Agenda Item	8.
Report No	BSAC/15/21

THE HIGHLAND COUNCIL

Committee: Badenoch & Strathspey Area Committee

Date: 9 August 2021

1.

Report Title: Kingussie and Grantown on Spey Common Good Funds

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

Purpose/Executive Summary

- 1.1 This report details the outcome of the public consultation that has taken place under section 102 Community Empowerment (Scotland) Act 2015 (the 2015 Act) in respect of the list of property proposed to be included on the Common Good Asset Register for Kingussie and the process for publishing the Asset Register.
- 1.2 The report also provides details on the recent officer investigations into possible Common Good property in Grantown on Spey and covers the process necessary to commence a public consultation under section 102 of the 2015 Act in respect of the list of proposed property which will lead to the establishment of a Common Good Asset Register for Grantown on Spey.
- 1.3 The report summarises the position and processes to be followed in respect of a Kingussie Common Good asset where a Community Asset Transfer request has been made for Kingussie Market Stance Pitch. Consideration of the request for an asset transfer of the Market Stance Pitch can be found detailed in the report elsewhere on this committee agenda.

2. Recommendations

2.1 Members are asked to:

- i. Note the contents of the Kingussie Common Good Asset Register in the format for publication (**Appendix 1**).
- ii. Note the content of the document titled "Kingussie Common Good property consultation representations and responses" (**Appendix 2**).

- iii. Agree to the publication of the Common Good Asset register for Kingussie and the representations and responses document on the Council website.
- iv. Agree to recommend to the Council the reclassification of the property included in the Asset Register and reactivation of Kingussie Common Good Fund.
- v. Agree to recommend to the Council that, due to the financial position of the fund, Kingussie Common Good property will continue to be maintained by Highland Council until such time as the fund recovers sufficiently to sustain Kingussie Common Good assets.
- vi. Note the contents of the list of property proposed to be included in the Common Good Asset Register for Grantown on Spey (**Appendix 3**).
- vii. Agree the commencement of the public consultation on the list of proposed property for Grantown on Spey in accordance with section 102 of the 2015 Act.
- viii. Note the position regarding the Community Asset Transfer request in respect of the Market Stance Pitch by Kingussie Camanachd which is detailed in the report elsewhere on this Committee agenda and the requirement to conduct a consultation under section 104 of the 2015 Act as this will constitute a proposal to dispose of a Common Good Asset.
- ix. Subject to the Committee decision with regards the Community Asset Transfer referred to, agree the commencement of the public consultation in respect of the proposed disposal by Community Asset Transfer of the Market Stance Pitch.

3. Implications

3.1 Resource – there are financial implications in re-activating the Common Good Fund in Kingussie as initially it will have property assets but minimal funds. It will be a similar position in due course in respect of Grantown on Spey. Currently, all Highland Common Good Funds bear a proportionate share of central overhead costs and manage and finance their own assets. The same would be expected of Kingussie in the event that assets generate income for the fund. In the meantime, the central support costs for Kingussie and maintenance of Kingussie Common Good assets would need to be met by the other Highland Funds in accordance with the currently agreed formula. The current existing Highland Common Good Funds undertake regular monitoring and reporting to Area Committees. As Kingussie Common Good will initially have minimal financial funds, there will be little to be included in any such monitoring reports however, reports will be brought to future Committee meetings should the financial position change and to report and update as strategic plans are developed.

The re-classification of assets may result in a change of rentals received/expenses charged as far as Council accounts are concerned. This is a matter which will need to form part of careful forward planning to allow Kingussie Common Good to start to build funds whilst ensuring any expenditure on any assets re-classified are still supported appropriately.

Members should note that in the absence of funds, any decisions taken in respect of Kingussie Common Good that have financial implications would require to be agreed by the Highland Council.

3.2 Legal – the requirement to identify and publish a Common Good Register is contained in section 102 of the 2015 Act supported by statutory guidance to which the Council must have regard. That guidance also recommends that the Asset Register is made subject to regular reviews which should take at intervals of no more than 5 years. Section 104 of the 2015 Act requires the Council to conduct a public consultation when considering disposing or changing the use of Common Good property.

