

Agenda Item	9
Report No	NC/15/23

THE HIGHLAND COUNCIL

Committee: Nairnshire Area Committee

Date: 7 August 2023

Report Title: Nairn Common Good - Consultation on proposal to dispose of 51.8m² or thereby of land at Harbour Street, Nairn (adjacent to the Seaman's Hall)

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 public consultation under section 104 Community Empowerment (Scotland) Act 2015 in respect of the proposal to dispose of 51.8m² or thereby of land at Harbour Street, Nairn (adjacent to the Seaman's Hall).

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 area of land adjacent to the Seaman's Hall for the reasons outlined in the report.

3. Implications

- 3.1 Resource - The area of land concerned in this consultation is a strip of land lying between the Seaman's Hall and the former gasworks site to the south as shown in

green on the site plan at **Appendix 2** (the area outlined in red represents the Seaman's Hall title). It is considered to be a remnant of land from the Royal Charter of Nairn dated 1589. The strip of land is little more than 1.5 metres in width and is not of a size, configuration or location which would attract interest from a wider market.

- 3.2 Legal - Investigations by solicitors for Green Hive have confirmed that the strip of land does not form part of the title of either the Seaman's hall property or the former gas works site and, as such, is considered to be a remnant of former Burgh land deriving title from the Royal Charter and has been assessed as Common Good.

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. The Charter does not dedicate it to a public use nor has the Council done so by declarations or actions and the public have not had uninterrupted use for a lengthy period of time namely since the flood wall was constructed in 2000. Therefore the Council considers the piece of land to be alienable and, as a result, a Court application is not required.

- 3.3 Community (Equality, Poverty, Rural and Island) – The council has been asked to consider this disposal for use in connection with the wider development plans for the Seaman's Hall. The intention of the owners of the Hall are that it should be developed for the use and benefit of the community of Nairn.

As required under the Community Empowerment Act, a community consultation has been undertaken to ascertain views from the public on the proposal to dispose of this piece of Common Good land. The findings from this consultation are outlined in the report.

- 3.4 Climate Change / Carbon Clever – none.

- 3.5 Risk – none.

- 3.6 Gaelic – none.

4. Consultation on proposal to dispose of 51.8m² or thereby of land at harbour Street, Nairn (adjacent to Seaman's Hall).

- 4.1 The piece of land that is subject to this consultation lies to the south of Seaman's Hall and runs between that property and the neighbouring former gas works site property. It had not previously been identified as belonging to the council. However, title was investigated by solicitors for Green Hive who own Seaman's Hall. The solicitor's investigation concluded that the area of land in question did not form part of either the Seaman's Hall title or the title to the neighbouring former gas works site. They found no evidence that any of the land in question was owned by a third party and, as a result, the most likely owner is the Council. All of the land in the area had originally been Burgh land deriving title from the Royal Charter and, in the circumstances, has now been assessed as forming part of Nairn Common Good fund.

- 4.2 Following clarification on ownership, Green Hive approached the Council with a request to consider disposal of the 51.8m² of land between Seaman's Hall and former gas works site. The background to their request is that they wish to use the strip of land as part of their development for the renovation of the property.

- 4.3 As is usual in the event of such situations, Members sought the input of the Council's Area Surveyor in assessing the request. In considering the proposal for a permanent disposal, value was balanced against the possible market for the land and the use for which its acquisition is sought. Any land can attract a value and, in regard, to the subject matter of the consultation, the Council's Area Surveyor considered that any value would be on the basis of garden ground. However, due to the configuration and location of the piece of land in question, it is unlikely to be of interest to any party except the properties on either side and this would be reflected in any value that could be achieved. Discussions were held between the Area Surveyor and Green Hive as part of formulating the consultation proposal and attached at **Appendix 3** is a copy of the formal response from Green Hive which explains their position and position regarding value versus costs incurred. If a value is to be attached to this land it would be speculative only as it is entirely dependent upon market forces but, in the circumstances, it would be reasonable to suggest that it should not exceed £500.
- 4.4 Members considered the Surveyor's advice at a Ward Business Meeting on 1 March 2023 and supported the proposal for a public consultation to be commenced on a proposal to dispose of the area of land to Green Hive for nil consideration.
- 4.5 The public consultation commenced on 14 March 2023 and concluded on 10 May 2023. An analysis of the outcome of the consultation has been prepared and can be found at **Appendix 1**.
- 4.6 A total of 19 responses were received including responses from both of the Nairn town Community Councils, the adjacent neighbour and local residents. The responses were broken down as follows:
- 8 were supportive of the proposal including the adjacent neighbour, Nairn BID, a member of Green Hive and individual members of the community,
 - 11 objected and/or raised issues for Council comment. Of these, 7 responses came from both Community Councils (a response from each of the 2 town Community Councils and then a further 5 from individual Community Council members) and 4 from members of the community.
- 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. The specific views of the adjacent neighbour and response obtained from Green Hive are contained in section 2c.
- 4.8 The analysis of the consultation as contained at **Appendix 1** more than half of the supportive comments received have come from members of the community. The remaining supportive comments having been received from Nairn BID, the adjacent neighbour and a member of Green Hive in an individual capacity.

