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Community and Democratic Engagement Manager  
 The Highland Council, Glenurquhart Road  
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On [REDACTED]

Your Ref:

8 June 2018

**BY EMAIL &  
 SIGNED FOR 1<sup>ST</sup> CLASS**

Dear Sirs

**OUR CLIENTS:**

**SUBJECT:  
 ASSET TRANSFER UNDER THE COMMUNITY EMPOWERMENT  
 (SCOTLAND) ACT 2015  
 NOTICE OF ASSET TRANSFER REQUEST  
 BETTYHILL VISITOR CENTRE**

We have been instructed by [REDACTED]

We are writing to you in respect of the above notice of asset transfer request published by the Council. We note that an asset transfer request has been made to The Highland Council under Part 5 of the Community Empowerment (Scotland) Act 2015. The request has been made by Strathnaver Museum. The request is for ownership of land/building comprising the Bettyhill Visitor Centre.

It is stated that anyone may make representations about this request to The Highland Council by 15 June 2018.

Please treat this letter as representations made on behalf of [REDACTED]. We understand that their personal details will be redacted when a copy of the representations is provided to the organisation making the request.

[REDACTED] submit that the application by Strathnaver Museum ("SM") should be rejected for the following reasons:

## **1. The inadequacy of the application and accompanying business plan submitted by Strathnaver Museum**

- 1.1 In general, the application and business plan are selective, aspirational and optimistic rather than evidence based.
- 1.2 The business plan omits to mention many existing catering options in the locality. It therefore misrepresents that there is a lack of catering facilities in the locality. In fact, there is not, neither for locals or visitors.
- 1.3 The projections, aims and costings of the business plans are overly optimistic. They do not appear to be based on full market research. For example, there is no confirmation from funders that renovation funds will or even could be available. Further, no contact has been made with potential third-party catering companies. Overall, the information provided regarding costs and future funding is inadequate and does not comply with para 8.34 of the Guidance.
- 1.4 In general, the business plan contains bald statements which are presented as fact. It is not the product of comprehensive research or market testing. The Council should place little if any weight upon the assertions made, without vouching, in the business plan.
- 1.5 The very restricted question and answer session ~~undertaken~~ provides little assistance to the Council's considerations and should not be mistaken for an indicator of general public support for the application. The consultation meeting is insufficient to amount to 'broad support' for the application and the proposals contained therein.
- 1.6 Separately, there is insufficient evidence of an ability to deliver the proposals. SM is run by volunteers. There has been no detail provided of the commitment of volunteers, the timescales for current lease holders' retirement, the manning of the tourist information centre, proficiency in the commercial negotiation of the lease of the catering side of the Property or the ability to sustain a period in which there are difficulties in identifying or maintaining a catering partner. It is expressly stated that SM has no desire to run the catering side of the property.

## **2. The offer to purchase the Bettyhill Visitor Centre for £1**

- 2.1 The price offered is an over-arching element of and provides context to the application. SM is requesting the property for £1, without any substantive justification for this. The Council will be forgoing all of the potential benefits of the profit and potential sale value associated with the property.
- 2.2 Neither the business plan nor the application contains a valuation of the current property. It assumes a nominal value as a result of flooding difficulties. This is the purported justification for the nominal purchase price offered. Despite this, it is also said that it will cost only £2,000 to rectify the flooding problems. This estimation is not vouched for by an appropriate individual or company. On the hypothesis of the application and SM, this restores the full value of the property. It therefore undermines the entire justification for such a reduced purchase price. In the absence

of a survey or vouched costing for any necessary repairs, the Council is unable to assess the discount (and therefore level of assistance) that it would be offering to SM. This is important not only for consideration of the merits of the application but also to ensure that the Council is complying with State Aid rules, including assessment of whether the *de minimis* threshold applies.