- 3.3 Community (Equality, Poverty, Rural and Island) the duties contained in Part 8 of the 2015 Act are designed to increase communities involvement in decisions affecting Common Good assets. In addition to the establishing of the Asset Register, it also includes consultation on disposal (by sale or long lease) or change of use of assets.
- 3.4 Climate Change / Carbon Clever no implications.
- 3.5 Risk no implications.
- 3.6 Gaelic no implications.

4. Kingussie Common Good Asset Register consultation

- 4.1 The public consultation on the list of property proposed to be included in the Common Good Asset Register for Kingussie opened on 11 February 2021 and closed on 4 June 2021. The 2015 Act provides for such consultations to be open for 12 weeks however; the period was extended to 16 weeks in light of the ongoing Covid restrictions in order to allow as many people as possible to participate. The consultation was advertised on the Council website and social media pages. Kingussie Community Council and a number of community bodies were also notified directly.
- 4.2 During the course of the consultation, 2 emails were received making representations regarding whether certain property should be included or to clarify aspects of the property included on the list being consulted upon. **Appendix 2** details the representations received and the responses to be made in respect of the same. Members are asked to agree this document which will then be published on the Council website and a copy sent to those that made representations.
- 4.3 If Members are content with the Asset Register, it will be published in the format at **Appendix 1.** The Asset Register is a living document and it can be added to at any time if further Common Good property is subsequently identified. In any event, the Register will be kept under regular review to ensure it remains up to date.
- 4.4 Consideration has been given to the decision making process for approving the publication of the Asset Register. When the existing Registers were published in February 2020, no formal Register was published for Kingussie as it was believed it only had minimal funds and no heritable property. However, the actual fund was in existence at the time. Therefore, the publication now will constitute a reactivation of the existing fund and, as such, approval to publish is appropriate to be at Area Committee level as it falls within management of the fund but that recommendations iv. and v. should go to full Council as starred items to reflect the fact that all elected Members of Highland Council are custodians of all Common Good Funds across Highland.

5. Actions upon or following publication of the Kingussie Common Good Asset Register

- 5.1 The finance service will be informed if approval to proceed to publication is given in order that the appropriate Common Good accounting and reporting processes can be put in place to ensure that the Common Good Fund for Kingussie operates in accordance with the other Highland Funds.
- 5.2 Strategy and forward planning meetings will take place involving Members and relevant Officers regarding the movement of assets from the Council's General Fund to the Kingussie Common Good Fund. The general Common Good policy contains an

understanding that each fund will maintain its property assets. However, in respect of the existing Highland funds most have sufficient financial assets, income generating assets or reserves to allow them to do so. This will not be the case in respect of Kingussie. Therefore, such forward planning meetings will need to consider carefully the financial implications involved in order to balance the need to allow the Kingussie Common Good Fund to receive income to start building funds alongside the fact the Council will need to continue to retain substantial responsibility for expenditure incurred in connection with any assets until Kingussie is in a position to take on the responsibility.

6 Grantown on Spey Common Good Asset Register consultation

- 6.1 Investigations have been undertaken into possible Common Good property in Grantown on Spey. Attached at **Appendix 3** is the list of property identified so far. If agreed, this list will be used to commence the consultation leading to the establishment of the Asset Register.
- 6.2 The process for the consultation under section 102 of the 2015 Act was set out in detail in the report before this Committee on 9 February 2021. In brief, the Council must publish the list of proposed property on its website and advertise on the website and social media pages as well as making it available in Council offices, libraries and hubs. Community Councils and any community bodies must be given direct notification and invited to make representations. The consultation period is usually 12 weeks however, it is suggested that this should be extended to 16 weeks in light of the ongoing Covid 19 difficulties and this aligns with the process undertaken for Kingussie. Representations must be in writing and will be accepted from any member of the public. All representations must be investigated and responded to and these representations and responses will be published on the Council website. The Asset Register must be published as soon as possible and, in any event, within 6 months of the end of the consultation period. The Asset Register must be kept under review.
- 6.3 The outcome of the public consultation in respect of the list of property proposed to be included on a Common Good Asset Register for Grantown on Spey will be brought before a future Area Committee meeting for consideration.