In respect of the comments against the proposal or raising issues of concern, only a third were received from individual members of the community. Two thirds of the responses came from the Community Councils or members of the Community Councils as individuals.

Most of the supportive comments reflect the view that the proposal will see the strip of land being brought back into use in a way that would benefit the community as part of the Green Hive development of the Seaman's Hall. The comments raised in objection or response have addressed the process, the proposal to dispose for nil value, concerns

regarding setting a precedent and the question of whether it constitutes public access to the riverside. Members are asked to consider whether any of the comments are such as to cause them to consider any form of amendment to the proposal.

5. Options for next steps

- 5.1 Members are asked to note the outcome of the consultation in respect of the proposal to dispose of 51.8m² of land adjacent to Seaman's Hall, Nairn.
- 5.2 The available options for next steps are:-
- Agree the proposal to dispose of 51.8m² of land adjacent to Seaman's Hall for nil value should proceed
 - Amend the proposal following consideration of the analysis of the consultation and the position outlined at 4.3 above (any significant amendment would require a new consultation process)
 - 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 Taking into account the responses received, and balancing the support and concerns raised, it is recommended that the proposal to dispose of this piece of Common Good land to Green Hive is granted. This is on the basis of the size, configuration, location and limited potential alternative uses for the site making its value negligible and the potential wider benefits to the community that are likely to be realised through agreeing to the request from Green Hive to acquire the land.

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

Date: 11 July 2023

Author: Sara Murdoch, Common Good Fund Officer

Background Papers: Appendix 1 – Analysis of consultation
Appendix 2 – Site plan
Appendix 3 – Copy response from Green Hive on value

NAIRN COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON THE PROPOSAL TO DISPOSE OF 51.8m² OR THEREBY OF LAND AT HARBOUR STREET, NAIRN ADJACENT TO THE SEAMANS HALL.

1. Number of responses received

The public consultation period ended on 10 May 2023 with a total of 19 responses having been received. Responses were received from both Nairn town Community Councils, local residents and the occupants of the property to the other side of the land that is the subject of this proposal. These responses are broken down as follows:

- **8 are supportive:**
 - including the owner of the property neighbouring the strip of land concerned, Nairn BID, member of Green Hive and individual members of the community.
- **11 are objecting:**
 - 7 of these responses are from Nairn River Community Council, Nairn West & Suburban Community Council and 5 individual Community Council members. The other 4 responses are from individual members of the public.

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:-

- This land has no value and no alternate use.
- As the rest of the track belongs to Green Hive, there is no logical reason not to allow them ownership of this strip of land.
- Green Hive have already made such a positive impact with the work they do based at the Hall and no barriers should be put in their way to prevent progress.
- Green Hive are breathing life into a culturally important building that was in danger of passing out of public use – their plans to refurbish and extend are exciting.
- This seems to be a sensible resolution for an otherwise unused space and will hopefully facilitate greater use and a more sustainable future for the hall.

