

Agenda Item	13
Report No	BSAC/09/22

THE HIGHLAND COUNCIL

Committee: **Badenoch & Strathspey Area Committee**

Date: **15 February 2022**

Report Title: **Kingussie Common Good Fund – consultation on proposal to dispose, by Community Asset Transfer lease, of Market Stance Playing Field to Kingussie Camanachd Club**

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 on the proposal to dispose, by Community Asset Transfer lease, of Market Stance Playing Field, Ruthven Road, Kingussie to Kingussie Camanachd Club.

2. Recommendations

- 2.1 Members are asked to:
- i. Note the outcome of the consultation process undertaken as detailed in paragraph 4 below.
 - ii. Agree the proposal to dispose, by Community Asset Transfer lease, of Market Stance Playing Field, Ruthven Road, Kingussie to Kingussie Camanachd Club.
 - iii. Note that, if agreed, it will be necessary to seek Sheriff Court consent in respect of the disposal.

3. Implications

- 3.1 Resource – The Market Stance Playing Field has been identified as a Common Good asset. It has been in a state of disrepair for more than a decade and has only had limited use as a result. The Kingussie Camanachd Club are seeking to lead a project, on behalf of the whole community, to upgrade and restore the playing field to a high standard. This will be of benefit to the Common Good Fund in improvement of its asset and to the whole community who will have access and use of the playing field.

- 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 disposal. The Market Stance Playing Field was acquired subject to a condition that it is to be used as a Playing Field for the use of the inhabitants of the Burgh of Kingussie as well as for markets and travelling shows and for no other use without consent. Therefore it is considered to be inalienable. As a result, should the proposal be agreed, the requirement to seek Sheriff Court approval for the proposal must also be complied with.
- 3.3 Community (Equality, Poverty, Rural and Island) – The project being proposed by the Camanachd Club will be of benefit to the whole community of Kingussie as it aims to provide high standard facilities for the playing, coaching and training of a variety of sports.
- 3.4 Climate Change / Carbon Clever – None.
- 3.5 Risk – Not to proceed with the proposal could result in further deterioration of the ground and an asset for community benefit continuing to be unused.
- 3.6 Gaelic – None.

4. Consultation on the proposal to dispose, by Community Asset Transfer lease, of the Market Stance Playing Field

- 4.1 Kingussie Camanachd Club submitted an application for a Community Asset Transfer lease in respect of the playing field. Due to the fact the playing field is a Common Good asset, it is necessary for it to be considered in terms of both relevant parts of the Community Empowerment legislation. 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. Highland treats a lease of 10 years or more as a disposal for consultation purposes. Therefore, the 25 year lease sought by the Camanachd Club triggered the requirement to consult.
- 4.2 On 9 August 2021, Badenoch & Strathspey Area Committee considered and approved the Community Asset Transfer lease application subject to the outcome of the Common Good public consultation.
- 4.3 The public consultation commenced on 26 August 2021 and ran until 8 November 2021. Two responses were received within that period and both were fully supportive of the proposal commenting that it would be a positive step for the community and provide a sports facility that would be a credit to Kingussie.
- 4.4 The governance arrangements for the decision making in respect of such matters are that the decision rests with Area Committee where the value of the asset is 10% or less than the total value of the particular Common Good fund and with full Council where the asset value exceeds 10%. Any assessment of value for the Market Stance Playing Field will be affected by the condition that it is to be used as a playing field and for no other purpose. The rental proposed within the Community Asset Transfer lease terms is £1 per annum. Taking these matters into account it would be reasonable to assess the value for governance purposes as being less than 10% of the total value of the Kingussie Common Good Fund. Therefore, governance for the decision rests with Members at Area Committee.

- 4.5 The decision making options are:
- Agree that the proposal to dispose, by Community Asset Transfer lease, of the Kingussie Market Stance Playing Field 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.
- 4.6 On the basis of the outcome of the consultation process, it is recommended that the proposal to dispose, by Community Asset Transfer lease, of the Market Stance Playing Field should go ahead.

5 Court application

- 5.1 The Highland Council has a statutory obligation to seek court consent before disposing of Common Good property which may be “inalienable”. This term refers to Common Good property that falls into at least one of the following categories:
- The title deed of the property dedicates it to a public purpose, or
 - The Council has dedicated it to a public purpose, or
 - The property has been used for public purposes for many years (time immemorial) without interference by the Council.
- 5.2 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 it is necessary to apply to the Sheriff Court for permission to dispose of the property under section 75 Local Government (Scotland) Act 1973. How long such an application will take to conclude will be entirely contingent upon Court timescales. Updates will be provided to future Badenoch and Strathspey Committees.

Designation: Allan Gunn, Executive Chief Officer, Communities and Place
Liz Denovan, Executive Chief Officer, Resources and Finance

Date: 17 January 2022

Author: Sara Murdoch, Common Good Fund Officer

Background Papers: