

Agenda Item	12
Report No	ERA-09-21

THE HIGHLAND COUNCIL

Committee: Easter Ross Area Committee

Date: 17 February 2021

Report Title: Tain Common Good Fund – Consultation on proposed change of use of the Wildlife Pond Kiosk, Tain Links

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 the public consultation under section 104 Community Empowerment (Scotland) Act 2015 in respect of the proposal to change the use of the Wildlife Pond Kiosk (located on Common Good land) from storage to a café outlet providing food and beverages.

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. Agree the proposal to change the use of the Wildlife Pond Kiosk to a café outlet subject to the consent of the Sheriff Court being obtained.
 - iii. Other permissions may be required relating to planning and environmental health in connection with the operation of the business however, these are separate processes and procedures to that required under Community Empowerment legislation.

3. Implications

- 3.1 Resource – the change of use will allow for a new lease to be granted which will generate income for Tain Common Good Fund. The prospective tenants have agreed to meet the costs associated with the consultation and Court proceedings.
- 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 change of use or appropriation. In this case the Kiosk derived title from its location on Tain Links which is inalienable Common Good land. Therefore, this requirement must also be complied with. Members attention is drawn to the fact that the Community Empowerment consultation is a separate process to any planning process or requirement to register under Environmental Health provisions.

- 3.3 Community (Equality, Poverty, Rural and Island) – The Kiosk has been empty and unused for a significant period of time. The proposal received from a couple local to Tain to lease the property and change it to a café will help rejuvenate the area and be of benefit to the community.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.
4. **Proposal to change the use of the Wildlife Pond Kiosk, Tain Links to a café providing food and beverages.**
 - 4.1 The Wildlife Pond Kiosk was previously used for hiring and storage of boats for use on the Wildlife Pond. However, it has lain empty and unused for a significant period of time. The property has been marketed for lease for over two years and a proposal has now been received from a local couple to lease the kiosk and change its use to that of a café providing food and beverages.
 - 4.2 The initial suggestion is that the lease should be for a period of 5 years. As a result, this does not constitute a disposal. In Highland a disposal of Common Good property includes a long lease of 10 years or more. However, the Council is also required to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015 where the proposal constitutes a change of use. In the current case the proposal is to change the use from a kiosk for hiring and storing equipment to a facility for preparation and service of food and beverages and, therefore, is considered to trigger the requirement to consult.
 - 4.3 The Community Empowerment consultation is a completely separate process to any requirement to apply for a change of use under planning legislation or to register the building as a food business under Environmental Health regulations. In Highland, we recommend undertaking and concluding the Community Empowerment consultation prior to any planning or other applications are made.
 - 4.4 On 12 October 2020 members were briefed and were supportive of commencing the public consultation. The public consultation commenced on 10 November 2020 and concluded on 19 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 has been prepared – **Appendix 1**
 - 4.5 9 representations were received within the consultation.
 - 8 were fully supportive. Examples of the comments in support are contained in the analysis at section 2a,

- 1 representation was supportive in principle but raised some issues that the Council is required to respond to. Information has been collated to respond to the matters raised. Details of the issues raised and the responses to be given are provided in the table in the analysis at section 2b.

4.6 The area of land where the Kiosk is located is considered to derive title from the Burgh Charters of 1612 and 1672. Title to the Kiosk 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. As a result of the Kiosk's location on Tain Links which has been public access amenity land for time immemorial, it is considered that a question of inalienability exists and therefore, a Court application is required. How long such an application will take to conclude will be entirely contingent upon Court timescales.

4.7 Members are now asked to note the outcome of the consultation. The available options for the next steps are:-

- Agree that the proposal for change of use of the Wildlife Pond Kiosk to café outlet 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 Change the use of the Wildlife Pond Kiosk to café outlet providing food and beverages should go ahead.

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

Date: 2 February 2021

Author: Sara Murdoch, Common Good Fund Officer

Background Papers:

TAIN COMMON GOOD**PROPOSAL TO CHANGE THE USE OF THE WILDLIFE POND KIOSK, TAIN LINKS TO A CAFE PROVIDING FOOD AND BEVERAGES (site forms part of Tain Common Good)****ANALYSIS OF COMMUNITY CONSULTATION****1. Number of responses received**

The public consultation period ended on 19 January 2021 with a total of 9 responses having been received.

These responses are broken down as follows:

- 8 supportive
- 1 is supportive in principle but raises some issues.

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:-

- Excellent idea.
- Help to rejuvenate and return community atmosphere to the Links.
- Great asset and encourage people to use the Links and stay for longer.
- Encourage visitors to the Links whilst not being a threat to other Tain businesses.
- It will open up an area of town that seems to have become forgotten.
- Currently an eyesore attracting vandalism, not in use for 20/30 years so fantastic to see it done up and become something to benefit the community.
- One supportive comment also highlighted a need to refurbish the playground and skateboard park suggesting this might be achieved by volunteers from the community.

b. Objections or issues raised for response

1 response supported in principle but raised issues which focussed on vehicle access.

The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
There should be no parking at the kiosk, even staff parking as it will change the character of the area. Currently pedestrians, children and bikes are more important than cars.	Vehicle access will be permitted for operational business use only i.e. deliveries. However, vehicular access will also be permitted to facilitate access for disabled customers.
The hardstanding track is poorly defined and surrounding grass is soft – customers might assume they can drive to the kiosk	Vehicle access is permitted for operational business use and disabled customer access only.

causing the ground surface to be degraded/damaged.	
<p>Suggestions:</p> <ul style="list-style-type: none"> • No customer parking • Strict access management along hardstanding by tenants • No staff parking • Vehicular access for loading/unloading only 	<ul style="list-style-type: none"> • Disabled parking only. • Yes - covered by lease terms and conditions. • No permission or space provided for staff parking. • Yes – covered by lease terms and conditions.

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 Area Committee. If the value exceeds 10%, the decision falls to full Council. In this particular case, the value will be less than 10% therefore, the decision can be made at Area Committee.

4. Decision making options

- Happy with proposal going ahead and agree with proceeding to Sheriff Court for authority to dispose.
- 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

The proposal constitutes a change of use or appropriation. The area of land concerned is public amenity land considered to derive title from the Burgh Charters of 1612 and 1672 with the title to the building following with title to the land. The building has been out of use for a significant period of time and when in use was used for storage and not food preparation/service. Due to the nature of the title, a question of inalienability is raised 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.