- We are excited to see the Seaman’s Hall being developed and look forward to the success of Green Hive in this venture for the good of Nairn and the wider community.
- Proposal seems sensible to allow easier access to the property.
- The proposals and plans Green Hive have are of great benefit to Nairn and should be supported.
- It is not in the interests of anyone in the business community to prevent this going through as proposed.
- Transferring the land provides increased and better use of a strip of little used land.
- The community of Nairn will benefit in environmental, social and economic ways.
- Disposing of the land to Green Hive will directly facilitate its practical use in the development of the Hall which will benefit many members of Nairn’s community.
- The disposal can be regarded as a Common Good investment given Green Hive’s purpose, governance and service to the community.
- The area of land has absolutely no purpose nor use to anyone else and should be passed to them. Any objection to this would be ludicrous.
- The benefits to the community would be huge as they are already making such a difference.

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
<p>The decision to commence a full public consultation was taken at a Ward Business meeting. No decisions should be taken at Ward Business meetings but should be tabled at Nairnshire Area Committee.</p> <p>The consultation document refers to “full consideration of all the options”. If Members had a range of options these should have been shared and discussed at Area Committee. It is assumed there was a paper submitted to Ward Business Meeting regarding this.</p>	<p>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 <u>must</u> initiate a consultation. This is not them making a formal decision but confirming compliance with a statutory obligation.</p> <p>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).</p>

	<p>The “full range of options” provided by the Area Surveyor to Members at Area Business meeting is summarised in the section headed “Assessment of the nature of the proposal”.</p> <p>Considering and preparing an option for consultation is an operational management matter not a formal decision. Therefore this consultation has been conducted in accordance with statute and Council due governance. There was no paper submitted to Area Business Meeting – Councillors received information verbally from officers as is most often the situation.</p>
<p>This is not an information gathering exercise but a full blown public consultation.</p>	<p>The public consultation is the vehicle for seeking the views and opinions of the community councils, community bodies and members of the public to inform the formal decision. Therefore, it is an information gathering process.</p>
<p>The consultation document states that Green Hive plans the installation of a new entrance to be accessed from Harbour Street and the Riverside. Will this require a breach of the current flood wall? What impact will this have?</p>	<p>A request was made to Green Hive for information to respond to this representation.</p> <p>Green Hive have confirmed they are very aware of the flood risk implications if a flood gate was installed at the end of the strip of land being consulted upon. They have consulted with the Council’s Flood Management Team and are aware of the steps needed in terms of planning permission etc. However, it may be that a side entrance can be taken via the garden at the north end of the Hall through the existing fence where there is already access to the riverside via the existing flood gates. The best option will form part of any plans developed in the event of the proposal being approved.</p>
<p>The land is not currently recorded in the published Common Good Register for Nairn, but it forms part of the Royal Charter land and therefore is inalienable. A direct challenge to the alienable status has been made.</p>	<p>The current published Common Good asset register includes a final catch all category covering small parcels of land subject to confirmation. This acknowledges that there will exist small areas of land that are remnants</p>

	<p>of the Charter land, but these will be investigated and categorised as and when they come to light.</p> <p>Being Charter land does not automatically mean the land is inalienable. To be inalienable the land must fulfil the test established in the case of Murray v Magistrates of Forfar namely:-</p> <ul style="list-style-type: none"> • Custom – public use for time immemorial • Dedication – by acting of the Council • Direct Grant – specific use stated in title deed. <p>Currently this land does not fall into any of these categories.</p>
<p>The site map does not show the access to the neighbouring site. Disposal to Green Hive would block this.</p>	<p>This has already been discussed and Green Hive have given assurances that the access will be maintained. In the event of the disposal proceeding such ongoing access would be confirmed as a condition within any property transaction. The neighbouring property owner is aware and supports the proposal subject to a number of conditions including maintaining the access.</p>
<p>The document states the strip of land is not a public thoroughway however this is not correct. Prior to the flood wall and within living memory it was a public footpath.</p>	<p>Enquiries have been made within the Council in respect of the flood defence wall. Approval to construct a flood protection wall was given by Committee in February 2000 and by July 2000 an 80m wall had been constructed. It was noted that there were gaps in the wall that accommodated footpaths and sandbags would be used for these areas. However, the Council does not have plans as to what was actually constructed as sections of the wall were created from existing property boundary walls. The wall is an informal flood defence structure as it was not promoted under the relevant legislation at the time and as a result the Council does not have formal duties to maintain or inspect it.</p>

