

Agenda Item	5
Report No	NC/10/23

THE HIGHLAND COUNCIL

Committee: Nairnshire Area Committee

Date: 15 May 2023

Report Title: Nairn Common Good - Consultation on proposal to dispose:
- by sale, of Grant Street workshop and yard, Grant Street, Fishertown, Nairn
- and/or by demolition of all buildings if appropriate as part of the marketing process

Report By: Acting 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 second public consultation under section 104 Community Empowerment (Scotland) act 2015 in respect of the proposal to dispose, by sale, of the Grant Street workshop and yard in Nairn.
- 1.2 The consultation also includes the proposal to dispose, by demolition, of the buildings on site if appropriate as part of any marketing process.

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. **Agree** to dispose of the Grant Street workshop and yard in its current condition for the reasons and implications outlined in the report.

3. Implications

- 3.1 Resource - The Grant Street workshop and yard 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. Following the first consultation, it was marketed for lease. During this process it became apparent that the buildings were more unsafe than had previously been thought with the only option appropriate being demolition.

Disposal by lease of this site would generate revenue income for the Common Good fund, however this must be balanced against the costs necessary in demolishing all buildings on site to allow it to be fit for market. These costs would fall to the Common Good fund and would take a number of years to recoup from the likely level of ground rent value achieved (estimated at £1,200-£1,500 per annum). A disposal by sale would not incur the demolition costs and would provide a capital receipt (estimated to be in the region of £50k) to the 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) – After the first consultation was concluded, the property was marketed for lease. However, concerns were raised regarding the extent of the disrepair and expert advice recommended demolition as the only viable option for the buildings on site. The current consultation reopens the question of sale as well as demolition and allows for the widest range of options for consideration in deciding the outcome for the best community benefit.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.

4. Second consultation on proposal to dispose, by sale and/or demolition, of Grant Street workshop and yard, Grant Street, Fishertown, Nairn.

- 4.1 In August 2022 the first consultation on the proposal to dispose of the Grant Street workshop and yard by sale came before Nairnshire Area Committee for consideration. On that occasion, Members decided to amend the proposal and decide that the property should be marketed for lease only.
- 4.2 Following an initial marketing period, a number of those viewing the property raised concerns in respect of the buildings on the site. In response, professional advice was obtained that highlighted the buildings are in a particularly poor and dilapidated

condition and at present, pose a major risk to health and safety. As a result, demolition was considered to be the most viable option for all buildings on site.

- 4.3 The updated position was considered by Nairn Area Members at a Ward Business Meeting on 20 October 2022. It was noted that continuing with the plan to lease the site would require the buildings to be demolished. As demolition is considered to be a disposal but was not raised during the first consultation, it was confirmed that it would be necessary to reconsult if this option was to be pursued. Demolition would result in costs being incurred by Nairn Common Good fund with a general estimate being given of being in the region of £15k. It was also noted that this figure could increase in the event of the presence of asbestos.
- 4.4 At that Ward Business Meeting Members requested that a new consultation process should be commenced on the basis of reverting to the original proposal of disposal by sale but including the proposal for disposal by demolition should this be required to carry out future marketing. Retaining the already approved option to dispose by lease resulting from the first consultation ensures that the fullest range of options remain available for the Common Good fund.
- 4.5 The public consultation commenced on 18 January 2023 and concluded on 17 March 2023. An analysis of the outcome of the consultation has been prepared and can be found at **Appendix 1**.
- 4.6 A total of 11 responses were received including a response from one of the Nairn town Community Councils. With the exception of the Community Council, all people responding within the second consultation were different to those responding within the first consultation. The responses were broken down as follows:
- 3 were supportive of the proposals to dispose by sale,
 - 7 including the Community Council raised issues for Council comment with some specifically expressing objection but others not being specific,
 - 1 was an expression of interest from a local group for possible lease and/or development subject to cost whilst also indicating a preference for retention of the property as an asset but also expressing a view on what should happen should it be sold.
- 4.7 **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.
- 4.8 It should be noted that the conclusion of the first consultation was to amend the proposal from disposal by sale to disposal by lease only.

5. Options for next steps

- 5.1 Members are asked to note the outcome of the second consultation in respect of Grant Street workshop and yard and consider to either:
- 1) Agree to demolish the buildings on site at the Grant Street workshop and yard and market the site for ground rent
Or
 - 2) Agree to market the Grant Street workshop and yard for sale in its present state.

