear full scrutiny.

**6. ONE OFF LETTINGS/SHORT TERM OCCUPATION**

Requests may be received for one off lettings/short term occupation of property or area of land for a specific purpose for a defined period of time, for example circus, community gala. A one off letting is likely to be for a day or a number of hours whereas a short term occupation situation may be for a weekend or week, for example rental of a shop unit for fund raising purposes. In such circumstances a one off let/short term occupation form should be completed (see attached). This form includes conditions of let and recommended charging rates.

A short term occupation arrangement does not give the applicant(s) exclusive occupation and, if necessary, can be moved to other premises.

The applicant(s) should also be referred to the guidance on the Council website regarding public entertainment licences.

The larger Common Good funds (Inverness and Nairn) have experience of regular “annual” lets for example circus, trades stalls at Highland Games and commercial fairground organisations. However the smaller funds may only have these types of lets on an occasional basis.

In such circumstances a discussion should take place between the City Area/Ward Manager and the Members on the application and possible fee to be charged. This discussion will help inform the City Area/Ward Manager’s decision whether to allow the application and what conditions, if any, should be applied.

If the event is a community event, charity event aimed at raising awareness of the organisation or local fund raising then a decision may be made not to levy a charge. Such a decision could be based on the principle that the main benefit of the resources goes to the residents within the boundaries of the former Burgh to which the particular fund relates.

If the application to let is made by a commercial, profit-making organisation then a figure to be charged should be agreed taking into account the type of sum charged for the regular annual lets in the larger areas adjusted for estimated footfall and duration of let of the particular event concerned.

In both cases the full reasons for the decision being made should be recorded and held with the application.

 **ALL SECTIONS MUST BE COMPLETED**

**APPLICATION FOR ONE OFF LET/SHORT TERM OCCUPATION**

|  |  |
| --- | --- |
| Facility required: |  |
| Contact name: |  |
| Organisation name:(if applicable) |  |
| Reg. Charity number:(if applicable) |  |
| Address: |  |
| Telephone number: (including mobile) |  |
| Email: |  |
| Purpose of let: |  |
| Date of proposed let: |  |
| Hours of proposed let:(including start and end times of event). Allow time required for access to set up and to clear away at the end |  |
| Approx. number of people attending: |  |

|  |
| --- |
| **ACCOMPANYING DOCUMENTS REQUIRED** |
| Event plan | This must include a full description of the event proposed, management plan and contact details, traffic/parking management, site design incl. any temporary structures, activities programme, risk assessments, first aid arrangements, security details & catering proposals (if applicable) | Yes/no |
| Public liability insurance | The Highland Council shall be fully indemnified for any claim that may arise as a result of the event taking place. It is strongly recommended that organisers have Public Liability Insurance in a sum of not less than £5m in respect of any one claim that may be made. If such insurance is in place a copy of the policy must be attached. | Yes/no |
| Child protection policy | Event organisers must have adopted/implements the Highland Council’s child protection policy or have an alternative policy in place. Copy must be attached. | Yes/no |

**Notes:**

* Completed application forms together with relevant documentation and relevant fee or evidence of payment of fee should be submitted no later than 10 working days prior to the proposed let.
* Please return the completed application form to ………………………………………………………………………………..
* All lets are subject to the Conditions of Let attached at Appendix 1.
* Details of the charges are attached at Appendix 2.
* No smoking is allowed in any facilities. It is Highland Council policy not to permit an event where a sponsor is in the tobacco industry.

**Declaration:**

I, the signatory, in respect of myself or on behalf of the organisation above stated, hereby apply for the let of the specified accommodation/area/location on the dates/at the times stated and on the terms above specified and I bind myself and the organisation to comply at all times with the Conditions of Let. It is understood that the let may be terminated forthwith if there is any breach of these conditions or if any information is inaccurate.

I understand that consent is granted on the basis that the Highland Council shall be fully relieved by us, the organisers, of any liability or any claim for damage, loss or injury, whether in respect of person or property, resulting from the occupation of the highway, paths, land and activities thereon which are the subject of this consent.

|  |  |
| --- | --- |
| Signature: |  |
| Date: |  |

Data Protection – the information you have supplied will be used for the purpose for which you have provided it and any relevant procedures following from this. This data will be maintained in accordance with the Act and will not be passed on or sold to any other organisation without your prior approval unless this is a legal requirement.