7 Consultation on disposal of Market Stance Pitch by Community Asset Transfer (lease) to Kingussie Camanachd Club

- 7.1 The Market Stance Pitch has been identified as a Common Good Asset. The title details for this asset are included in the Kingussie Asset Register at **Appendix 1**. The pitch is occupied by Kingussie Camanachd Club who have submitted an application for a Community Asset Transfer by lease which will allow them to improve and develop the pitch. This request has been submitted and validated and the details for this, and recommendation in respect of this request, can be found in the report elsewhere on this Committee agenda.
- 7.2 Common Good assets are in scope for consideration for Community Asset Transfers and there are statutory procedures within the 2015 Act and guidance with regard to both CATs and disposals or change of use of Common Good property. Unfortunately, the Act and guidance are silent on how the 2 procedures should combine. Therefore, it is a matter for each Council to develop an individual approach to such matters. In the current circumstances and given the number of steps required in order to progress this request as outlined below, Members are being asked to consider the asset transfer request and, subject to a positive decision on this matter, proceed to the consultation process required under the Community Empowerment Act as outlined below.

- 7.3 Section 104 of the 2015 Act requires the Council to conduct a public consultation when proposing to dispose or change the use of Common Good property. A disposal can include a long lease or other form of beneficial third party rights as well as sale. Whilst the length of lease is not specified, Highland (as well as a number of other Scottish Councils) have followed case law and treat any lease of 10 years or more as a disposal for consultation purposes. The Camanachd Club are seeking a 25 year lease which will qualify as a disposal triggering the requirement to consult.
- 7.4 The process for undertaking a consultation under section 104 of the 2015 Act was also detailed in full in the report before this Committee on 9 February 2021. In brief, a document must be produced clearly identifying the property and what is proposed. This must be published on the Council website and advertised there as well as on Council social media. It must also be available to view in Council offices, libraries and hubs. Community Councils and any community bodies with an interest in the property must be notified directly and invited to make representations however, comments will be accepted from any member of the public. The Council must respond to any representations received and these must be published on the Council website along with the formal decision. The guidance provides for these consultations to be publicly available for 8 weeks however, the Council has been extending this to 12 weeks whilst the current Covid19 situation is ongoing.
- 7.5 If the request to commence a consultation under section 104 is agreed, the consultation document will be prepared seeking community views on the specific proposal to dispose by Community Asset Transfer (lease). As noted in the report elsewhere on this Committee agenda, a final decision cannot be made until this consultation process has been completed. Governance for the decision is contained within the Council's Scheme of Delegation which provides that Area Committees have the delegated authority to oversee the management of the Common Good funds including disposing of assets up to 10% of the value of the fund for the particular area, with anything over 10% being reserved to full Council. In this case, the asset has been given a value of £1 as detailed in the report elsewhere on this Committee agenda. This is less than 10% of the value of Kingussie Common Good Fund and, as a result, the decision on the outcome of the consultation will sit with Badenoch & Strathspey Area Committee.
- 7.6 In addition to the consultation process, consideration must also be given to whether the property concerned is inalienable which means the Council is restricted from disposing or changing the use of it without first obtaining the authority of the Sheriff Court under section 75 Local Government (Scotland) Act 1973. The Market Stance Pitch is considered to be inalienable because the deed disposing of it to the former Burgh contains a specific requirement that it is "for the purpose of being used as a Playing Field for the use of the inhabitants if the said Burgh of Kingussie and for no other purpose without consent". Therefore, authority of the Court will also be required before any final transaction can be completed.

Designation: Carron McDermid, ECO, Community & Places Liz Denovan, ECO, Finance & Resources

Date: 19 July 2021

Author: Sara Murdoch, Common Good Fund Officer

Background Papers: 1. Common Good Asset Register for the former Burgh of Kingussie

- 2. Consultation representations and responses for Kingussie
- 3. List of property proposed to be included in the Common Good