<p>Nairn River Community Council disagrees that the strip of land only has a negligible rental value. All land is an asset and has a value to those who wish to use it.</p>	<p>This strip of land amounts to little more than 1.5 metres in width and runs from Harbour Street to the flood wall which runs along the riverside path. There is no access from Harbour Street along the strip of land to any public space by virtue of the flood wall. The considered view therefore is that this land has little or no market value, by virtue of the fact that there is unlikely to be a market for it. The land is not of a size, configuration or location that renders it usable for any community purpose.</p>
<p>When the Council closed off the river side end of what had been a well-used path, it was a change of use. It is not clear if a consultation was carried out. If not, then this historic change of use was contrary to current Common Good legislation.</p>	<p>The flood wall was constructed during 2000 though seems to have been in part by joining together existing property boundary walls. As the Council does not have plans, it is not known if this was one of the parts completed during that time.</p> <p>The Community Empowerment (Scotland) Act 2015 Part 8 (Common Good) is not retrospective. It came into force at the end of June 2018. There is no requirement to conduct a consultation in respect of any change of use occurring prior to this date. The flood wall construction pre-dated 2018.</p>
<p>There should be parity with other Nairn Common Good disposals/change of use. A smaller piece of land was recently leased to one of the café tenants and attracted an additional rent of £400pa. On that basis the land now consulted on could generate a rental income of £500pa. Why should Green Hive be given a Common Good asset for nothing whilst other local businesses are required to lease and pay rent?</p>	<p>As detailed above, this strip of ground is not of a size, configuration or location which would attract interest from a wider market. The space referred to elsewhere on the Links was widely accessible amenity land and is in a location and of a size that may have attracted interest, hence the additional rent being charged to the tenant.</p>
<p>Members have a duty to protect and maintain local assets for the people of Nairn and to derive best value by securing long term income streams at “market value”. Green Hive’s proposal does not do this.</p>	<p>Each possible property transaction is assessed on the individual merits of the situation. For the reasons detailed above, there is not considered to be a market for this strip of ground. It is therefore unlikely to produce an income stream for the Common Good. Depending upon one’s point of view, it could be argued that it will</p>

	<p>deliver greater benefit to the common good by being adopted and developed in the way proposed by the group.</p>
<p>If at some point in the future Green Hive decided to sell the Seaman's Hall and surrounding land, this land would be included in the sale effectively handing it over to a developer to the loss of the people of Nairn.</p> <p>If Green Hive decided to sell in the future would money from the sale come back to Nairn/Fishertown?</p> <p>Did Members consider this when they were persuaded it should be given away for free?</p>	<p>The transaction between the trustees of the Seaman's hall and Green Hive was not something that the Council was involved in. If the Council retains the strip of land it would have no bearing on any future decision Green Hive may or may not make in respect of the actual Hall itself.</p> <p>If Green Hive sell in the future what happens to the proceeds of sale will be a matter for them to decide on in the same way that the price paid for the Hall was a matter for decision between the Trustees of the Seamens Hall and Green Hive.</p>
<p>A range of options should be on the table for public consultation.</p>	<p>The Council is running a consultation on its proposal – that does not preclude other proposals being put forward for consideration by those responding to the consultation process. There are occasions across Highland where the Council's proposal has been changed or not proceeded with due to the representations and suggestions made. This is part of the purpose of the consultation process.</p>
<p>Nairn River Community Council suggest options in order of preference as follows:</p> <ul style="list-style-type: none"> • Leave as is, reopen the river end and install flood gates • Letting – keeps ownership in Nairn and generates income. It should be let for up to 10 years to the highest bidder • Any let should be publicly marketed with parity with other lettings • Sale should be considered only as an exception and should be marketed on the open market to secure best price. 	<p>Comments:</p> <ul style="list-style-type: none"> • Leaving it as is and recreating the footpath does not generate income for the Common Good and would incur expenditure for maintenance • Letting suggestions – only realistic interest would be from the neighbouring properties who are unlikely to wish to pay a high rent for use. Both properties have established use for access which would impact on the marketability of the land • Sale – response as above re lettings.
<p>A decision has been made to set up a Common Good Engagement Group to</p>	<p>The proposed engagement group is a pilot scheme and does not replace</p>

