

The Highland Council

Agenda Item	5
Report No	BIER-10-24

Committee: Black Isle and Easter Ross Area Committee

Date: 13 May 2024

Report Title: Invergordon Common Good Fund – consultation on the proposal to dispose, by sale, of the bust of Sir John Gordon by Edmé Bouchardon

Report By: Executive Chief Officer – Communities and Place
Acting Executive Chief Officer – Performance and Governance

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 (the Act) in respect of the proposal to dispose, by sale, of the bust of Sir John Gordon by Edmé Bouchardon.

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 representations received within the consultation period for publication on the Council's website as contained in the document at **Appendix 2**.
- iii. **Consider and balance** the representations received together with the responsibilities for the Invergordon Common Good fund.
- iv. Following consideration of the representations received and best interests of the Invergordon Common Good Fund:
 - a) **Agree** to recommend to full Council that the proposal to dispose of the bust of Sir John Gordon by sale should go ahead (see paragraph 5.3) and
 - b) **Agree** that the disposal should proceed by way of private sale (see paragraph 5.4) and
 - c) **Agree** that a museum quality replica be commissioned (see paragraph 6.1).
 - d) **Note** that, if approval is recommended, it will be necessary to seek Sheriff Court consent because the bust is considered to be inalienable.

3. Implications

- 3.1 Resource - if the proposal to sell the Bouchardon bust is approved, it would result in a significant capital receipt being received into Invergordon Common Good fund. This could be used to fund capital projects or investment to generate income which in turn could be used to benefit the community of Invergordon. As Invergordon has little in the way of other income generating Common Good assets, this offers a major opportunity to rejuvenate the Common Good fund for the ongoing benefit of current and future generations.
- 3.2 Legal – the statutory requirement to consult under the terms of section 104 of the Act in respect of the proposal to dispose by sale of a Common Good asset has been complied with. There is also a statutory requirement to seek Court approval if property is assessed as being inalienable. Whilst the statutory provisions only refer to “land”, there has been case law which extended the principle to moveable property. As a result, in the event that it is decided that the proposal to dispose should go ahead, an application to the Sheriff Court for approval will be submitted.

The Council’s Scheme of Delegation provides that decisions related to Common Good assets where the asset value is 10% or less of the total value of the fund rests with Area Committee. Where the asset value is above 10% of the fund, decision making rests with full Council. In the present case, the value of the bust exceeds 10% therefore Area Committee will be asked to make recommendations for a final decision by full Council.

If both the Council and the Court approve the proposal to dispose, a further legal process known as the “Waverley Criteria” will be triggered. This was fully explained in the report before Easter Ross Area Committee on 30 October 2023, copy attached at **Appendix 4** for ease of reference.

- 3.3 Community (Equality, Poverty, Rural and Island) – Invergordon Common Good fund has little in the way of income generating assets and does not have an active community grants budget. The capital receipt from the sale of the bust would rejuvenate the fund by providing investment opportunities which would generate income that could then be used for community benefit.

There are no rural or island impacts identified as a consequence of the proposal. There are also no direct equality or poverty implications. However, as outlined above, the sale of the Bust could generate a significant capital receipt for the Invergordon Common Good Fund and any investment opportunities could be utilised to support wider socio-economic community based projects, as delivered through other Common Good Funds with investment portfolios.

- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – some comments received during the consultation process suggest the sale of the bust poses a risk by diminishing the cultural and historical benefits to Invergordon. Whilst these views are noted, it is suggested that such risks are mitigated by the intention to obtain a museum quality replica that could be publicly displayed. The bust is not currently on public display due to insurance and security concerns and therefore current cultural and historical benefits.
- 3.6 Health and Safety (risks arising from changes to plant, equipment, process, or people) – none.

3.7 Gaelic – none.

4. Proposal to dispose, by sale, of the bust of Sir John Gordon by Edmé Bouchardon.

4.1 The Bouchardon bust is an asset of Invergordon Common Good fund. It was acquired by Invergordon Town Council in 1930 for £5 because Sir John Gordon was “*said to be the founder of Invergordon*”. Following the acquisition, the Town Council agreed that it should be placed in the Town Hall with the location signposted. The assessment of Common Good is based on case law which states that any property acquired by a burgh not for statutory purposes or held on special trusts is Common Good.

4.2 It has not been possible for the Bust to be on public display due to its high value and the associated security implications. This is based on advice from the Council’s Insurers. It remains in secure storage. There have been no requests for it to be loaned to any museum or gallery since it was loaned to the Louvre and the Getty for specific exhibitions.

4.3 The possibility of the sale of the bust was raised as part of the wider discussions surrounding the future plans for Invergordon Town Hall. Members at Easter Ross Area Committee meeting on 17 February 2022 requested officers to undertake work on an options appraisal and business case for the potential sale and subsequent use of any capital receipt. As part of this work, officers sought advice from Sotheby’s with whom the Council has had a professional working relationship for approximately 40 years. They also have a renowned, dedicated team of sculpture experts.

The report on the outcome of this work was in the course of being prepared when contact was received from Sotheby’s advising they had received an unsolicited offer in the event the Council was minded to sell. Sotheby’s confirmed that should this offer be accepted; they would not deduct any commission from the sale price. In addition, the interested party confirmed they would meet the cost of the replica to be commissioned. Therefore, this would ensure the maximum capital receipt would be received by Invergordon Common Good fund.

The report that came before Area Committee on 30 October 2023 (**Appendix 4**) covered both the officer work undertaken and the offer received. Approval was given to undertake the required Community Empowerment consultation.

4.4 The public consultation commenced on 16 January 2024. A copy of the consultation document is attached at **Appendix 3** for ease of reference. Provision was made for responses to be submitted by post, email and online form. The consultation ended on 15 March 2024. An analysis of the consultation has been prepared and can be found at **Appendix 1**.

4.5 68 representations were received using all formats available with the online form being the most popular. **Appendix 1** details a numerical and percentage breakdown of the responses received. It also contains a summary of the themes distilled from the representations received and provides a more detailed discussion on some of the themes raised within the representations expressing opposition to the disposal.

Appendix 2 contains a table of all representations received reproduced verbatim with identifying information redacted (save for representative bodies), together with the Council's proposed responses. Whilst the questions for the online form mirrored the questions asked in the consultation document, all representations submitted via the online form were shorter. Some of the email representations are extensive covering aspects directly within the scope of the consultation but also referring to matters that fall outwith the scope of the consultation.

4.6 **Summary of Responses Received**

The total number of responses received to the consultation were as follows:

- **Yes** – 48 representations – 70.59% of the total representations received
- **No** – 19 representations – 27.94% of the total representations received
- **Comments** – 1 representation – 1.47% of the total representations received

Whilst the majority of responses received were in support of the proposal, this must be considered alongside the detailed representations. It should be noted that two Community Councils (Invergordon and Saltburn & Westwood) and Invergordon Development Trust replied by email providing lengthy and detailed reasons for their opposition to the proposal.

The analysis below provides a summary of the responses received but as noted above, **Appendix 2** to the report provides the detail of all responses received and the Council's responses to these. Members must have regard to the contents of these representations when making a decision in respect of the proposal.

Themes

The themes running through the supporting representations are as follows:

- If the bust cannot be securely displayed, it should be sold and the proceeds received into the Invergordon Common Good fund.
- It would be good for Invergordon to have such an amount in the Common Good fund.
- Money can be used to benefit the community of Invergordon. It should be invested in long term community projects.
- A replica can be obtained and put on show.
- Some suggestions were made for possible use of the funds if received – play parks, help to restore the Town Hall, renovation of the town, create tourism opportunities etc.

The themes running through the opposing representations are as follows:

- Consultation process not sufficiently detailed. A further consultation should be undertaken.
- Reliance on technology for disseminating information.
- Reliance on Sotheby's for expert advice.
- Other options should be explored and explained in detail including prospect for raising income by displaying the bust.
- Concern regarding how any funds received will be safeguarded and used.

Analysis – considerations

The contents of all representations received should be considered and balanced alongside the statistics of the percentage figures. Members must consider the extent and validity of the issues expressed. An example of a concern running through those who are for and against relates to the use of any funds received. This is perhaps understandable given the fact that, historically, Invergordon has had insufficient income reserves for such decisions to have featured highly within the Common Good management. However, at this stage it is not possible to provide any detail of what the funds could be spent on, bar confirming that it must be on income raising investment or capital opportunities. This is due to the restrictions around funds of this nature. Should a decision be taken to sell, investment opportunities available at that time will be explored and considered.