- 5.2 The consultation responses received would suggest a preference for the asset to be retained for the Nairn Common Good. This was reflected in both the first and second consultations. However, in light of the expected high costs of demolition to make the site safe to market for lease, combined with the low levels of expected ground rent return, Members are recommended by Officers to agree option 2 as this is regarded as achieving best value for the Nairn Common Good fund.
- 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.

Designation: Paul Nevin, Acting Executive Chief Officer Performance and Governance
Allan Gunn, Executive Chief Officer Communities and Place

Date: 17 April 2023

Author: Sara Murdoch, Common Good Fund Officer

Background Papers: Appendix 1 – Analysis of consultation

Appendices:

NAIRN COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON THE PROPOSAL TO DISPOSE:

- BY SALE, OF GRANT STREET WORKSHOP AND YARD, GRANT STREET, FISHERTOWN, NAIRN
- AND/OR BY DEMOLITION OF ALL BUILDINGS IF APPROPRIATE AS PART OF THE MARKETING PROCESS

1. Number of responses received

The public consultation period ended on 17 March 2023 with a total of 11 responses having been received. Responses were received from 1 of the Nairn town Community Councils and local residents. These responses are broken down as follows:

- 3 were supportive.
- 7 including the Community Council raised issues/comments for response with some specifically expressing objection but others not being specific.
- 1 was an expression of interest from a local group for possible lease and/or development subject to cost whilst also expressing a preference for retention of the property as an asset but also expressing a view on what should happen should it be sold.
- With the exception of Nairn River Community Council, the people responding to the second consultation were different to those responding to the first consultation. The nature of the objections to sale are broadly similar in each consultation.

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:-

- Local councillors have fully considered the best options and are correct to market it for sale.
- It would make an ideal small housing plot of which there are a shortage in central Nairn.
- Councillors could consider the disposal of other small pieces of land in Nairn for small scale development.
- The site is probably only suitable for demolition and development as a private residence in keeping with the surroundings of Fishertown.
- It could be used for development as a further arts venue although the size of the site and costs of development may make this cost prohibitive.
- It should be sold – the common good has bigger fish to fry and needs the cash.

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
Ongoing reference to Councillors as Common Good trustees.	This is a misnomer – trusts are covered by different statutory provisions to Common Good. Councillors are custodian or managers of the Common Good not Trustees.
The decision to consult again has been taken again at a Ward Business Meeting in private. This is not a decision making forum and no minute is recorded. This decision should have been taken in a public forum at a Nairnshire Area Committee.	The requirement to conduct a consultation is a statutory duty. As such, if Councillors wish to propose either the disposal of or change of use of a Common Good asset they must initiate a consultation. This is not them making a formal decision but confirming compliance with a statutory obligation. The consultation process is the gathering of public opinion and views to inform the eventual formal decision by Councillors which is always taken at a public meeting (either Area Committee or full Council). Therefore this consultation has been conducted in accordance with statute and Council due governance.
As with the first consultation, the Councillors preference for sale was decided in private at a Ward Business Meeting instead of at a Nairnshire Area Committee.	By way of clarification, whilst in both cases, Councillors may have expressed an initial preference for sale as an option , the first consultation process was formally decided at a Nairnshire Area Committee and Councillors decided against sale and amended the proposal for disposal to lease only. A second consultation was only undertaken because of the inability to lease the property in its current state. The second consultation has yet to come before Committee for a formal decision to be made.
The rationale for the preferred sale option is flawed as it does not fairly reflect that a lease holder will usually invest in the property at their own expense – there are examples of this at other Nairn properties.	The current consultation expressly retains the option to lease the site. As this may require the need to demolish the buildings, either by the Council or a prospective tenant, the consultation also includes disposal by demolition. In the event that disposal by sale is the

	outcome, it would be on the basis of the site in its current condition. Therefore, the consultation reflects all available options for consideration.
There has been no prior discussion with Community Councils on the future of this asset or to take on board the previous detailed submissions.	The consultation process is the statutory forum for Community Councils to currently have input into such matters. The fact that the previous consultation decided against sale in favour of lease after Councillors considered all representations proves that full account was taken of the submissions received.
The people of Nairn still await the establishment of a promised community led Nairn Common Good reference group.	This is not directly the subject of this consultation and is in the course of being dealt with separately.
The Community Councils made it clear in 2022 that there should be no further Common Good disposals or changes of use considered until the new community led reference group is convened to support Councillors to develop with the community more transparent and consistent practise in Common Good asset management in the best interests of the people of Nairn.	The responsibility for managing the Common Good lies with the Council as legal owner of the property. The request by the Community Councils for a community engagement group in respect of Common Good is receiving attention but aspects such as resourcing such a group have yet to be clarified before progress can be made. The Community Councils do not have the power to insist that the Council delay or withhold any considerations of disposals or changes of use meantime. This would result in a dereliction in the Council's responsibility for managing the Common Good.
Reference in the Community Council response has been made to a lack of information in the first consultation regarding evidence to support demolition or restoration costs.	The first consultation has concluded with the outcome being to lease. Attempts at marketing raised concerns regarding the condition of the buildings. The second consultation document confirms expert advice was sought and confirms the outcome. An approximation of demolition costs was given together with a caveat that this could not be exact unless or until such action was taken.
A lessee could invest in this property and improve it at minimal public expense whilst retaining it as a Common Good asset.	That is possible and is the reason the possibility of lease remains available, and the current consultation also addresses the question of demolition. In reality, however, in such cases a lessee will seek a low ground rent to compensate for the level of work required.