 Asset Register for the former Burgh of Grantown on Spey

Common Good Asset Register for the former Burgh of Kingussie

Appendix 1

COMMON GOOD ASSET REGISTER FOR THE FORMER BURGH OF KINGUSSIE

LAND AND BUILDINGS		
In 1464 Kingussie was created a b	ourgh of barony by King James III in favo	our of Alexander Gordon, 1st Earl of
Huntly. It then became a Police B	urgh in 1867.	
Name of asset	Location	Description
Ardvonie Car Park	Gynack Road, PH21 1HE. CAGUPRN: 130112555 Bordered by Tait's Brae Play Park and the surgery to the north, part of Tait's Brae Play Park on the east, Moray Bank on the south and Tait's Brae Play Park and the toilets on the west.	Site area: 2100m². The area of the car park was acquired in the same deed as Tait's Brae play park. Title deed: Trustee of James E B Baillie (Nellie Lisa, Baroness Burton) to Provost, Magistrates & Councillors of Burgh of Kingussie recorded 8 March 1956. Land is subject to the condition that the land is for use as a recreation ground and for no other purpose. Inalienable.
Tait's Brae Play Park	Ardvonie Road CAGUPRN: 130112542. Bordered on the north west be the rear of properties Ardvonie to Spey cottage on south of Old Distillery Road, on the west and south west by Tait's Brae/Ardvonie Road, on the south east by the rear of Mcinnes Cottage, Tighna-Beag and Duke of Gordon Hotel, continuing around Ardvonie Car Park and the Surgery to the eastern border at the rear of properties Ardmore to Tom Liath.	Site area: 11,200 m² approx. The area of the playing fields was acquired by the same deed as the land now used as Ardvonie Car Park. Title deed: Trustee of James E B Baillie (Nellie Lisa, Baroness Burton) to Provost, Magistrates& Councillors of Burgh of Kingussie recorded 8 March 1956. Land is subject to the condition that the land is for use as a recreation ground and for no other purpose. Inalienable.
Market stance (Livestock market) and shinty pitch	Ruthven Road, PH21 1ER. CAGUPRN (Pitch): 130112545. Bordered on the north by Market Lane, on the east by Ruthven Road, on the south by open land and on the west by open land, Kingussie Recycling Centre/Civic Amenity Site and lane adjacent to light industrial units but excluding the area that was sold to Northern Co-operative Society by Badenoch & Strathspey District Council in 1977. Title to the Shinty Clubhouse has been transferred to Kingussie Camanachd Club pursuant to an agreement that predated the Common Good part of the Community Empowerment (Scotland) Act 2015 coming into force.	Site area: 15,700 m² or thereby. Title deed: Feu Charter by Trustee of James E B Baillie (Nellie Lisa, Baroness Burton) to Provost, Magistrates & Councillors of Burgh of Kingussie recorded 23 January 1947. Land is subject to the condition that it is "for the purpose of being used as a Playing Field for the use of the inhabitants of the said Burgh of Kingussie and for no other purpose without consent". However, it is also declared that it may be used for "markets and for Travelling Shows and Circuses". The deed also provides that it must remain unbuilt upon for all time coming with the exception of a pavilion for use in connection with recreation.



Common Good Asset Register for the former Burgh of Kingussie

		Inalienable. Northern portion is leased for use as a livestock market and the lower portion is occupied by Kingussie Camanachd Club.
Putting Green	Spey Street, PH21 1EL. CAGUPRN: 130112547. Rectangular piece of land bordered on south by railway line, on west by eastern boundary of Gynack Lane, on north by Spey Street and on east by the western boundary of the Bowling Green and land belonging to the Hon. Alexander James Baillie of Dochfour (this land lies between the southern boundary of the Bowling Green and the railway line).	Only part of the putting green is Common Good, the rest is privately owned. Common Good area: 2025 m² approx. Title deed: Bank of Scotland to Provost, Magistrates & Councillors of Burgh of Kingussie recorded 22 February 1967. Land was gifted for use solely as a putting green and garden ground. Inalienable.
Putting Green sheds and adjacent land	Spey Street, PH21 1EL. CAGUPRN: 130112547. Bordered on the north by Spey Street, on the east by the lane separating this land from the Putting Green, on the south by the railway line and on the west by the Gynack Burn.	Site area: 480 m² approx. Title deed: James Evan Bruce Baillie of Dochfour to Provost, Magistrates & Councillors of Burgh of Kingussie recorded 2 November 1923. Land was gifted for the purposes of the erection of 2 low buildings to be used as stores and for no other purpose. Land is land of the Burgh not acquired for statutory purpose or held under a special trust and therefore, is considered to be Common Good. Inalienable.
Kingussie Tennis Courts	Ardbroilach Road PH21 1LD CAGUPRN: 130112548 Located between properties known as Millstones and Rosemount on Ardbroilach Road and adjacent to woodland owned by Kingussie Community Development Company.	Site area: 2873.25 m² or thereby. Title deed: James Evan Bruce Baillie of Dochfour to Provost, Magistrates & Councillors of Burgh of Kingussie recorded 16 December 1920. Land was gifted to be used for the purpose of forming public tennis courts for the Burgh of Kingussie and for no other purpose. Leased out. Inalienable.
Clock Tower and land for location of Clock Tower.	East Terrace. Land for the location of the Clock Tower is bordered on the east and south by land that is privately owned (properties Cnoc Ard and Villa Latina), on the west by Ardbroilach Road and on the north by East Terrace. The Clock Tower is located on this land approximately 40 metres east of Ardbroilach Road.	Site area of location land: 420 m² approx. The gift of the Clock Tower and the land for its location are contained in separate titles. • Clock Tower: The Tower bears the inscription – "This tower and clock were gifted to the Burgh of Kingussie by John Duncan McGruer Esq. Invercargill, New



Common Good Asset Register for the former Burgh of Kingussie

		Zealand, a native of the town. 1925 "Mar Chuimhneachan"".
		Location – Title deed: William Wolfenden & William McGruer to the Provost, Magistrates & Councillors of the Burgh of Kingussie recorded 16 December 1925. Land was specifically acquired and gifted for the purpose of the erection of the Clock Tower and for use as a "pleasure ground or open space for the use of the inhabitants of the Burgh of Kingussie in all time coming".
	ART AND ARTIFACTS	Inalienable.
Name of asset	Location	Description
Provost Chain of Office	Am Fasgadh Folk Museum Kingussie	Solid silver chain set with gemstones dating from 1960's. This is a replacement of the original Provost Chain whose whereabouts is unknown.
	COMMON GOOD FUND	
Name of asset	Location	Description
Kingussie Common Good Fund	N/A	Fund set up for benefit of former Burgh of Kingussie. Financial information about this fund is contained within the Annual Accounts and Area Committee monitoring reports which are available on the Highland Council website.



Appendix 2

KINGUSSIE REPRESENTATIONS AND RESPONSES

REPRESENTATIONS RECEIVED	RESPONSES
Kingussie Tennis Courts These should be included as a Common Good asset.	Kingussie Tennis Courts This has been investigated and it is agreed that the area of land occupied by the Tennis Courts should be classified as Common Good. This will be added to the Asset Register for publication.
Gynack Gardens	Gynack Gardens
Should these be Common Good?	Gynack gardens were formerly the Duke of Gordon gardens. They were acquired by Highland Regional Council from Eden Hotels in 1976 then conveyed to Badenoch & Strathspey District Council in 1982. No new Common Good property can be created after the burghs were abolished in 1975. As the gardens did not come into Council ownership until 1976, they cannot be Common Good.
The Glebe (including the duck ponds)	The Glebe (including the duck ponds)
Should this be considered Common Good?	The Glebe was formerly owned by Church of Scotland General Trustees who transferred it to Badenoch & Strathspey District Council by 2 dispositions dated 1981 and 1985. These transactions post-dated the abolition of the burghs in 1975 therefore, the Glebe is not Common Good.
MacKenzie Fountain	MacKenzie Fountain
This is located at the railway station car park. The fountain was gifted to Kingussie by Peter Alexander Cameron MacKenzie and opened by his wife in 1911. Should this be added to the list of Common Good property?	Although fountain was gifted to Kingussie, it was erected on railway company land. The legal rule of accession provides that title of property is taken from the land to which it is attached. Therefore, fountain is owned by the railway company. There is a Minute of Agreement for when the fountain was to be erected but it specifically does not create any rights over the land in favour of the Council.



Court House	Court House
Should this be considered as Common Good?	The Court House was not acquired by the Burgh of Kingussie. It was
	conveyed to the Commissioners of Supply of Inverness-shire on 31
	December 1863. As such it would not be considered Burgh property and
	therefore, not Common Good.