Within the representations some issues were raised that require consideration and debate within the decision making process. This includes:

- **Should the Council be required to obtain a second opinion on sale advice?**
 - Issues were raised relating to the sole reliance on Sotheby's, noting a lack of impartiality and a potential conflict of interest.
 - **Response:** The Council has had a professional, trusted relationship with Sotheby's for in the region of 40 years. In this matter they are acting on the Council's behalf and in its best interests, they did not actively seek out the proposed purchaser.

- **Are there any merits in a second/extended consultation?**
 - Issues raised relate to a lack of detailed information in the consultation, lack of public meeting/lack of public awareness, lack of other options explored, over reliance on technology to disseminate and collect information.
 - **Response:** This consultation contains the Council's proposal based on the advice received as detailed in the Committee report. The representations can contain counter proposals which the Council would consider as part of the consultation process. At this point, the options are whether to sell or not. The aspect of alternative options is discussed below.

The Community Council were notified on the day the consultation commenced allowing 8 weeks to canvas community opinion to inform their reply. There is no requirement for the Council to hold a public meeting for such a purpose.

It is unclear how much more the Council could add over and above what is already contained in the consultation document and linked reports and what information is missing has not been articulated. Post, email and online forms were utilised and with a response rate of 68, this represents a high response rate for a consultation of this kind.

- Should any additional proposals be developed?
 - Issues relate to concerns that investigation have not been undertaken about possible display options locally or nationally and the possibility of leasing it.
 - Response: Guidance from the Council's Insurers and Museum's team has consistently stated that security and insurance issues make local display impractical. This is not a practical option that can be explored.

Any national display is entirely dependent on a museum's schedule of displays therefore it may not be given space and to date only the Louve and Getty have requested to display the Bust. Guidance from the Council's Museum's team would suggest that due to the high associated costs of insurance, transport etc together with low funding levels, museums borrow items but cover such costs in lieu of rent therefore no income would be generated from leasing. It is important to note that display in another venue would bring no financial benefit to the Invergordon Common Good fund.

This is not an exhaustive list of issues and Members with their local knowledge may consider other matters raised should be discussed further.

In reaching a decision, the Council is required to have regard to the representations received but ultimately, must make a decision that it considers is in the best interests of Invergordon Common Good.

5. Options for next steps

- 5.1 Members are asked to consider the outcome of the consultation. In doing this, Members must have regard to the representations received, the issues raised, the proposed responses and their responsibilities to Invergordon Common Good fund.
- 5.2 The available options are as follows:-
 - Recommend to full Council that the proposal should go ahead subject to Sheriff Court approval.
 - Recommend to full Council to amend the proposal (any significant amendment would require a new consultation process).
 - Decide that the proposal should not go ahead.

In the event Members decide that the proposal should not go ahead, it would not be necessary to make a recommendation to Council as this would be noted under the terms of the Area Committee meeting.

- 5.3 Taking into account the representations received, balancing the nature of the issues raised and considering the benefit to the local community which could be achieved from the investment potential opportunities, it is recommended that Members of the Black Isle and Easter Ross Area Committee recommend to full Council to agree that the proposal to dispose by sale should go ahead.
- 5.4 If Members are in support of the recommendation, thereafter consideration needs to be given to the method of sale. The pros and cons of public and private sales following receipt of initial advice from Sotheby's as part of the options appraisal work are detailed

in paragraph 5 of the report to Area Committee dated 30 October 2023 and attached at **Appendix 4**. The Council sought further advice from Sotheby's following their receipt of the unsolicited offer. Sotheby's are acting on the Council's behalf in this matter and, in their expert opinion, the best value for Invergordon Common Good fund would be achieved by proceeding by private sale. It is the considered opinion of the experts at Sotheby's that the current offer received is at the top level of the market and represents peak offer for the Bust.

6. Other information

- 6.1 In the event that all processes (Council decision, Court approval, Waverley Criteria) result in the actual sale going ahead, it is proposed that a museum quality replica be made which would allow for public display. Advice has been taken from Sotheby's on available options. The preferred suggestion would be to use Factum Arte, a company that utilises cutting edge technology to undertake a 3d scan before producing a replica in marble. This would result in a replica that would be as close to the original as it is possible to obtain. The cost of the replica is likely to be in excess of £50,000, taking into account transportation, fluctuating material costs etc. The suggested company have undertaken similar types of work for major museums.