Until due process is followed at ward level and a new governance group established, any interest to lease Grant Street premises should be considered at Highland Council who must then initiate a proper consultation process.	This is not necessary. The current consultation process complies with Council governance and statutory requirements and is being validly conducted.
The site and buildings have been left for over 10 years to become dilapidated with nothing being done and no income generated. This is a dereliction of duties. The building and yard should be reinstated at the Highland Council expense in compensation rather than further costs being incurred by the Common Good fund.	The position is noted regarding the extent of time that this site has been left unattended and no explanation for this can be offered. However, the site is a Common Good asset and the cost of any renovation (and/or demolition) would fall to the Common Good rather than the Council general fund.
The small sale income the land will fetch does not justify giving up the land asset. Short term disposal seems like the least long term value for the Common Good.	Advice from the Council's Area Surveyor confirms that the site is unlikely to generate what most people would consider, a significant income for Nairn Common Good.
The Fishertown area is of high cultural and heritage value and this building is part of that.	The heritage background of Fishertown is agreed however, the buildings on site are a workshop and some sheds and have no heritage value.
Creative thinking could bring it back into use for the community and enhance Fishertown as a tourist area.	Renovating the site would incur costs to the Common Good fund and it is unclear how it could be used for community benefit.
Consider a long term lease arrangement.	This was the outcome of the first consultation. It was when it was marketed for lease that the serious health and safety concerns came to light resulting in this matter being reconsidered and the current consultation being commenced.
Any sale should be for greater than market value.	Sale price is dependent on a number of factors including prevailing market conditions, prices of similar size sites in the locale etc.
The land should not be sold at a low value of £50k.	£50k was an estimation based on a slightly larger plot being marketed in close proximity. See above for comments on what may affect the actual price achieved. Ultimately, the market will decide the value of the plot.

The land should be retained for the benefit of local people and future generations.	The Councillors will need to consider what is the best option after having due regard to the representations received within the consultation process.
The arbitrary figure of £15k seems a lot to knock down an old shed.	This figure is an estimate based on the Nairn Area Surveyors experience of possible costings and follows advice from an independent Building Surveyor.
Common Good should invest in making good the site/installing a new unit and leasing it out. Small industrial units are in short supply in Nairn.	<p>The expense of doing so could greatly outweigh the future income generation benefit to the Common Good fund. It could take many years to recoup the investment required in the site following demolition and rebuilding an industrial unit thereafter. Cost of rebuilding would be dependent on the type and size of unit suggested.</p> <p>Based on comparable evidence, any subsequent rental value is likely to be somewhere in the region of £3,500-£4,000 per annum (NB estimated figures only). It is also debateable whether an industrial use is in keeping with the Fishertown area.</p>
If the yard is sold, it will no doubt be developed into another holiday home thus contributing to the destruction of community life in Fishertown.	It is possible that, if sold, the site could be developed for a small residence. Planning conditions can have some control over style etc but private or holiday home use would be up to the owner.
Sale of this site is short sited.	Councillors will need to balance all factors involved in retaining or disposing of the site in reaching a decision.
Prefer it to be retained as Common Good and building renovated. But if to be sold can first refusal be given to a community organisation to keep it as an asset contributing to the community.	This view is noted.
Use Common Good funds to clear the site then lease it providing a long term income source while retaining the land within community ownership.	The consultation document confirms the advice received from the Nairn Area Surveyor that leasing the premises in either its current or cleared condition would not generate a reasonable rental income for Nairn Common Good. As a result consideration must be given to how long it would take to recoup the renovation costs from the rental figure received.

	Assuming a unit similar to those owned by the Council at Balmakeith were to be built, and taking into account the site clearance costs, it would be likely to take in excess of 30 years to recoup the initial capital outlay.
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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.