Appendix 3

LIST OF PROPERTY PROPOSED TO BE INCLUDED IN THE HIGHLAND COMMON GOOD FUND ASSET REGISTER IN RESPECT OF THE FORMER BURGH OF GRANTOWN ON SPEY

LAND AND BUILDINGS

In 1694 Grantown was erected into a Burgh of Regality for Ludovick Grant by King William and Queen Mary. It then became a Police Burgh in 1898

then became a Police Burgh in 1898.		
Name of asset	Location	Description
The Square including: Area of ornamental garden opposite the Court House and adjacent to the Garth Hotel	PH26 3HG. The Square runs from the junctions with Seafield Avenue and Forest Road in a north easterly direction to the junction with Castle Road, including the ornamental garden referred to. The Square does not include the land occupied by the Court House.	Site area: 13500.3m². Title deed: Right Honourable Nina Caroline Ogilvie Grant, Countess of Seafield to Provost, Magistrates & Councillors of Burgh of Grantown recorded 15 July 1966. Deed does not specify use but is assessed as Common Good due to being Burgh land not acquired for a statutory purpose or held on special trust. Inalienable.
High Street toilets and car park Also includes an area of amenity land between the car park boundary and the boundary of the property known as The Sheiling.	PH26 3EL Toilets CAGUPRN: 130112554 Car Park CAGUPRN: 130113340 Address when acquired was given as 94-98 High Street.	Site area: 1712m² or thereby. Title deed: Right Honourable Nina Caroline Ogilvie Grant, Countess of Seafield to Provost, Magistrates and Councillors of the Burgh of Grantown recorded 11 November 1969. Deed does not specify use but is assessed as Common Good due to being Burgh land not acquired for a statutory purpose or held on special trust. Inalienable.
Mossie Road play park	CAGUPRN: 130112539 Located at the junction of Castle Road East and Mossie Road and adjacent to Grant House Resource Centre.	Site area: 3023m² or thereby. Title deed: Right Honourable Nina Caroline Ogilvie Grant, Countess of Seafield to Provost, Magistrates & Councillors of Burgh of Grantown recorded 26 April 1968. Deed specifies that the land is to be used only as a children's play park in all time coming. The land is subject to a pre- emption in the event of the Council wishing to sell and a condition that it must remain owned as an undivided piece of land. Inalienable.
Grantown War Memorial	CAGUPRN: 130113277 The Square, PH26 3HG Located in the middle of The Square at the intersection with Church Avenue and Strathspey Gardens.	War memorial was designed by Alexander Marshall MacKenzie and unveiled by the Countess of Seafield on 18 September 1921. As it is sited on Common Good land,



		it takes its title from that land, therefore is considered to be Common Good.
		Memorials and statues are currently
		managed by the Highland Council
		Community Services. There is no proposal
		to change this arrangement.
Regality Cross	The Square, PH26 3HG	The original Regality Cross erected in the current town of Grantown in 1766 went missing without trace. In 2015, the current
		Regality Cross was erected to celebrate the 250 th anniversary of the town being
		founded. It has been built on The Square,
		which is land considered to be Common
		Good and, as a result, takes its title from
		that land. Therefore, the Regality Cross is
		considered to be Common Good.
	ART AND ARTIFACTS	
Name of asset	Location	Description
Grantown Clock & Bell	Grantown Museum	The town clock and bell were purchased
	Burnfield House	using money raised locally originally
	Burnfield Avenue	intended for relief for soldiers wounded in
	PH26 3HH	the Napoleonic War but never sent. In
		1824 a tower was built to house the clock
		and bell at Speyside House. It was
		removed in1980's when Speyside House
		was converted into flats. In 2006, Grantown Museum restored the
		clock and built a campanile to house the
		bell. The clock is displayed in the museum.
Desk Stand	Grantown Museum	Ornate desk stand with drawer, 2 glass
Desk Stallu	Burnfield House	metal topped ink wells, pen rests and
	Burnfield Avenue	handle.
	PH26 3HH	Presented by Right Honourable Nina
		Caroline Ogilvie Grant, Countess of
		Seafield when The Square was transferred
		to the Provost, Magistrates & Councillors
		of the burgh of Grantown on Spey in 1966
		marking the 200 th anniversary of the
		founding of the town.
Provost Chair	Location – to be confirmed	Description – to be confirmed
COMMON GOOD FUND		
Name of asset	Location	Description
Grantown on Spey Common Good	N/A	Fund set up for benefit of former Burgh of
Fund		Grantown. Financial information about
		this fund is contained within the Annual
		Accounts and Area Committee monitoring
		reports which are available on the
		Highland Council website.