

Agenda Item	7
Report No	NC/06/21

THE HIGHLAND COUNCIL

Committee: Nairnshire Area Committee

Date: 10 March 2021

Report Title: Nairn Common Good Fund – Consultation on:

1. Proposal to dispose, by lease, of Links Tea Room, The Links, Nairn
2. Proposal to dispose, by demolition, of the old store, The Links, Nairn and to return the use of the land to public amenity.

Report By: Executive Chief Officer – Communities and Place
Executive Chief Officer – Resources and Finance

1. Purpose/Executive Summary

- 1.1 This report provides information on the outcome of two public consultations under section 104 Community Empowerment (Scotland) Act 2015 which propose to dispose of two Nairn Common Good assets namely:
- proposal to dispose, by lease, of the Links Tea Room, The Links, Nairn
 - proposal to dispose, by demolition, of the old store, The Links, Nairn and to return the use of the area of land to public amenity

2. Recommendations

2.1 Members are asked to:

- i. Note the outcome of the consultation process undertaken as contained in the analysis at **Appendix 1**.
- ii. Approve the responses to the issues raised in connection with both proposals.
- iii. Agree the proposal to dispose, by lease, of the Links Tea Room, The Links, Nairn.
- iv. Consider the response from Nairn West & Suburban Community Council regarding alternative use/repurposing of the old store on the Links and decide:
 - a. to adopt this suggestion to repurpose the store for community/business use or
 - b. agree the proposal to dispose, by demolition, of the old store, The Links, Nairn and to return the use of the area of land to public amenity.
- v. Note that, if agreed, it will be necessary to seek Sheriff Court consent in respect of both proposals.

3. Implications

- 3.1 Resource – The proposal for the Tea Room relates to the creation of a long lease to the existing tenants. This will safeguard income for the Common Good from the rental for this asset and allow for future investment by the tenants to the improvement and benefit of the Common Good. The tenants have agreed to meet the costs associated with the consultation and Court proceedings.
In relation to the old store, there will be costs associated with the demolition process and reinstatement of the land for public amenity which will be the responsibility of Nairn Common Good. A specific quote for the costs involved in demolishing and landscaping has not been obtained as the decision following the outcome of the consultation has not yet been made. However, for the purposes of this report and in order to provide a general indication, discussions with a local building surveyor would indicate that a fair and reasonable estimate would be in or around £5,800 plus VAT for the works.
- 3.2 Legal – the statutory requirement to consult has been complied with. Where land is also considered to be inalienable, there is a statutory requirement to seek Court approval to the disposal. Nairn Links is considered to be inalienable Common Good land and therefore, should the proposals be agreed, the requirement to seek Sheriff Court approval for both proposals must also be complied with.
- 3.3 Community (Equality, Poverty, Rural and Island) – The existing tenants wish to be in a position to invest in the Tea Room and a long lease will provide them the security to do so. The old store is in a very dilapidated state and no interest has been received in any alternate use to date. The electricity supply will be retained and housed in a secure unit on site. The report outlines the community consultation that has taken place and the feedback received as part of that. An alternative use for the old store has been proposed as part of the consultation and this forms part of the decision making going forward.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.

4. Consultations in respect of the Tea Room and old store, The Links, Nairn

- 4.1 As the Tea Room and old store are in close proximity on The Links and proposals were being considered in respect of both properties, it was considered sensible to conduct the consultations within a single process. Notwithstanding this, the outcome of both consultations will be given separate consideration and separate decisions made.
- 4.2 On 23 October 2020 Members were briefed and were supportive of commencing the public consultations in the manner outlined at 4.1 above. The public consultation commenced on 28 October 2020 and concluded on 6 January 2021. The duration of the consultation was longer than the statutory 8 weeks due to the intervening festive period and the ongoing Covid-19 restrictions to ensure the community had ample opportunities to comment. An analysis of the outcome of the consultation for both proposals has been prepared and can be found at **Appendix 1**.

