

Agenda Item	10
Report No	EDI/07/18

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure Committee

Date: 1 February 2018

Report Title: Nairn Business Improvement District

Report By: Director of Development and Infrastructure

1. Purpose/Executive Summary

- 1.1 This Report offers a formal assessment of the Nairn Business Improvement District proposal relative to the Council's right of veto in accordance with the Planning etc (Scotland) Act 2006 and the Business Improvement Districts (Scotland) Regulations 2007.

2. Recommendations

- 2.1 Members are asked to approve the assessment made in **Appendix 1**, relative to the Nairn BID Proposal and agree not to exercise the Council's right of veto, subject to the final BID Proposal not materially affecting the assessment made.

If upon receipt of the final BID proposal, it is considered that changes have been made which affect the assessment made in **Appendix 1**, delegate authority to the Director of Development and Infrastructure in consultation with the Chair of Environment, Development and Infrastructure, to seek the necessary amendments to the final BID Proposal, failing which a further report is brought back to the Council meeting on 8 March 2018.

3. Introduction

- 3.1 A Business Improvement District (BID) is a business led initiative where businesses work together and invest collectively in local services and improvements in their business environment. A BID is funded by businesses through a levy calculated on their respective non-domestic rates valuation. The resulting improvements and services are additional to those provided by public sector organisations such as the local authority. A BID is only introduced once it has been put to a democratic vote involving all eligible businesses and when at least 50% of all businesses involved are in support of it and they in turn represent more than 50% of the rateable value of the BID area.
- 3.2 Over the past year a business led steering group has been active in developing a BID proposal for Nairn. This process is still under way and it is proposed that a BID ballot will take place on 21 June 2018.
- 3.3 As a potential levy payer, the Council will have the opportunity to consider the merits of the BID proposal and determine whether it wishes to support the BID or not. It is anticipated that consideration of this aspect will take place at the Highland Council meeting on 10 May 2018.
- 3.4 However, in advance of this the Planning etc. (Scotland) Act 2006, Part 9 – Business Improvement Districts, gives the Council the Power of Veto over a BID proposal and hence determine whether a ballot shall be held or not. The Council is required to consider a BID proposal within a prescribed period and give notice that it is, or is not, going to veto the proposal:
- if exercising a veto, the local authority must set out the reason why and give details of the right of appeal; of
 - if not exercising a veto, the local authority must set out its reasons for not doing so.

The circumstances when a local authority can exercise its veto are prescribed in the Act and the Business Improvement Districts (Scotland) Regulations 2007.

- 3.5 The final date for submission of the BID proposal to the Local Authority, as prescribed in the legislation, is 15 March 2018 (98 days before the day of the ballot). The last day the Local Authority can veto BID Proposals is 12 April 2018 (70 days before the day of the ballot). The Council's timetable of Committee meetings does not fit conveniently with this legislative timetable, consequently the BID proposers have submitted their proposal for assessment at this time with an indication there will be no substantive changes to the proposal prior to the 15 March deadline. While it is not anticipated that the final BID proposal will alter significantly and therefore affect the assessment made, it is prudent to recognise that if any changes are made that do so, then this matter may require to be referred to full Council on 8 March 2018.
- 3.6 For the avoidance of doubt, Members should be clear that the assessment they are being asked to make at this Committee relates to the Council's right of veto as per the legislative 'prescribed circumstances' and does not relate to the merits or otherwise of the BID proposal. Experience with the previous Inverness BID and the Inverness/Loch Ness and Lochaber Tourism BID proposals, has demonstrated the

benefit of dealing with these two matters separately. It is currently anticipated that the decision or not to support the BID will be presented to the May 2018 Council meeting.

4. Assessment

- 4.1 An assessment of the BID proposal against the prescribed circumstances as set out in the Planning etc (Scotland) Act 2006 and associated Business Improvement Districts (Scotland) Regulations 2007 is set out in **Appendix 1**.
- 4.2 When undertaking this assessment, the Council must remain impartial and ensure that the BID proposal is applied in a fair and non discriminatory manner and does not undermine established Council policies as they apply to the area. As detailed in the assessment contained in **Appendix 1: 42 (4)(c)** there remains an outstanding issue relating to content of the draft business plan and whether the three schools within Nairn should be included in the BID. As, potentially, this may disproportionately impact on a ratepayer, this matter needs to be resolved before the Council can determine whether its legislative right of veto needs to be exercised.