It is proposed that a museum quality replica be a core requirement of any decision to sell. With regard to the unsolicited offer, the interested party would meet the costs associated with the commission of the replica.

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

Date: 24 April 2024

Author: Sara Murdoch, Common Good Fund Officer

Appendices: Appendix 1 – Analysis of Consultation
Appendix 2 – Representations and Responses
Appendix 3 – Consultation Document
Appendix 4 – Report to Easter Ross Area Committee on 30 October 2023

INVERGORDON COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON THE PROPOSAL TO DISPOSE, BY SALE, OF THE BUST OF SIR JOHN GORDON BY EDMÉ BOUCHARDON; AN ASSET OF INVERGORDON COMMON GOOD FUND

1. Representations format used

The public consultation period ended on 15 March 2024 with a total of 70 responses being received **but** 1 person submitted an email and online response and 1 person submitted 2 identical online responses. In both cases, the multiple responses have only been counted as one reply from each person. Therefore the actual total of representations received was **68**.

Responses could be submitted by post, email and online form and were received using all formats with the majority using the online form option (82.35%).

The online form asked specific questions in line with those contained at the key questions section in the consultation document. The option to respond by post/email, whilst those questions could still be addressed, also allowed for more wide reaching comments and lengthier documents to be submitted.

Due to the differing format available for use, the table of representations received and Council responses to the same has been divided so it can be seen which responses were by post/email (prefix EP and ID number) and which utilised the online form (prefix OL and ID number).

2. Representations received

Representations were received from individuals, Community Councils and community organisations. Despite one response expressing concern that people from outwith the Invergordon area could submit a response, no such representation was received.

The responses are broken down as follows:

- Email and postal representations
 - **Yes** – 2 representations
 - **No** – 9 representations (including a person who also submitted an online representation – combined and counted as 1 representation)
 - **Comments** – 1 representation
- Online representations
 - **Yes** – 47 representations of which 30 also answered the additional comments, the remaining 17 answered yes only but did not complete the additional questions. One person submitted a duplicate positive response and this has been counted as a single reply.
 - **No** – 11 representations (including the person who also submitted an email reply as mentioned above).

- Combined figures (adjusting for the 2 duplicates)
 - **Yes** – 48 representations – 70.59% of the total representations received
 - **No** – 19 representations – 27.94% of the total representations received
 - **Comments** – 1 representation – 1.47% of the total representations received

3. Analysis of the consultation process

Based on the simple percentage breakdown, the majority opinion of those who have commented within the consultation is to support the proposal.

However, those percentage figures must be considered alongside the reasons and explanations contained within the representations.

This analysis provides a brief summary of the themes of the comments raised. However, **Appendix 2** to the report before the Black Isle & Easter Ross Area Committee meeting on 13 May 2024 is a table containing verbatim reproductions of all of the representations received together with proposed responses to those representations. In compliance with the Council's data protection policy and the statutory guidance, identifying information has been removed/redacted. Members must have regard to the contents of these representations when making a decision in respect of the proposal.

Themes

The themes running through the supporting representations are as follows:

- If the bust cannot be securely displayed, it should be sold and the proceeds received into the Invergordon Common Good fund.
- It would be good for Invergordon to have such an amount in the Common Good fund.
- Money can be used to benefit the community of Invergordon. It should be invested in long term community projects.
- A replica can be obtained and put on show.
- Some suggestions were made for possible use of the funds if received – play parks, help to restore the Town Hall, renovation of the town, create tourism opportunities etc.

The themes running through the opposing representations are as follows:

- Consultation process not sufficiently detailed. A further consultation should be undertaken.
- Reliance on technology for disseminating information.
- Reliance on Sotheby's for expert advice.
- Other options should be explored and explained in detail including prospect for raising income by displaying the bust.
- Concern regarding how any funds received will be safeguarded and used.

Analysis - considerations

The themes distilled from the responses as listed above provide a brief summary only. The content of the actual representations received (Appendix 2 to Committee Report 13 May 2024) provide more information with the email responses, in particular, being lengthy and detailed. Council responses are also included in the table alongside each representation received to provide additional information and explanations where appropriate.