- 2.3 Paragraph 8.26 of the Guidance states that, in respect of the benefits of the asset transfer request, “*the amount of detail that you need to give will depend on the scale of the project and the amount of support or reduction in market value you are seeking*”. SM are seeking a complete reduction in the value of the property, so should be required to give a high level of detail and provide suitable vouching. The absence of such vouching is a reasonable reason for refusal.
- 2.4 Similarly, in accordance with section 11.4 of the Guidance, there is a requirement of a formal valuation. This has not been provided and the application cannot be granted as a result.
- 2.5 It is contended that a fair valuation of the property is between £80-120,000 in its current condition.
- 2.6 In the event that the property was to be sold for £1, the sale should contain suitable conditions to ensure that a windfall is not achieved in the absence of suitable and sufficient reciprocal benefits being achieved by the community, including the avoidance of economic displacement (see below). For example, it should contain a condition that payment of full value, or at least significant value, should be obtained if the requisite level of benefits have not been achieved within 5 years. For the avoidance of doubt, this will not prevent economic displacement or provide compensation for those who have been detrimentally affected. As result, the presence of conditions alone cannot be seen to adequately resolve the numerous deficiencies within the application.

### **3. Displacement of business from existing, unaided local businesses**

- 3.1 The application ignores displacement in its entirety. That in itself is a good reason for refusal. The Council are required by statute to take into account economic development and any negative consequences that would result from the asset transfer. The request provides the council with no assessment of the overall economic development of the area. It fails entirely even to acknowledge the likelihood of displacement. The Guidance at 8.29 requires SM to consider the potential drawbacks to particular groups of people and the local economy.

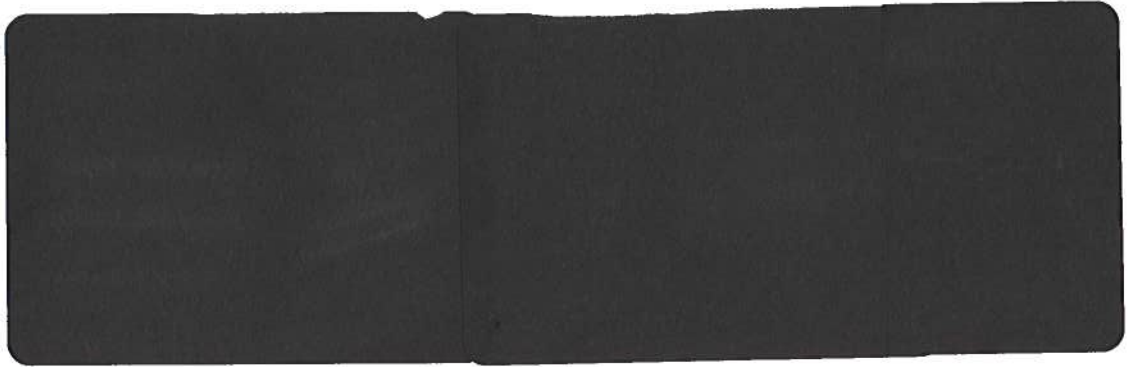
It fails to do so sufficiently or at all. It is apparent that SM has carried out no research into this. The Council is therefore not in a position to assess properly economic development and should refuse the application.

- 3.2 In the event that Bettyhill Visitor Centre is purchased for £1 and developed as intended, there will be considerable impact upon local businesses, including but certainly not limited to, [REDACTED]. Taking [REDACTED] as an example, the development proposed will result in reduced turnover at [REDACTED] with the real

potential to make the business unviable. It will reduce the goodwill of [REDACTED] which effects the value of the business. Further, it will reduce the value of the [REDACTED] None of these factors have been taken into account by SM and will be relevant to almost all catering businesses in the area.

3.3 The result is that grant of the application is likely to contribute to economic decline due to displacement of the income from local businesses in favour of a development run by volunteers using grant funding and benefiting only one catering operator. This must be disproportionate and unjustified.

3.4



#### 4. Alternative means of achieving the aims of the application

4.1 If the main intended legitimate benefit to the community is the increase of information available to locals and footfall within the museum, then this can be achieved in less drastic ways and without the need for an under-value purchase of property. For example, the provision of relatively minor funds for the current tourist information centre, increased online presence and better signage.

#### 5. Breach of article 8 of the European Convention of Human Rights (“ECHR”)

5.1 Article 8 of the ECHR states:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. “

5.2 It has recently been confirmed, in the Court of Appeal case of *Onwuje v Secretary of State for the Home Department* [2018] EWCA Civ 331 that running a business can amount to private life for the purposes of Article 8 of the ECHR. The Lord Justice accepted that “an entrepreneur’s ownership of, and involvement in, his or her business may also be regarded as an aspect of their private life for the purpose of Article 8”, as stated in *Niemietz v Germany* (1993) 16 EHRR 97.

5.3 Due to the displacement that will occur in the event that the application is granted and development occurs, the article 8 rights of [REDACTED] will be interfered with.

5.4 Any interference with Art. 8(2) must be in accordance with the law have a legitimate aim and be necessary in a democratic society. The onus is on the Council to ensure (and prove in any court action) that these conditions are fulfilled. The reference to 'necessary' in article 8 has been interpreted as 'a pressing social need': *Khoroshenko v Russia* [GC] 2015 at paras 118-120.

5.5 It is clear that the application, which is unsupported by evidence, falls well short of a pressing social need for it to be granted. As a result, granting the application would amount to an unlawful interference of [REDACTED] private life. The Council are not permitted to act contrary to the ECHR and therefore are lawfully bound to reject the application.

## 6. Article I Protocol I ECHR – Interference with Property

6.1 Article I Protocol I of ECHR (“A1PI”) states:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

6.2 The goodwill of a business is a possession for the purposes of A1PI: *Van Marle & Ors v Netherlands* (1986) A 101 at para 41; and *Breyer Group Plc v Department of Energy & Climate Change* [2015] 1 WLR 4559. Furthermore, possessions can include economic interests and assets: *Axa General Insurance v Lord Advocate* 2012 SC (UKSC) 122 at para 114.

6.3 Furthermore, it has been established that a person’s economic interest in earning his or her livelihood constitutes a possession for the purposes of A1PI at it does: *Adams v Scottish Ministers* 2004 SC 665.2

6.4 Granting of the application will interfere with the peaceful enjoyment of the [REDACTED] possessions, namely their economic interest in earning a livelihood and by reducing the goodwill associated with their business.

6.5 A1PI provides that “no one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and by the general principles of international law”. An interference with property rights should in principle be

redressed by the provision of a right to compensation. A failure to pay compensation of an amount reasonably related to the value of the property which is the subject of interference will normally constitute a disproportionate interference with property rights: e.g. *Kozacioglu v Turkey* [GC] 19 February 2009 paras 65-733.

6.6 There is insufficient reasoning or evidence contained within SM's application to justify the proposed interference with [REDACTED] rights under AIPI. Such an interference would neither be proportionate, be in the public interest or be subject to compensation under the 2015 Act.

6.7 Again, the Council is required to comply with the AIPI. For the reasons given, granting the application would breach AIPI and would be unlawful. The application should therefore be refused.

## 7. State Aid Rules

7.1 It is noted that, unless the assistance given to SM is below the *de minimis* threshold (taking into account any previous award in the last 3 years), then the Council will require to comply with State Aid rules. It is submitted that there is no particular approved scheme in place which would permit the grant of the State Aid proposed without notification to the European Commission, if the *de minimis* threshold is met.

## Overall conclusions on the application

For all the reasons above, both individually and cumulatively, there are reasonable grounds for refusal of the application. The application by Strathnaver Museum should be refused.

Please contact the writer if you require any further information.

Yours faithfully



**Sindi Mules**

Partner

For and on behalf of Balfour+Manson LLP