<p>assess and provide input in relation to any decision, management, change of use or disposal of Common Good assets. This consultation should be withdrawn pending the establishment of this group.</p>	<p>the Council's statutory responsibility as legal owner for managing the Common Good. There is no basis for delaying and consideration of such matters pending the establishment of this group.</p>
<p>The assertion that the land is of negligible rental value and unlikely to be of interest to the general market is unsubstantiated. The potential interest of the proprietor of the neighbouring site should have been ascertained.</p>	<p>For the reasons detailed above regarding size, configuration, location etc...it is reasonable to assume the rental value of the land is negligible. This is the assessment of the Council Area Surveyor who has direct experience in such matters. It is understood that Green Hive had discussions with the neighbouring proprietor before approaching the Council. The neighbour has also commented within the consultation – see below.</p>
<p>The Council has a duty to secure best value for the Common Good and this requires a comparative assessment of the relative value of disposal by sale as against lease. This has not been done. It should form part of the information presented in the public consultation.</p>	<p>This process has been undertaken by the Area Surveyor who has the experience to undertake such assessment. The summary of this is contained in the section headed "Assessment of the nature of the proposal".</p>
<p>Nairn West & Suburban Community Council comments that a disposal for nil cost delivers no value to the Common Good fund.</p>	<p>This comment is noted. The Council's proposal reflects the type and likely marketability of the strip of land as well as taking note of the wider community benefit to be derived from Green Hive's plans for the Hall incorporating this strip of land.</p>
<p>It is important as a matter of principle to ensure consistency of approach to potential Common Good disposals. A recent disposal of 40m² of public Common Good land attracted an additional £400pa in rent. On that basis a potential lease of this strip of land would attract a rental of approximately £500pa. There is an example of a sale of a similar parcel of Common Good land in Dornoch which took place recently for a price of £8,000.</p>	<p>Each property transaction is considered individually on its own merits. Whilst comparable locations and properties can be useful in deriving valuations, it is not always the case that 2 parcels of land or premises will be dealt with in exactly the same way. Given the constraints associated with the subject land (width of only approximately 1.5m) the future use and development potential of the land is severely restricted.</p>
<p>Giving away Common Good land for nothing could set an alarming precedent.</p>	<p>As stated above, every situation is assessed on its own merits and the Council's proposal in this case would</p>

<p>The trustees of the common good are charged with considering their stewardship of the common good ahead of their other interests. To sell this piece of land for no value is unacceptable and negligent on the part of the trustees. Green Hive want to erect a building on this land therefore there is clearly a demand for it.</p>	<p>not be seen to be setting a precedent for future requests.</p> <p>The Councillors are <u>custodians</u> not trustees. Trust property is governed by different legislation to common good property. The Councillors responsibility is to administer and manage the common good in accordance with statute but, as with many of their responsibilities, this must be balanced with their other duties. If the decision of this consultation is not to proceed with the disposal to Green Hive, it will not prevent them developing the Seamens Hall and the current situation of use of land for access only would continue.</p>
<p>All Common Good land is an asset and has a value to those who wish to use it. There are examples of other small areas of land in Nairn generating rental income. The car wash site in Nairn although different in shape was of a similar area and was subject to lease arrangements. The tenant has now been asked to vacate and the site is now being used as an informal car park and no longer generating income which is not a good move.</p>	<p>This comment is noted. See above for responses concerning the leasing of similar sized areas of land. Specific matters relating to the car wash site are outwith the scope of this consultation.</p>
<p>The consultation is premature and has not looked at all the options, current policy or recent practise. It is likely it will be knocked back now or after a Court hearing with another proposal likely to be put forward then get knocked back. These proposals have not had proper consideration by all involved to consider the most appropriate option to go to consultation. This will just keep racking up costs to the Common Good.</p>	<p>The legislation provides that the Council must consult when it is proposing disposal or change of use. Therefore, the proposal that is the subject of the consultation is that of the Council. This is very much the starting point as the process then allows for views and opinions to be collated and if a contrary suggestion is more appropriate the consultation can be amended and, if not significant, a decision made on that basis or conclude that the proposal does not go ahead. To pre-determine an agreed proposal for consultation could be seen as an undermining of the process.</p>
<p>The land originally formed part of the Maggot lands and derives title from the Charter.</p>	<p>It is agreed that this land derives title from the Charter.</p>

