





FAO Pablo Mascarenhas
Community and Democratic Engagement Manager
The Highland Council, Glenurquhart Road
Inverness IV3 5NX



Your Ref:



15 October 2018


**BY EMAIL &
SIGNED FOR 1ST CLASS**

Dear Mr Mascarenhas




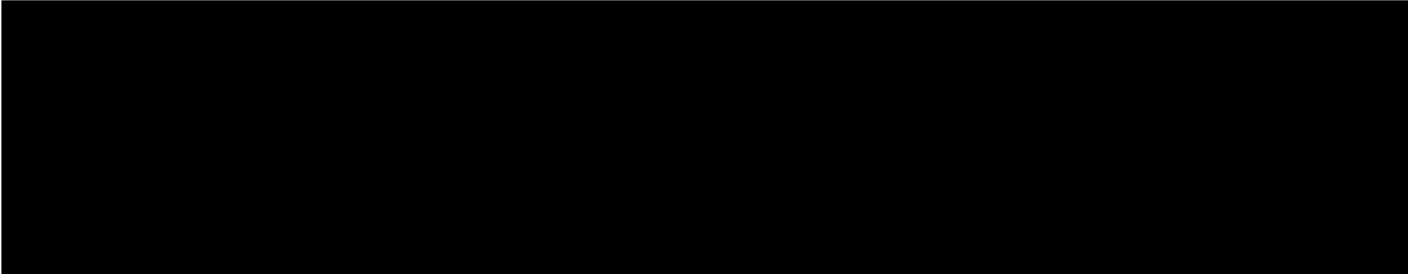
**SUBJECT:
ASSET TRANSFER UNDER THE COMMUNITY EMPOWERMENT
(SCOTLAND) ACT 2015
NOTICE OF ASSET TRANSFER REQUEST
BETTYHILL VISITOR CENTRE**

We are instructed by  who are business partners and owners of  Further to representations submitted on behalf of our clients on 8 June 2018, Strathnaver Museum (SM) submitted a revised business plan covering the period from 2019 to 2022 in September 2018. On 19 September 2018, we were advised by The Highland Council that as a revised business plan had been submitted by SM, our clients were entitled to submit further representations to The Highland Council by 17 October 2018 at 5pm.

Please treat this letter as further representations made on behalf of  We enclose a copy of the letter on behalf of our client to Community and Democratic Engagement Manager, The Highland Council, dated 8 June 2018 for ease of reference. We understand that their personal details will be redacted when a copy of the representations is provided to the organisation making the request.

We would also request that any reference to 


 submit that the application by SM should be rejected for the reasons detailed below.



Initial representations dated 8 June 2018

1. Representations were made on behalf of [REDACTED] on 8 June 2018. Since those representations, SM have prepared a revised business plan for the period dated 2019 – 2022 (“the business plan”). Specific representations upon the content of this plan are detailed below. At the outset however, it is noted that SM have failed to:
 - a. Provide a valuation of the Bettyhill café and visitor centre; and
 - b. Explain the inconsistent approach to valuation and addressing apparent issues with flooding.
2. Highland Council is required by section 96 of the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”) to have regard to the “Community Empowerment (Scotland) Act 2015 – Guidance for Community Transfer Bodies” (“the Guidance”).
3. In accordance with section 11.4 of the Guidance, there is a requirement for a formal valuation. This has not been provided and the application cannot be granted as a result.
4. Furthermore, 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.
5. Relevant to this is the failure of SM to address the issue of flooding. Previously, SM estimated the cost of flooding based repairs to be £2,000. No vouching or basis for this was provided. The business plan does not advance matters in this regard. It is clear from page 11 that no considered assessment has been made of the flooding issue, the works required to alleviate them or the source of any funds for required works. Despite SM relying heavily previously upon the flooding issues at Bettyhill café as a justification for a purchase price of £1, these works are not valued or detailed within the business plan. It is clear that no estimates have been obtained. These matters make the complete failure to provide a valuation even more important.
6. Generally, the revised business plan does little to address the valid objections to the application made in the representations dated 8 June 2018. These representations continue to be relied upon in full. For the avoidance of doubt, the business plan does nothing to address the fatal failures to follow the Guidance or to negate the potential breaches of the European Convention of Human Rights and State Aid Rules.