5. Conclusion

- 5.1 It is considered that on the basis of the BID proposal submitted, subject to a satisfactory resolution of the above issue, there are no grounds for the Council to exercise its veto. The assessment made in **Appendix 1** sets out, as required by the Planning etc. (Scotland) Act 2006, the reasons as to why this is the case.
- 5.2 Once the final BID proposal is received a further assessment will be required to review any changes made and how the above issue has been resolved. If they materially affect the assessment made and the BID team are unwilling or unable to amend them, the right of veto will require to be considered again at Council in March 2018.

6. Implications

- 6.1 Legal: The process for the development of a BID and the statutory role of the Local Authority are prescribed in the Planning etc. (Scotland) Act 2006, Part 9 – Business Improvement Districts. The legislation gives the Council the Power of Veto over a BID proposal, requires the Council to consider a BID proposal within a prescribed period and requires the Council to give notice that it is or is not going to veto the proposal and set out its reasons why. Consideration of this report and taking a decision on whether or not to use its right of veto will ensure the Council's compliance with the legislation.
- 6.2 Resource, Community, Climate Change/Carbon Clever, Risk and Gaelic - There are no implications arising from this report.

Designation: Director of Development & Infrastructure

Date: 16 January 2018

Author: Colin Simpson, Principal Tourism & Film Officer

**APPENDIX 1:
Nairn Business Improvement District Proposal
Assessment of Proposal against the Council’s Power of Veto**

The Planning etc (Scotland) Act 2006, Part 9 – Business Improvement Districts, gives the Council the Power of Veto over a BID proposal and ensures that no ballot shall be held. The local authority is required to consider a BID proposal within the prescribed period - 70 days before the ballot date (in the circumstances of the Nairn BID proposal this must be by Thursday 12 April 2018) and give notice that it is or is not going to veto the proposal.

- If exercising a veto the local authority must set out the reason why and give details of the right of appeal.
- If not exercising a veto then the local authority must set out its reasons for not doing so.

The circumstances when a local authority can exercise its veto are prescribed in the Act and the Business Improvement Districts (Scotland) Regulations 2007. This assessment is structured around these prescribed circumstances.

Planning etc (Scotland) Act 2006	
The prescribed circumstances are that the local authority consider that the BID proposals are likely:-	
42 (4)(a)	<p><i>‘to conflict with any structure plan, local plan, strategic development plan or local development plan which has been approved or adopted under the principal Act and which applies to the proposed business improvement district or any part of it’</i></p> <p>The ambitions of the Nairn BID complement the development policies of the Highland-wide Local Development Plan and the Inner Moray Firth Local Development Plan and none of the actions proposed in the draft BID business plan conflict with these plans.</p> <p>Accordingly, there is no reason to exercise the Council’s right of veto.</p>
42 (4)(b)	<p><i>‘to conflict to a material extent with any policy formally adopted by and contained in a document published by the authority (whether or not the authority are under a statutory duty to prepare such a document)’</i></p> <p>The Council has published a Nairn Community Town Centre Plan and is a contributing partner to the Highland Tourism Action Plan. The BID proposals do not conflict with either plan.</p> <p>Accordingly, there is no reason to exercise the Council’s right of veto.</p>
42 (4)(c)	<p><i>‘to lead to a significantly disproportionate financial burden being imposed on-</i> <i>(i) any person entitled to vote in the ballot on the proposals</i> <i>(ii) any class of such person,</i> <i>as compared to other such persons or classes</i></p> <p>The BID proposal states that the levy rate will be a fee structure based on the rateable value of the property at the time of the ballot and throughout the 5-year term of the BID. All businesses within the defined area with a rateable value of</p>

