**HIGHLAND COUNCIL**

**DISPOSAL OF OR CHANGE OF USE OF COMMON GOOD PROPERTY – PROCESS**

**A. INTRODUCTION**

The Community Empowerment (Scotland) Act 2015 Part 8 came into force on 27 June 2018. It seeks to increase transparency about the existence of common good assets and to ensure there is community involvement in decisions taken about their identification, use and disposal.

The Act places duties on local authorities to establish and maintain a common good register (section 102) and to undertake a consultation process before taking any decision to dispose of or change the use of a common good asset (section 104).

This document details the process the Highland Council must follow for disposing of or changing use of a common good asset. The process to establish the register and to review the register is contained in a separate document.

**B. DEFINITIONS**

**1. Disposal**

This means to transfer out of the hands of the local authority. The most obvious example of a disposal is a sale of an asset although a lease or other arrangement giving a third party ascertainable rights of beneficial occupation may also qualify.

The Highland Council will treat any lease of 10 years or more as being a disposal for consultation purposes.

**2. Change of use**

* In some earlier legislation relating to common good this has also been called “appropriation”. It covers a situation where a local authority may want to change the use of a common good asset from one purpose to another.
* The Act does not define “change of use” therefore the Council will seek to adopt a common sense approach when considering this matter.
* The Scottish Government guidance has confirmed that, in relation to cash funds, change of use would not cover every payment to different people or moving investments about but would include changing the rules regarding what types of things could be funded.

Every situation is different so the question of change of use will depend on the particular circumstances but change of use consultation is likely to result from a situation where the nature of the existing use and the new use are distinctly different and not incidental to each other. Some examples are given below for illustration purposes only and other situations may occur.

Some possible examples where change of use would require consultation:-

* Change of retail premises to industrial manufacturing.
* Change of park to a school site.
* Change of retail premises to residential premises.

Some possible examples where change of use would not require consultation:-

* Change of one tenant to another if use remains the same – commercial, retail etc.
* Change of business being operated if the same in general – one type of retail business to another.

**3. Alienable common good property**

* This is property where there is no specific restriction or prohibition preventing disposal or change of use.
* In this case the Council can deal with the property as it would any other council property subject to the duty to carry out the consultation process referred to in this document and also having regard to the principles of best value and the interests of the residents within the boundaries of the former Burgh to which the particular fund relates.
* Examples can be land, buildings, fishing rights.

**4. Inalienable common good property**

* This covers property where there is some specific restriction preventing disposal or change of use or if there is some question that there may be.
* In this case the Council must apply to the Sheriff Court or Court of Session to authorise the disposal or change of use. It is possible for interested parties to respond to the Court action.
* Property is considered to be inalienable if the restriction or purpose is clearly stated in the deed or gift, it has been specifically dedicated for public use or it has been used in a certain beneficial way for a lengthy period of time (time immemorial).
* Examples can be public buildings like town halls, markets, grounds set apart for the enjoyment of the inhabitants of the former Burgh.

**C. CONSULTATION**

**1. First step**

* The Council will form a view that it wishes to dispose of or change the use of a common good asset and prepare a proposal. The decision to initiate the consultation process will be made in accordance with the Council’s Scheme of Delegation and governance procedures. This means that Area Committees have the power to deal with assets valued at up to 10% of the fund value for their particular area with anything above that being reserved for the full Council.
* Consideration will also need to be given to whether an asset is alienable or inalienable – see above.
* The Community Empowerment consultation will precede any planning process which is a completely separate procedure.

**2. Publishing and advertising the proposal**

* The proposal will identify the property concerned using the same information as is contained in the asset register. It will clearly state what is being proposed including anticipated timescales for completing the disposal or change of use.
* The proposal will be published on the Council’s website. It will also be available to view in person at local council offices, council hubs and libraries. Availability in these places may be by paper copies or staff assistance to view online. Copies of the proposal will also be made available in other languages or formats if requested.
* The Council will advertise the consultation on its website and social media pages as well as in Council publications and (in some circumstances) local newspapers. Consideration may also be given to holding public meetings depending on the asset concerned and the nature of the proposal – for instance if it is likely to affect a large number of people.
* For buildings or land, the Council will put up public notices on or near the property and in locations where local notices are normally advertised – shop, information points and noticeboards.
* The Council must notify any community council whose area includes all or part of the property concerned as well as any community body known to have an interest in the property and invite them to consider the proposal and make representations.
* However the Council will also accept representations from any person/body wishing to make them.
* The proposal will be publicly available for viewing for 8 weeks to allow for consideration and representations to be made. The 8 week period will not include the first or the last day of the consultation period or any public holidays that may fall within the consultation period.

**3. Making representations**

* All representations must be made in writing either by letter or email. The contact for submission of representations will be clearly stated in the proposal document.
* When the consultation is opened a closing date for the submission of representations will be clearly stated.
* Details of all representations received will be published on the Council’s website in the same place as the proposal. The person/body making the representation may be identified by name, but no other personal information will be included.

**4. Responding to representations**

* The Council will aim to respond to any representations within 8 weeks of receipt with the responses being published alongside the original representations.
* Section 104 (6) Community Empowerment Act states that a local authority “must have regard to” any representations made when deciding whether or not to dispose or change the use of Common Good property.
* The Council will also publish its final decision about the proposal alongside the proposal, representations and responses. Community councils, community bodies and anyone who made a representation will be sent direct notification of the outcome.

**5. Further consultation**

The Council will conduct a further full consultation on the proposal if it is amended significantly in response to changing circumstances or representations received.

**D. FURTHER ACTIONS IF THE PROPOSAL IS APPROVED**

* If the property is alienable, the Council will proceed with all appropriate steps to give effect to the disposal or change of use.
* If the property is inalienable, an application for the approval of the Court will be necessary. A positive response to the proposal consulted on will be useful evidence in support of any application. Any interested parties may lodge responses within the Court process which is completely separate to the Community Empowerment process.