The revised business plan

7. The business plan remains selective, aspirational and optimistic, rather than evidence based. This is particularly evident within section 5 of the business plan, which purports to address the issue of impact upon existing local (unassisted) businesses, i.e. displacement. Displacement is discussed below, along with further representations on miscellaneous, but fundamental, matters connected to the business plan.

Displacement

8. At page 11 the business plan confirms that the intention is to have a restaurant with seating for 50 patrons and that it will provide a full dine-in and carry out services. The catering establishment proposed is therefore substantial. It is axiomatic, in the absence of credible evidence or testimony to the contrary, that this will displace business from local businesses who provide catering facilities to locals and visitors.
9. SM have carried out and made no reference to meaningful research to evidence their, mainly, bald assertions that displacement will be very minimal. That alone casts doubt on the veracity of any such assertions. That is particularly the case when many of the assertions are counter-intuitive.
10. A clear example of the inadequate approach is the complete failure to take into account the new café within Bettyhill at the Old Bettyhill Stores. This café is one of the most obvious competitors to the proposed catering facilities and at severe risk of significant displacement. It is not mentioned within the business plan.
11. More generally, the assumption that runs throughout SM's displacement analysis is that, if the catering facilities of an establishment are of a slightly different nature, then there will be no impact on that establishment. No evidential basis for this is provided and it is counter-intuitive. There is a limited number of visitors to the area and it is almost inevitable that displacement will occur. SM seek to remove the possibility of displacement at the majority of the local catering facilities on the basis of this flawed assumption. In particular, at: Bettyhill Hotel; Borgie Lodge; Strathy Inn; Halladale Inn; Melvich Hotel; Ben Loyal Hotel and Tongue Hotel.
12. Separately, at page 17 the business plan recognises that there will be displacement to [REDACTED]
[REDACTED] Whilst it is recognised that distance is a legitimate factor in the consideration of displacement, the distance of 12 miles requires to be seen in context. The NC500 is normally travelled in its entirety. The distance of 12 miles within the journey and in this remote area is negligible. There can be no doubt that [REDACTED] and the proposed development would compete. The result of the proposed development would undoubtedly lead to significant displacement from [REDACTED] In the absence of significant justification for this, it would be unreasonable to accept the application, particularly on the terms proposed.

Other relevant matters


13. At the foot of page 11 the business plan recognises that the operational business case for financial sustainability of the project has yet to be determined. This is telling and indicative of the approach taken by SM. It is by itself a reasonable basis for refusal. It makes clear that what is proposed is that Highland Council gift a valuable asset to SM in circumstances where the viability of the proposed project has not been assessed as financially sustainable.

14. At page 26 of the business plan it is detailed that the current business is viable and turns an operating profit. Despite this, SM seek to purchase the asset for £1 with no proposed protection against a windfall.
15. It is notable also that SM make clear throughout the business plan that they intend to seek funding for any development works that are required. Future assistance will therefore be sought, in order to compete with unassisted developments. This is very relevant to considerations of fairness, reasonable reasons for refusing the applications and State Aid considerations. If the *de minimis* threshold is breached either by grant of this application alone or combined with future support, then *ad hoc* aid approval would be required from the European Commission.
16. Separately, it is apparent from page 13 of the business plan and the consultation methodology that little, if any, further consultation has been undertaken since the initial application. The reliance on future consultation where the outcome is unknown is inappropriate.

Conclusion

17. A grant of the application by Highland Council would be contrary to the 2015 Act, constitute a failure to follow the Guidance and would be unreasonable for the reasons stated on 8 June 2018 and above. Whilst there is no desire to embark upon litigation if avoidable, it is clear that a decision to grant the application would be susceptible to judicial review. It is submitted that the application should be refused.

For all the reasons above and the reasons set out in the letter on behalf of our client to Community and Democratic Engagement Manager, The Highland Council, dated 8 June 2018, 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.