<p>It was only blocked off as part of the flood defences and that is by a small wall that is easily stepped over. Recently it has been used for the public to park on, to access the river or to enter Seamen’s Hall or the former gasworks site. Therefore it should be considered inalienable.</p>	<p>In considering the test for inalienability referred to above, the land was not formally and specifically dedicated to a public purpose either in a deed or by the Council. The final potential ground for inalienability could derive from continual public use for as long as anyone alive today can remember (‘time immemorial’). Whilst the land may have been open to the riverbank within living memory of some inhabitants of Nairn, it has been closed off since 2000, the height of the wall does not detract from the intention of the construction which was effectively to close off the opening to the river. Public use should be consistent and meaningful which cannot be implied simply by the fact it might be possible to step over the wall. Since the erection of the flood wall, the principle use of the land has been to provide access to the Seamen’s Hall and the former gasworks site.</p>
<p>Concern is expressed that the Council takes the view that public use is the defining feature of inalienability. Public use must include public use of the rental from all common good properties. It would be nonsense to say Charter property cannot be rented or that, if rented, it loses its inalienable quality when the common good fund benefits from the rental.</p>	<p>In considering possible common good property 2 things must be taken into account:</p> <ul style="list-style-type: none"> • Does the property form part of the common good of the former Burgh. • Is it subject to some form of prohibition or restriction on alienation as a result of being common good. <p>Whilst much of the Charter land will be inalienable due to the ongoing public nature of its use whether recreation or commercial public use (caravan sites), some areas of Charter land will not be inalienable as they are no longer used for public purposes. Ground rental for units for private commercial enterprises would be an example of this. Each case is considered on its own unique circumstances.</p>
<p>There has been no sale of common good land in Nairn since 2012. Long leases would appear to be the current policy</p>	<p>There is no specific policy on whether land should only be leased and not sold. Again, every situation is</p>

<p>not sale. Regular income and retention of Nairn's land is clearly the best option.</p>	<p>assessed on the merits of the particular case. The Councillors have the responsibility to manage the common good having regard to the interests of the inhabitants of the former Burgh. In so managing and administering common good there may be occasions when the sale of an asset is the appropriate decision after all due process has been complied with. In fact a recent consultation on another Nairn common good asset has decided formally in favour of sale in the particular circumstances relating to that asset.</p>
<p>The organisation concerned needs a large sum of money for the project. The Seamens hall has a high flood risk which might be one of the funding application criteria. What happens to Nairn's land if the building is deemed unsafe as seems likely.</p>	<p>The Council was not party to the property transaction between the Seamens Hall Trustees and Green Hive when ownership changed but flood risk and potential effect on the building's stability would have formed part of conveyancing enquiries during that process. The building does not stand on land that belongs to Nairn or the Council.</p>
<p>This is another unnecessary formal consultation exercise that could be avoided and could have been dealt with by the promised Nairn Common Good Advisory Group.</p>	<p>Consultations are required by statute and cannot be avoided if triggered by the particular circumstances. For instance if the suggested group supported either sale or long lease, there would still need to be a consultation process.</p>
<p>There seems to be one rule for Green Hive and one rule for everyone else. They have acquired the use of a common good asset namely the Community Orchard at Viewfield without lease or formal agreement and now want this piece of land for free. They have obtained Seamens Hall for £1 which was intended for use of local people and require significant funding to renovate it. There is no evidence that this is in place or that they can open it for public use until they raise the funding.</p>	<p>The current arrangement at the community orchard has been in place for some time. A request has been made to the Area Surveyor to consider appropriate terms to formalise the situation. As with a number of community groups, Green Hive will have an ongoing programme of funding applications and it will take time to have all the money they need in place. The Hall reopened in March 2023 and has been used successfully for a number of community activities since.</p>
<p>The Councillors should insist on seeing the founding deeds of the Seamen's Hall which would have been needed within the property transaction. The community</p>	<p>Seamens Hall was held by Trustees until acquisition by Green Hive. The land was formally a sawmill site. It was disposed by the Provost,</p>