**CONDITIONS OF LET**



1. The lessees will be responsible, during the course of the let, for the proper conduct of the let and shall be liable for and indemnify the Council in respect of ***(a)***any damage caused on/to the area/premises/facilities and/or to the furnishings, fittings, equipment and others contained in, or in part of, the area/premises arising from, or during the course of, the let and the cost of repairing such damage, and ***(b)***any damage to the premises/facilities/property or any person or injury caused to any person arising from, or during the course of, the let.

2. Any damage to the area/premises/facilities, fittings or equipment therein found prior to the commencement of the let must be reported to the Ward Manager/Service Point prior to the let commencing.

3. The Council will not be liable for any damage to, or loss of property brought to, or left in, the area/premises or for any injury to any person, arising out of the let.

4. The lessee will use the area/premises/facilities solely for the purpose(s) stated in the let application and will ensure that the premises/facilities are left in a clean, neat and tidy condition. If, as a consequence of the use of the area/premises/facilities, cleaning or repair is required, this will be carried out by the employees of the Council and the lessee will meet the cost thereof.

5. The lessee will name one of their group/organisation who will be the “responsible person” in respect of the let.

6. The lessees are responsible for ensuring compliance with any emergency regulation or any other regulations in force for the time being. The lessees will familiarise themselves with the layout of the area/premises/facilities and any emergency exits in order that they will be able to take the appropriate action in the event of a fire occurring during the course of the let. All exits from the premises must be kept clear of obstruction.

7. If permission is given by the Council for there to be alcohol at a social function, the lessees will ensure that ***(a)*** they have obtained and have in force the necessary permissions by the licensing authority, ***(b)***no breach of the conditions of such permissions, or the addition of conditions specified by the Ward Manager, is allowed to occur and ***(c)***sufficient stewards are appointed to ensure proper control of the event.

8. Authorised officials of the Council shall be entitled, in the course of their duty, to have free access at all times, to the area/premises/facilities let.

9. There is reserved to the Council, at any time and without reason given, the right to cancel any let in respect of any occasion or to terminate the let. The Council shall refund any charges paid and not due by reason of such cancellation or termination.

10. If a let is to be cancelled, written notice must be given at least 2 working days prior to the due date of the let otherwise cancellation fees will be applicable.

11. The lessees shall ensure that the number of persons admitted to the area/premises does not exceed the number for which the area/premises are licensed.

12. The Council does not stipulate that the area/premises/facilities are suitable for any particular use. The lessees shall provide the necessary stewards and attendants during the let to ensure that effective control is provided in all areas during the let and that proper control of the event is maintained.

13. For the avoidance of doubt the following definitions shall apply to these conditions:-

 ***“The Council”*** means the Highland Council.

 ***“The Organisation/Club”*** means the Organisation/Club granted the let.

 ***“Let”*** means where a charge is made for the use of the area/premises/facilities/lease in respect of each occasion on which the premises may be used/short term occupation

 ***“Lessees”*** mean:

1. The Organisation/Club, and
2. The authorised office bearer who applied for the let, and
3. The responsible person

 All bound jointly and severally. This means that the authorised office bearer and the responsible person are personally bound to ensure compliance with these conditions and may be held liable for any claim arising from the let.

***“The premises”*** means the premises of let.

14. The lessee shall ensure that all statutory requirements are met.

15. Every care is taken in the preparation of pitches and to ensure that the surface of the pitches is free from glass and other debris. All club officials are advised to inspect pitches before play. Broken glass and other debris often appear on pitches for reasons beyond the control of The Highland Council, who will not be held responsible for any injury however caused.



**ONE OFF LET/SHORT TERM OCCUPATION**

 **CHARGES**

|  |  |
| --- | --- |
| **Duration of let** | **Charge** |
| Hourly | £10.00 |
| 3 hour block | £25.00 |
| Daily | £50.00 |
| Weekend | £100.00 |
| Other period | By negotiation |
| Charities, community groups, local schools/nurseries | By negotiation |

If you require any further information or advice, please do not hesitate to contact the office on:-

Telephone …………………………………………………………………………………………………….

Email ……………………………………………………………………………………………………………..