- 4.3 A total of 16 responses were received. Some addressed both consultations however, most only addressed the proposal in respect of the Tea Room. The responses were broken down as follows:
- 4 addressed both with 3 fully supportive of both and 1 supportive of Tea Room but raised issues regarding the old store proposal.
 - 10 addressed Tea Room only with 7 fully supportive and 3 raising issues for consideration.
 - 2 addressed the old store only with both raising issues for consideration.

5. Proposal to dispose, by lease, of the Tea Room, The Links, Nairn

- 5.1 The Tea Room, The Links, Nairn is currently rented by John Main Bochel and Alexander Main Bochel on the basis of a lease that is less than 10 years. However, they have approached the Council with a request to consider granting a long lease of 30 years which will give them the security to commit to a programme of investment in the site. The longer length of lease proposed would allow them to see a return on their investment. This investment may include the future replacement of the building with a more modern structure in keeping with the overall development proposals of the Links. However, there are no plans for this as yet and any such plans would need to comply with all necessary planning and building permissions and consents
- 5.2 In Highland a long lease of 10 years or more is considered to be a disposal of Common Good property and triggers the requirement to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015.
- 5.3 Section 2a of **Appendix 1** gives examples of the supportive comments received. The objections or issues raised for response are detailed in the table at section 2b of **Appendix 1** together with suggested responses. Nairn West & Suburban Community Council were supportive in principle but requested clarification on lease details first. This information has been included as part of the responses to the issues raised.

6 Proposal to dispose, by demolition, of the old store, The Links, Nairn

- 6.1 The old store is not currently subject to any lease although in the past it has been included as part of the Tea Room lease. It has not been used in any significant way since the late 1980's and has become run down. There is an electrical supply which will be retained in a secure unit for use when the Shows and Fair come to Nairn. Otherwise it is proposed to demolish the building, landscape the area and change the use back to that of public amenity land.
- 6.2 A demolition of Common Good property is considered to be a disposal and, as such, triggers the requirement to consult under section 104.
- 6.3 The comments relating to the old store are contained in section 3 of **Appendix 1** with the issues or objections being raised for response being contained in the table at section 3b together with suggested responses. Nairn West & Suburban Community Council were supportive of the proposal but outlined suggestions for a plan of action to be considered first before a decision is reached – this related to alternative use, offering to community groups, repurposing etc. Suggested responses to their points have been included as part of the responses to issues raised but Members should consider whether their suggestion is viable before deciding on the question of demolition.

7 Court application

7.1 The Links, Nairn where the Tea Room and old store are located is considered to derive title from the Burgh Charter of 1589. Title to the Tea Room and the old store follows title to the land. It is necessary to consider if the proposal raises a question of inalienability. If such a question is raised, then it is necessary to apply to the Sheriff Court for permission to appropriate (change use) of the property under section 75 Local Government (Scotland) Act 1973. The Links, Nairn has been public access amenity land for time immemorial. As a result of the Tea Room and old store being located on The Links it is considered that a question of inalienability exists and therefore, a Court application is required in respect of both proposals. How long such an application will take to conclude will be entirely contingent upon Court timescales.

7.2 Members are now asked to note the outcome of the consultation in respect of the Tea Room. The available options for the next steps are:-

- Agree that the proposal to dispose, by lease, of the Tea Room should go ahead subject to Sheriff Court approval
- Amend the proposal (any significant amendment would require a new consultation process)
- Decide that the proposal should not go ahead.

On the basis of the outcome contained in **Appendix 1** it is recommended that Members agree that the proposal to dispose, by lease, of the Tea Room should go ahead.

7.3 Members are now asked to note the outcome of the consultation in respect of the old store and, in particular, decide whether the suggestion of Nairn West & Suburban Community Council regarding alternative use/marketing/repurposing should be pursued. The available options for the next steps are:-

- Agree the Community Council proposal should be pursued and then decide that the proposal to demolish should not go ahead or
- Agree that the Community Council suggestion should not be pursued in which case the following options are available:
 - Agree that the proposal to dispose, by demolition, of the old store and change the use back to public amenity use should go ahead subject to Sheriff Court approval
 - Amend the proposal (any significant amendment would require a new consultation process)
 - Decide that the proposal should not go ahead.