<p>has been verbally assured that the building is not common good even though it sits on common good land.</p>	<p>Magistrates and Town Council of Nairn to the Trustees of Nairn Seamens Hall on 19 November 1887. On that occasion the land became the property of the Trustees and was no longer owned by the Council. Therefore neither the land nor the Hall is common good. The Hall would derive title from the land upon which it was built.</p>
<p>Although in favour of all the good that Green Hive is doing for the community, it is not right to give away public land which belongs to the whole town.</p>	<p>This comment is noted and has been responded to above.</p>
<p>The current status quo should continue of leasing to ensure the land remains within the common good and the erection of buildings or structures should not be allowed.</p>	<p>Each situation is considered on its own merits with statute allowing for the possibility of disposal by sale or even Community Asset Transfer of common good land. Across the Highland common good portfolios there are plenty of examples of land being leased on ground rent for the purpose of buildings being constructed on them for, often, commercial use. Much of Inverness common good industrial estate land is leased on this basis.</p>
<p>I feel strongly that the position of the Trustees of the Seamens hall was not made public and community suggestions sought for a way forward. The acquisition by Green Hive for £1 was improper and secretive.</p>	<p>The manner of and negotiations concerning the acquisition of Seamens Hall are not part of this consultation. The Council was not a party to that transaction as it had no legal interest in the Hall.</p>
<p>Green Hive showed no interest in responses received to a low key consultation for proposed uses for the Hall and have not provided feedback when requested.</p>	<p>Again, this is not relevant to this consultation, but Green Hive does have a website with a section dedicated to the Seamens Hall which might provide the information sought.</p>
<p>The proposed uses would seem to be in direct competition with the established Community Centre without any statistics on unsatisfied demand.</p>	<p>It is not considered that there is any competition issue. The Ward Manager meets regularly with the Community & Arts Centre board, and they have not expressed any such concerns. In addition this point has been raised with Green Hive who consider that the Seamen's Hall has a purpose and identity distinct from that of the Community Centre. They also spoke with the Community Centre manager</p>

	<p>who did not see there being any competition.</p> <p>As the Hall was largely dormant for a number of years, it has not been possible to collate statistics but, on request, Green Hive have confirmed that, to the best of their knowledge, none of those now booking the Hall have previously hired space at the Community Centre.</p>
<p>If this strip is transferred to Green Hive a clause should be included that if they were to sell in the future, the common good should have first option on the land.</p>	<p>Any such option would relate to the strip of land only and not the whole area including the Hall. There are not considered to be any scenarios whereby the Common Good would seek to take the land back in the event of an onward sale. The strip of land is a liability which requires to be maintained and has recently been subjected to fly-tipping. There is an access from the road to the riverside on the other side of the Seaman's Hall.</p>

c. Neighbouring landowner position

Green Hive had already been in discussions with the neighbouring landowner but, as part of this consultation process, the Council notified the neighbouring land owner direct, supplied a copy of the consultation document and invited any responses.

The neighbouring landowner confirmed their support for the proposal subject to a number of requirements as follows:

- Existing rights of access and use to be protected and included in any future deeds.
- Existing access to be maintained and continue to be unobstructed at all times.
- Existing boundary to be maintained.
- Green Hive acknowledge the neighbouring land is operated as a commercial venture. No action will be taken to seek to limit the reasonable and continued operations of the neighbouring land user.
- Any improvement to the boundary to be at the cost of Green Hive with any such works protecting the boundary fence to maintain security and limit any for environmental damage to the boundary from wind or new fittings.
- Green Hive or any future owner shall not create a situation resulting in an increase of the likelihood of fly tipping or wind-blown rubbish.

- Neighbouring landowner to be kept fully informed throughout the development of the disposal of the piece of land.

The Council raised these specific comments with Green Hive who have confirmed their agreement in the following statement:

“Green Hive is grateful for the stated support with this consultation from our much-valued neighbour who is clearly one of the most important stakeholders in this case. We are happy to stay in close consultation with Mr. Spinks and will not be doing anything which would restrict his access to his site. Nor indeed would we be looking to do anything which would negatively impact his business or pension trust. We are happy to provide any verbal or written reassurances regarding any and all of the concerns he has outlined which we see no difficulty in complying with and addressing.”

