

Agenda Item	10.a
Report No	NC/08/22

THE HIGHLAND COUNCIL

Committee: Nairnshire Area Committee

Date: 8 August 2022

Report Title: Nairn Common Good Fund – Consultation on proposal to dispose, by sale, of Grant Street workshop and yard, Grant Street, Fishertown, Nairn

Report By: Acting Depute Chief Executive and Executive Chief Officer – Performance and Governance
Executive Chief Officer – Communities and Place

1. Purpose/Executive Summary

- 1.1 This report provides information on the outcome of the public consultation under section 104 Community Empowerment (Scotland) Act 2015 proposal to dispose, by sale, of Grant Street workshop and store, Nairn.

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 the proposal for publication on the Council's website as contained in the table in **Appendix 1**.
- iii. Consider whether to:
 - a. Agree that the proposal to dispose, by sale, should go ahead in the terms of the consultation document OR
 - b. Amend the proposal to include the marketing of the property for lease instead of sale and agree that the proposal should go ahead on that basis OR
 - c. Amend the proposal to include the marketing of the property for lease as well as sale and the proposal to go ahead on that basis OR
 - d. Decide that the proposal should not go ahead.

3. Implications

- 3.1 Resource – The Grant Street workshop and store does not currently generate any income for Nairn Common Good fund and has not been in use/generating any income for a period in excess of 10 years. It is in a run down and dilapidated condition and renovation/restoration would result in costs being incurred by Nairn Common Good fund. Seeking to dispose of this property by either sale or lease in its current condition would result in income/capital receipt being received into the fund without incurring renovation costs. However, the costs of the consultation and marketing of the property would be the responsibility of Nairn Common Good fund.
- 3.2 Legal – The statutory requirements to consult have been complied with. Where land is also considered to be inalienable, there is a statutory requirement to seek Court approval for disposal and appropriation. When the asset register was published, Grant Street workshop and store was indicated to be inalienable based on the fact it is a remnant of Charter land. However, this has been reconsidered and this is on the list for amendment when the registers are reviewed in due course. The Charter does not dedicate it to a public use nor has the Council done so by declarations or actions. Finally the public have not had uninterrupted use for time immemorial. Therefore, following review, it is now considered to be alienable and, as a result, a Court application is not required.
- 3.3 Community (Equality, Poverty, Rural and Island) – Grant Street workshop and store is in a very dilapidated state. This process has raised awareness of this asset and the report outlines the community consultation that has taken place and the feedback received as part of that. Marketing it for lease as an alternative 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. Consultation on proposal to dispose, by sale, of Grant Street workshop and yard, Grant Street, Fishertown, Nairn

- 4.1 Grant Street workshop and store is not subject to any lease and does not currently generate any income for Nairn Common Good fund. The site and building is in a dilapidated, run down condition and has not been used for a period in excess of 10 years. The Council's Nairn Area Surveyor assessed the property and was of the opinion that leasing the premises in the current condition would not generate a significant rental income for Nairn Common Good. Similarly, demolishing or restoring the property would incur costs to the fund but would be unlikely to result in a proportionately higher rental yield. In response to representations received an approximate, subjective, indication of figures in this regard are:
- Estimated rental in current or cleared/improved state - £1,200-£1,400 per annum based on similar sites in the locality
 - Estimated costs to make wind and watertight - £10k
 - Estimated demolition costs - £12k

Estimation of a capital receipt for sale is difficult to gauge without marketing the site but, if a small scale residential development was possible, this could be in the region of £45-£50k.

Taking all matters into consideration, Members were of the view that a proposal to dispose, by sale, should be considered as the better option. A sale of Common Good property is a disposal and, as such, triggers the requirement to consult under section 104 Community Empowerment (Scotland) Act 2015. Therefore, Members were consulted on the proposal to commence a public consultation on this basis at a Ward Business Meeting on 8 December 2021.

- 4.2 The public consultation commenced on 11 January 2022 and concluded on 10 March 2022. An analysis of the outcome of the consultation has been prepared and can be found at **Appendix 1**.
- 4.3 A total of 9 responses were received including responses from both Nairn town Community Councils and local residents. In addition 3 expressions of interest in the property either for rental or purchase were received. The responses were broken down as follows:
- 2 were supportive of the proposal as contained in the consultation document.
 - 6 raised issues/comments for response with 2 of those not indicating specifically whether the supported or objected to the proposal.
 - 1 was a simple rejection of the proposal without further comment.
- 4.4 **Appendix 1** provides examples of supportive comments received at section 2a. A table detailing the representations received and the proposed responses from the Council for publication on the Council website is contained at section 2b. In the main, the comments raised the fact the property should be offered for lease either as well as or instead of sale. The comments received on this matter have been noted and are reflected in the options for Members to consider as part of their decision making.

5 Options for next steps

- 5.1 Members are now asked to note the outcome of the consultation in respect of Grant Street workshop and yard. Members should consider and decide upon whether the property should be marketed for lease as well as or instead of sale as an initial matter.
- 5.2 Thereafter the available options for the next steps are:-
- Agree that the proposal to dispose, by sale, should go ahead in the terms of the consultation document
 - Amend the proposal to include the marketing of the property for lease either instead of or as well as sale and decide that the proposal should go ahead on that basis. As this suggestion has been raised and responded to within the current process, such an amendment would not be considered a significant amendment triggering a requirement to commence a new consultation.
 - Decide that the proposal should not go ahead.
- 5.3 As the value of this property is less than 10% of the value of Nairn Common Good fund the governance for making this decision rests with Members at Area Committee.
- 5.4 Where disposal or appropriation (change of use) of Common Good property is being considered, the Council must also address the issue of inalienability. In the case of "disposal" in Highland this included a lease of 10 years or more. To be inalienable

property must be dedicated to public purpose in the title deed or so dedicated by the Council or has been used for public purposes without interference for time immemorial. Currently this property is detailed on the asset register as being inalienable based on title derived from the Royal Charter however it has been confirmed that the Charter does not contain a public purposes dedication and as all other use of this property has been of a private nature, it is now considered to be alienable. As a result Court approval is not necessary for sale or a lease of 10 years or more.

Designation: Kate Lackie, Acting Depute Chief Executive and Executive Chief Officer
Performance and Governance
Allan Gunn, Executive Chief Officer, Communities and Place

Date: 6 July 2022

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Background Papers:

Appendix 1 – Analysis of consultation

NAIRN COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON THE PROPOSAL TO DISPOSE, BY SALE, OF GRANT STREET WORKSHOP AND YARD, GRANT STREET, FISHERTOWN, NAIRN.

1. Number of responses received

The public consultation period ended on 10 March 2022 with a total of 9 responses having been received. Responses were received from both Nairn town Community Councils and local residents. In addition, 3 expressions of interest in the property were received. These responses are broken down as follows:

- 2 were supportive.
- 6 raised issues/comments for response with 2 of those not indicating specifically whether they supported or objected to the proposal.
- 1 was a simple rejection of the proposal but no comment.

In addition:

- 3 expressions of interest in taking on the property either by rental or purchase were received.

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

a. Supportive comments received

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

- No problem with selling off this land.
- May be best to advertise for lease or sale then let the trustees (Councillors) decide what would be the most financially beneficial to the Common Good Fund in the long run.

b. Objections or issues raised for response

Some representations received raised comments or issues for comment only with others objecting to the proposal and also raising comments or issues.

The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
The option to lease should have been included in the consultation document. The document states interest in leasing has been minimal but since the consultation commenced there has been significant	The property has not been advertised in recent years as far as the Area Surveyor is aware however, one of the benefits of the current consultation is to raise awareness of the availability of the property. If the property is to be

<p>interest on social media which contradicts this point. It is understood the Council has not publicised, advertised or offered the site for rent.</p>	<p>marketed for either sale or rent, it would be via the Council website, Council usual media channels and HSPC. Although there may have been interest expressed on social media, only 2 parties submitted expressions of interest within the consultation process with an additional expression of interest being submitted directly to the property team.</p>
<p>It is wrong to consult on only one option.</p>	<p>The Council is presenting its proposal. The community can make other suggestions within the consultation process which Members will consider and may adopt as part of the decision making.</p>
<p>A lease holder might invest in the property at their own expense. This would also support local enterprise.</p>	<p>This possibility is acknowledged however, it is likely any such party would expect a significantly discounted rental in return.</p>
<p>There has been no prior discussion with community councils on the future of this asset. The Members have a clear duty to invite and listen to the views of local residents before making any decision and did not do so.</p>	<p>The consultation is the process within which the community councils and the local community can submit their comments which will receive due regard during the decision making process. No decision has been or can be taken on the matter until the outcome of the consultation has been fully considered by Members at Area Committee.</p>
<p>The consultation is not valid because:</p> <ul style="list-style-type: none"> • It only offers one option, sale, based on unverified arguments • It was not discussed in public at Nairnshire Area Committee but approved in private at a Ward Business Meeting. • A full range of options aimed at keeping it as a public asset for the sole benefit of Nairn residents needs to be discussed. • No decisions or action regarding Nairn Common Good should take place before the local elections in May. 	<p>Responses:</p> <ul style="list-style-type: none"> • The Council's Nairn Area Surveyor is the person qualified to assess the condition of and provide advice on future rental income for the property. • The consultation is an information gathering process and, as such, it is valid to authorise its commencement at a Ward Business Meeting. • Options can be raised during the consultation process and will be given full consideration. • Timetabling alone means this matter will not be considered until the Area Committee following the local elections however, in the meantime, the management of Nairn Common Good will continue as necessary.
<p>Any approaches from local community groups, individuals or local businesses to rent the site should be given consideration by the Highland Council.</p>	<p>Currently there have been only 3 expressions of interest received. These have been acknowledged and will be included in the report to Area Committee</p>