Designation: Carron McDiarmid, Executive Chief Officer, Communities and Place
Liz Denovan, Executive Chief Officer, Resources and Finance

Date: 15 February 2021

Author: Sara Murdoch, Common Good Fund Officer

Background Papers:

NAIRN COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON:

- 1. PROPOSAL TO DISPOSE, BY LEASE, OF THE LINKS TEA ROOM, THE LINKS, NAIRN**
- 2. PROPOSAL TO DISPOSE, BY DEMOLITION, OF THE OLD STORE, THE LINKS, NAIRN AND TO RETURN THE USE OF THE AREA OF LAND TO PUBLIC AMENITY**

1. Number of responses received

The public consultation period ended on 6 January 2021 with a total of 16 responses having been received. Some responses addressed both consultations however most only addressed the consultation in respect of the Tea Room and made no comment on the Old Store.

These responses are broken down as follows:

- 4 addressed both consultations
- 10 addressed Tea Room only
- 2 addressed Old Store only

Of the responses addressing both, 3 responses were fully supportive of both proposals and 1 was supportive of the Tea Room proposal but raised issues regarding the Old Store proposal.

Of the responses addressing the Tea Room only, 7 responses were fully supportive and 3 raised issues to be responded to. Nairn West & Suburban Community Council are supportive in principal but have raised a number of points for clarification.

Of the 2 responses in respect of the Old Store only, both raised issues to be responded to. Nairn West & Suburban Community Council are supportive of the proposal but submitted suggestions for a plan of action to take place before any decision is reached. This is detailed for response in the table below.

2. Representations, questions and issues distilled from the responses received – Tea Room

a. Supportive comments received

The types of supportive comments received can be summarised in the following examples:-

- One of the best things to happen to Nairn, beneficial to both local community and tourism industry.
- Significantly enhances the area.
- Great to see local businesses thriving.
- Tenants have transformed Tea Room into a highly successful business which operates to a great standard with area being kept clean and tidy.

- Longer lease will allow for investment and will increase income into the Common Good Fund.

b. Objections or issues raised for response

The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
<p>Tea Room is iconic and should be listed – concerned by possible future plans to demolish and replace it.</p>	<p>Highland Council does not have any plans to apply for listing of the Tea Room however, anyone can apply, and it will be assessed by Historic Environment Scotland.</p> <p>Any plans to replace the Tea Room will be assessed under planning regulations and procedures.</p>
<p>Accessibility concerns:</p> <ul style="list-style-type: none"> • All internal and external tables to enable a wheelchair to have full access • Fully accessible toilet with availability to other disabled Links users • Any replacement building to be fully compliant with accessibility requirements 	<p>Tenants are obliged to comply with relevant statutory provisions with regard to accessibility for disabled customers.</p> <p>In the event of the building being replaced these issues will be considered within the planning process.</p>
<p>There is a need for an overall policy on Common Good leasing which should be subject to community consultation and agreement.</p>	<p>There are 2 policies in respect of Common Good available on Highland Council website –</p> <ul style="list-style-type: none"> • Common Good Policy • Policy for disposal or lease of Common Good property for a consideration less than market value <p>These are Council procedural/management documents and there is no requirement to consult or agree the contents with the community in advance of publication. However, the comment has been noted and engagement with the community will be considered when a review of existing policies arises.</p>
<p>Any further development/leasing should be compatible with the overall blueprint for the Links area with clear conditions on what development may be permitted.</p>	<p>Depending on the particular circumstances of any further developments/leases, these may fall within Community Empowerment or Planning requirements (or both) for consultation requirements.</p>

<p>No consistency in Nairn Common Good leases – durations, terms & rentals vary. Who decides on the terms – length, renewal/extension?</p>	<p>Each lease is a separate negotiation which will vary depending on the circumstances of each case – and nature of asset. For instance, a tenant could invest a significant amount of money in an asset in which case it would be reasonable to grant a long lease to allow them time to recoup their investment.</p> <p>The terms are negotiated by the Council’s Estates team with the prospective tenant or their legal representative. A view is taken on what is considered reasonable having cognisance to the views of local Councillors.</p>
<p>What if tenant goes out of business or wants to relinquish the lease? What circumstances can Common Good reclaim the site?</p>	<p>A long commercial lease has some value therefore, if a tenant goes out of business they may seek to assign to a third party. This would allow them some recovery on investment. A tenant could surrender the lease back to the Council but would receive nothing in return.</p> <p>The Council could reclaim the site prior to the end if the tenant did something to justify the lease being irritated and terminated. On some occasions break clauses are included which specify when either landlord or tenant may terminate the lease within the currency of the term – this is something negotiable dependant on circumstances and nature of asset as mentioned above.</p>
<p>How is rent level set? What is review formula – inflation or index linked? Would a link to trading turnover/profit be more appropriate?</p>	<p>The rent constitutes the best rental offered at the Closing Date and by virtue of the marketing process is considered to be the market rent. The rent is reviewed on a 5 yearly basis in an upward only direction to open market value having regard to the various assumptions and disregards contained in the lease.</p> <p>Linking the rent to turnover or profit is not considered appropriate in that it does not guarantee a market rent for the Common Good. The tenant</p>

	<p>cannot be forced to remain open and so could in effect decide to close the premises for 6 months or go on sabbatical for a year and this would result in the Common Good receiving limited or no rent. Similarly, they may operate the café poorly and not generate the level of turnover required to secure a “market” rent for the site. The Landlord would be at the mercy of the tenant.</p>
<p>Will there be restrictions on use – as café only, seasonal periods, opening times, serving alcohol etc?</p>	<p>Yes. The User Clause in the lease dictates that the subjects can only be used as a café with just 6.6 sq. m of space given over to “retail”, i.e. selling postcards and the like. There is an obligation on the landlord to act reasonably in the event of a request to change the use class to 4, 5 or 6 within the Town & Country Planning (Scotland) Act 1997.</p> <p>There will be no restriction on opening times/seasonal periods. It will be up to the tenant to apply to the Licencing Board if they wish to sell alcohol from the premises.</p>
<p>Current Tea Room occupies a small part of the lease plot, in the event of it being replaced what constraints will apply to the size (scale/height) of the new building? Will there be any conditions on provision of or extension of outside seating beyond the leased plot?</p>	<p>There are currently no proposals for consideration regarding replacement so it is not possible to state what might be appropriate at this stage. This would be a matter for planning when any application is made.</p> <p>There will be no provision for seating beyond the leased area. The tenant will only be permitted to erect external seating within the leased demise.</p>
<p>Who owns the current building? Is it currently on a full repair and insurance lease? If replaced, will compensation be due to Common Good Fund and what title/rights will Common Good have in respect of the new building?</p>	<p>The building is owned by Highland Council as a Common Good asset. The tenant insures against third party and property occupiers liability with the Landlord insuring the premises. Any replacement building will continue to be the property of Highland Council and held as a Common Good asset.</p>

How are the rights of landlord and tenant protected?	Rights are protected by the provisions of the lease and relevant legislation.
Who is responsible for rates, council tax and insurance?	Tenant is responsible for all outgoings. See above re insurance.
Can lease be sublet or assigned? Can the lease be protected against conversion into a McDonalds or KFC franchise?	<p>The tenant can only assign or sublet with the written consent of the Landlord. Such consent shall not be unreasonable withheld where the Landlord is satisfied as to the financial standing and capacity of the proposed assignee.</p> <p>Current use is for café primarily with secondary use for retail and no other use without written consent of Landlord.</p> <p>Technically, there is nothing to prevent the tenant assigning or sub-letting to a KFC or McDonalds assuming they meet the criteria above. Whilst it may be possible for the Council to insist on absolute discretion on the matter of alienation, it must be noted that this would be an onerous clause and could result in a reduced rent being sought.</p>
Is there protection against inadvertent creation of a protected tenancy or similar rights of occupation?	The lease governs the tenant's occupation of the property.
At lease end who benefits from any capital gain on rebuilt/extended structure? Will tenant have any claim for compensation for improvements made?	The structure will remain a Common Good asset. There will be no compensation provision contained in the lease.
Will there be provisions for restitution/reinstatement of site at the end of the lease?	It is usual to include a provision that when the tenant surrenders the property, they leave it in good and substantial repair having also made good any damage caused by removal of any of their fixtures and fittings.
Details of the leases should be publicly known.	During the course of negotiations, it is usual to treat the proposed details under discussion as being commercially confidential. However, once the lease has been completed it becomes a public document. Leases over 20 years are recorded in the Land Registry otherwise leases can be

	recorded in the Books of Council and Session.
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3. Representations, questions and issues distilled from the responses received – Old Store

a. **Supportive comments received**

2 responses made reference to the Old Store being an eyesore with 1 of these further commenting that it was a target for vandalism.