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 1-% of the Fund value, the decision in respect of the proposal rests with the 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

The proposal constitutes a disposal. The area of land has been investigated on behalf of Green Hive by title searchers and is considered to be a remnant of land deriving title from the Royal Charter of King James VI dated 15 October 1589.

Council officers are of the view that the land is alienable because it does not fall into one of the categories used to identify if land is inalienable namely:

- 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.

Some of the objections have raised the fact that at one point this area of land allowed for access to the riverside footpath but has been subsequently closed as part of flood defence work. Also a comment was received that the height of the wall does not prevent a person from climbing over it to access the footpath should they wish to do so.

A specific enquiry has been raised with the appropriate team in the Council and information supplied that approval to construct a flood protection wall was given by Committee in February 2000 and by July 2000 an 80m wall had been constructed. It was noted that there were gaps in the wall that accommodated footpaths and sandbags would be used for these areas. However, the Council does not have plans as to what was actually constructed as sections of the wall were created from existing property boundary walls and, as a result, it is not possible to confirm that the closing off of this piece of land was done at that time although it would seem likely. The wall is an informal flood defence structure as it was not promoted under the relevant legislation at the time and as a result the Council does not have formal duties to maintain or inspect it.

The only category of the test for inalienability that this piece of land could fall into is that of time immemorial. Whilst the land may have been open to the riverbank within living memory of some inhabitants of Nairn, it has been closed off since 2000, the height of the wall does not detract from the intention of the construction which was effectively to close off the opening to the river. To maintain the "public use" classification any ongoing use would need to be consistent and meaningful which cannot be implied simply by the fact it might be possible to step over the wall. Thereafter the principle use of the land has been to provide access to the Seamen's Hall and the former gasworks site.

Therefore, it is the Council's opinion that the piece of land that is the subject of this consultation is alienable and, as such, does not trigger the requirement to seek Sheriff Court approval.

The Community Empowerment consultation and Court application are separate to any process and consultation under planning legislation.

Sara Murdoch
Common Good Fund Officer
11.07.2023

Site plan





Appendix 3

Strip of land between Seaman's Hall and the old gas works, Harbour Street, Nairn.

Green Hive is interested in acquiring this strip of land which lies to the south of Seaman's Hall and runs between the land to which Green Hive has title and the land, formerly known as the gas works. Seaman's Hall was identified as a major resource for the community when it was built in the late 19th century but in recent years has had little use and has lacked funding for maintenance.

Green Hive has pulled together comprehensively researched plans for the development of the building. From our extensive consultation we know that these plans are overwhelmingly supported by the community and, because of our activities over the past 7 years, readily deliverable. The plans supported by the community propose the installation of a new entrance to the building dually accessed from the riverside and Harbour Street, requiring a narrow extension along the southern gable.

In the course of acquiring Seaman's Hall Green Hive instructed search agents, at a cost of £300, to conduct an additional search of adjoining land and established that there was no title registered for this strip of land. We noted that it also did not appear on the register of Common Good Land. We drew the matter to the attention of Highland Council's Common Good officer.

This strip of land amounts to little more than 1.5 metres in width and runs from Harbour Street to the flood wall which runs along the riverside path. There is no access from Harbour Street along the strip of land to any public space by virtue of the flood wall, installed by the council in the 1970s we believe. This lack of access is underlined by the fly-tipping which has taken place there. Green Hive has reported an abandoned freezer in the last month.

We do not think it unreasonable to point out that the land had no previously known value to the Common Good and assert that it is not of a size or location that renders it usable for any community purpose, other than that which will be afforded by Green Hive's stewardship of Seaman's Hall. We recognise it is in the interests of the Common Good Fund to generate income from its assets and so appreciate that there will be some inclination to place a value on the land. Our view is that this land has no market value, by virtue of the fact that there is unlikely to be a market for it. Moreover it will deliver greater benefit to the common good by being adopted and developed in the way proposed by Green Hive than any short-term financial gain from its sale.



On this basis, and recognising Green Hive's financial investment in researching ownership of the land, we therefore propose that this land is transferred to Green Hive's ownership for a nominal sum agreeable to both parties.