	<p>£1,000 or more will be liable to pay the BID levy with the levy paid by the occupier or the property owner where a property is vacant.</p> <p>The levy threshold of £1000 is low in comparison with other BIDs across Scotland but reflects the nature of the town with many small or micro businesses.</p> <p>The scale of charges proposed, and in particular the broad range of bands included (10) recognises variations in the size of businesses and ability to pay. The total annual levy varies from £125 for the smallest businesses to £4000 for the largest and this will be fixed for the 5 year term. While it is difficult for the Council to determine if these charges have been fixed at the right level, it can be concluded however, that the BID proposers have proposed a levy structure that recognises and reflects these issues. Accordingly, it is fair to conclude that the levy structure proposed does not seek to impose a significantly disproportionate financial burden on any person, business or sector.</p> <p>At the current time the BID proposers have not determined as to whether the Council (insofar as it affects the three schools within the BID catchment) should be a levy payer. The BID proposers have also not determined which, if any, activities contained with the draft BID business plan will impact upon and benefit the schools.</p> <p>Therefore, it can be concluded that until this matter is resolved, potentially, if the BID is not seeking to bring benefit to the ratepayer (the schools), a disproportionate financial burden could fall on that ratepayer and, hence, gives grounds for the legislative right of veto to be exercised.</p> <p>Accordingly, subject to a satisfactory resolution of this matter, there is no reason to exercise the Council's right of veto.</p>
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Business Improvement Districts (Scotland) Regulations 2007

The prescribed matters to which the local authority shall have regard in deciding whether to exercise its veto are:–

<p>14 (2)(a)</p>	<p><i>the level of support (as evidenced by the result of the BID ballot or re-ballot, as the case may be) for the BID proposals, where this information is available;</i></p> <p>As no ballot has yet taken place support cannot be evidenced by the result of a BID ballot. However, the evidence provided in the form of consultation undertaken and the support demonstrated from a cross section of businesses suggests there is a degree of support for the formation of a BID. As of 16th January 2018, steering group members have had one to one discussions with 109 businesses (39% of the expected electorate of 279 businesses) of which 80 have indicated they would be likely to vote in favour of a BID (29% of the expected electorate). These 80 businesses in turn represent 43% of the rateable value of the properties forming the electorate. Further canvassing by steering group members is under way at present and while the support demonstrated to date does not indicate whether or not a ballot would be successful, there are no grounds for the Council to prevent the proposal going to ballot by use of its power of veto.</p>
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	Accordingly, there is no reason to exercise the Council's right of veto.
14 (2)(b)	<p><i>'the nature and extent of the conflicts mentioned in 42(4) of the 2006 Act' (i.e. with any policy formally adopted by and contained in a document published by the authority)</i></p> <p>As outlined above there are not considered to be any conflicts with Council policies or plans.</p> <p>Accordingly, there is no reason to exercise the Council's right of veto.</p>
14 (2)(c)	<p><i>'the structure of the proposed BID levy and how the financial burden of the business improvement district is to be distributed amongst ratepayers and other eligible persons in the geographic area of the business improvement district'</i></p> <p>As outlined above the BID proposers have proposed a levy structure that is not expected to impose a disproportionate financial burden on any person, business or sector.</p> <p>Accordingly, there is no reason to exercise the Council's right of veto.</p>
14 (2)(d)	<p><i>'how the financial burden of the business improvement district may have been disproportionately distributed among ratepayers and the other eligible persons as a result of the selection of the geographic area or areas of the business improvement district'</i></p> <p>The scale of levy charges is to be applied equally across the whole area with no geographic variation while the range of activities included in the draft business plan will provide benefits to all areas so costs are considered proportional.</p> <p>Accordingly, there is no reason to exercise the Council's right of veto.</p>
14 (2)(e)	<p><i>'the extent to which the BID proposer discussed the BID proposals with the authority before submitting the BID proposals to the authority ...'</i></p> <p>An early presentation on the proposed BID was given to the meeting of the Nairn Ward Councillors on 26 June 2017. One elected member - Cllr. Peter Saggars was subsequently nominated to represent the Council on the Steering Group. He has attended the steering group and has been regularly updated by the BID Project Manager on the thinking of the Steering Group. A further meeting with the Nairn Ward Councillors was held on 10th January 2018 to update Members on progress with the BID proposal.</p> <p>The Council's City Manager, Ward Manager and Principal Tourism and Film Officer and staff from the finance, elections and assessors teams have all been involved in meetings or discussions with the BID proposers in the development of the BID proposal.</p> <p>Accordingly, there is no reason to exercise the Council's right of veto.</p>

14 (2)(f)	<i>'the cost incurred by any person in developing the BID proposals and canvassing in relation to the BID proposals'</i>
	<p>The BID proposal has been put forward by the BID steering group which includes a sectoral spread of business representatives. The Steering group has received grant aid from BIDs Scotland, The Highland Council and Highlands and Islands Enterprise towards the cost of developing the BID proposal but no individual business or person has had to incur costs related to developing the BID proposals.</p> <p>Accordingly, there is no reason to exercise the Council's right of veto.</p>