A response was received asking about leasing or buying the Old Store. The respondent was asked to submit further information for consideration but has not been in touch again during the consultation period.

b. **Objections or issues raised for response**

The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
Could the Old Store provide a future use for business start-up, art or cultural activity? Is building at risk of collapse?	While the property is not at immediate risk of collapse, it is in a poor condition and badly dilapidated. It is not considered suitable for a future use in its current state and would require considerable capital to bring the property into a "lettable" condition – demolition and rebuild.
Has availability for alternate use/repurposing been promoted? If not, why not?	See comment above re condition. The Estates team has not been asked to market it or promote an alternative use as a result.
It is understood some local groups have enquired about access to premises on Links in the past (cycling club, camera club). Have they been approached to take on the store?	No approach has been made. See comments above.
Would the Common Good consider a short lease to a community group on basis of nominal rent in return for refurbishing and maintaining the building? This could generate a small income for the Common Good fund.	This would need to be put as a proposal to local Members. The consultation has not generated any such proposal. The cost of refurbishing the Store may make this a prohibitive suggestion for community groups.
Option should not be offered to a commercial enterprise for instance providing refreshments due to proximity of other outlets.	Any application submitted for use would be considered on the merits of each case taking into account all

	relevant factors. Neighbouring similar outlets would qualify as such a factor.
If demolished, site should be landscaped with a safe, ground level installation and protection of electrical supply and no other structure.	The plan is for the area to be landscaped with a safe and secure electrical supply in place.
As Highland Council is applying to demolish and return the land to public use, Highland Council amenities budget should bear the costs of the demolition and landscaping and not the Common Good fund.	The proposal to demolish is being made by Highland Council in its capacity as managers and custodians of Nairn Common Good fund. It is appropriate that responsibility for the costs of the demolition and landscaping fall to the Common Good fund not the general Highland Council amenities budget.

4. Next steps

- Consider and agree responses to the above questions/issues raised. Once approved they will be included in a document for publication on the Council website and notifying to those who have responded within the consultation process.
- Members to consider the outcome following the consultation process. If the value of the proposed disposal is up to 10% of the Fund value, the decision in respect of the proposal rests with Nairnshire Committee. If the value exceeds 10%, the decision falls to full Council.
- In respect of the old store the Nairn West & Suburban Community Council have put forward a suggestion that consideration is given to whether there are alternative uses it could be put to, offered to community groups or repurposed. They have asked that Members consider this before deciding on whether to proceed with demolition.

5. Decision making options

- **Tea Room –**
 - Happy with proposal going ahead and agree to proceeding to Sheriff Court for approval.
 - Consider if any amendments to the proposal may be necessary in light of the representations received – any significant amendments will trigger a fresh consultation process.
 - Decide that the proposal should not go ahead.
- **Old store –**
 - If it is decided not to pursue Community Council suggestion then proposal should go ahead with agreement to proceed to Sheriff Court for approval.

- Consider if any amendments to the proposal may be necessary in light of the representations received – any significant amendments will trigger a fresh consultation process.
- Decide to pursue Community Council suggestion and decide that proposal should not go ahead.

6. Additional information

The proposal in respect of the Tea Room constitutes a disposal. The proposal to demolish the Old Store constitutes both a disposal and a change of use or appropriation. As the Links is considered to derive title from the Burgh Charter of King James VI dated 16 October 1589 and has been used as public amenity land for time immemorial, it raises a question of inalienability and therefore an application to the Sheriff Court for permission to dispose is required.

The Community Empowerment consultation and Court application are separate to any process and consultation under planning legislation.

Sara Murdoch
Common Good Fund Officer
15.02.2021