	as part of the overall information received for Members to consider.
The consultation document states that, after taking all matters into consideration, Members were of the opinion disposal “might be” the best option. This is hardly definitive. It implies Members have either not done due diligence or only been able to form an uncertain view.	This is not the case. At this stage, this is only a proposal. Members can only be of the view that this <i>might</i> be the best option as the outcome of the public consultation has not been considered. Only after full consideration at an Area Committee has taken place can this proposal become a firm decision.
There has been no cost/benefit analysis for disposal (in present state) against rental (with a range of options) to generate an income stream whilst retaining the capital asset. Rental/income for a long period, even at a concessionary rent, must surely be better value for Common Good than a one off gain by disposal.	Such an analysis is difficult to produce as, without marketing the site, it is difficult to gauge what the level of interest would be. Therefore, any suggested figures are highly subjective . <ul style="list-style-type: none"> • The pre-app enquiry indicated residential development <i>may</i> be possible. Assuming that to be the case a reasonable capital receipt could possibly be in the region of £45-£50k based on a nearby site. This would only be determined if the site were actually marketed for sale. • Estimated rental figure either in current condition or if cleared are likely to be £1,200-£1,400 per annum based on ground rents in locality and size. • Estimated costs to make property wind & watertight are likely to be £10k. • Estimated demolition costs £12k. <p>The value in the long term development of the site whether by sale or development lease is debateable. Members will consider the outcome of the consultation and all representations received and will have the scope to amend to consider a disposal by lease if they so decide.</p>
<ul style="list-style-type: none"> • If rented, conditions could be imposed requiring tenant to maintain and restore the property. • Rental could justify the setting of a concessionary rental if to a community group or charity if of benefit to the town. • If sold, conditions could limit “opportunistic” asset purchase – land banking or speculative 	<ul style="list-style-type: none"> • A tenant will usually take a property in the condition it is in at rental – if a tenant is to restore then maintain the property, it would be reasonable for the tenant to expect a significant concession in the rental figure. • The Council has a specific policy covering this on the website – see below this table for web link.

<p>redevelopment. Protect it from commercial development by keeping for rental housing.</p>	<ul style="list-style-type: none"> This would require an economic development burden to be placed on the property, but this could reduce the value of the land. What can or cannot be done on site is largely governed by its planning status and the fact it is within a conservation area.
<p>Work with housing association to build housing for young people or families.</p>	<p>This is a possibility, but it may not be of interest to a housing association given the relatively small size of the site.</p>
<p>It is a community property and proposals should be put forward for community use. If site was cleared it could be used as a community garden. It should continue to be used in a way in keeping with its historic usage in the Fishertown area.</p>	<p>Members will consider any suggestions at the decision making stage. However, as part of the Council's responsibility to Common Good, it must consider strategic and viable use of assets in addition to maintaining the historical aspect. It is understood this can often be difficult to reconcile.</p>
<p>The store is built on to the gable of an existing dwelling and, as such, needs to be properly maintained to ensure there is no negative impact to that property.</p>	<p>The store does not physically adjoin the adjacent property. It would be the responsibility of any purchaser or tenant to comply with any legislation pertaining to the neighbouring property.</p>
<p>Disposal is a short term option as once it is sold; it is gone forever. The Council should be looking at the long term management of the assets instead.</p>	<p>The proposal being consulted upon is based on a view that retention may not be in the long term interests of Nairn Common Good. However, Members must fully consider all representations received within the decision making and may make a decision different to that contained within the proposal – for instance to dispose by sale or long term rental.</p>

[Policy for disposal or lease of Common Good property for a consideration less than market value](https://www.highland.gov.uk/downloads/download/1846/policy_for_disposal_or_lease_of_common_good_property_for_less_than_market_value)
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3. **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 this matter the value of the asset is less than 10% of the total value of Nairn Common Good fund.

4. Decision making options

Available options are as follows:-

- Decide proposal should go ahead in the terms of the consultation document.
- 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.

5. Additional information

This property is considered to be alienable. As a result the requirement to also seek Court approval for a disposal is not triggered.

The Community Empowerment consultation is separate to any process and consultation under planning legislation.

Sara Murdoch
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19.05.2022