The contents of all representations received should be considered and balanced alongside the statistics of the percentage figures. Members must consider the extent and validity of the issues expressed. An example of a concern running through those who are for and against relates to the use of any funds received. This is perhaps understandable given the fact that, historically, Invergordon has had insufficient income reserves for such decisions to have featured highly within the Common Good management. However, at this stage it is not possible to provide any detail of what the funds could be spent on, bar confirming that it must be on income raising investment or capital opportunities. This is due to the restrictions around funds of this nature. Should a decision be taken to sell, investment opportunities available at that time will be explored and considered.

Within the representations are some issues that will merit discussion and debate within the decision making process – for example;

- should the Council be required to obtain a second opinion on sale advice?
 - Issues raised relate to sole reliance on Sotheby's, lack of impartiality, conflict of interest.
 - Response: The Council has had a professional, trusted relationship with Sotheby's for in the region of 40 years, in this matter they are acting on the Council's behalf and in its best interests, they did not actively seek out the proposed purchaser.

- Are there any merits in a second/extended consultation?
 - Issues raised relate to a lack of detailed information in the consultation, lack of public meeting/lack of public awareness, lack of other options explored, over reliance on technology to disseminate and collect information.
 - Response: This consultation contains the Council's proposal based on the advice received as detailed in the Committee report. The representations can contain counter proposals which the Council would consider as part of the consultation process. At this point, the options are whether to sell or not. The aspect of alternative options is discussed in the report before Area Committee.

The Community Council were notified on the day the consultation commenced allowing 8 weeks to canvas community opinion to inform their reply. There is no requirement for the Council to hold a public meeting for such a purpose.

It is unclear how much more the Council could add over and above what is already contained in the consultation document and linked reports and what information is missing has not been articulated. Post, email and online forms were utilised and with a response rate of 68, this represents a high response rate for a consultation of this kind..

- should any additional proposals be developed?
 - Issues relate to concerns that investigation have not been undertaken about possible display options locally or nationally, possibility of leasing it.
 - Response: Guidance from the Council's Insurers and Museum's team has consistently stated that security and insurance issues make local display impractical. This is not a practical option that can be explored.

Any national display is entirely dependent on a museums schedule of displays therefore it may not be given space and, to date, only the Louvre and the Getty have requested to display the Bust. Guidance from the Council's Museum's team would suggest that due to the high associated costs of insurance, transport etc together with low funding levels, museums borrow items but cover such costs in lieu of rent therefore no income would be generated from leasing. It is important to note that display in another venue would bring no financial benefit to the Invergordon Common Good fund.

This is not an exhaustive list of issues and Members with their local knowledge may consider other matters raised should be discussed further.

In reaching a decision, the Council is required to have regard to the representations received but ultimately, must make a decision that it considers is in the best interests of Invergordon Common Good.

4. 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 the Black Isle & Easter Ross Area Committee.
 - If the value exceeds 10%, the decision falls to full Council.
 - With regard to this consultation, the value of the Bouchardon bust is in excess of 10% of the total value of Invergordon Common Good fund. Therefore, if approved, this consultation will be referred to full Council for the final decision.

5. Decision making options

Available options in the terms of recommendations to be made to full Council 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.

6. Additional information

The Highland Council have a statutory obligation to seek court consent before disposing of Common Good land which may be 'inalienable'.

In this context 'inalienable' 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.

Whilst the relevant statutory provision refers to land and not moveable property, there is historic case law that extended the category of inalienability to a Burgh Charter. It is the Council's view that due to the reasons behind the Council's acquisition in 1930 namely, because he was thought to be the founder of Invergordon and also because they agreed to display the bust publicly in the Town Hall, that the bust should be considered to be inalienable. As a result an application to Court for approval will be made in the event the proposal to sell is agreed.

Sara Murdoch
Common Good Fund
09 April 2024

INVERGORDON COMMON GOOD**CONSULTATION ON PROPOSAL TO DISPOSE, BY SALE, OF THE BUST OF SIR JOHN GORDON BY EDMÉ BOUCHARDON; AN ASSET OF****INVERGORDON COMMON GOOD FUND****REPRESENTATIONS AND RESPONSES****EMAIL & POSTAL RESPONSES**

Email/postal responses are based on the questions asked in the consultation document which are as follows:-

- Do you support the proposal to sell the Bouchardon bust?
- If yes, do you have any further comments?
- If no, please give reasons and comment what you think should be done with the bust instead?
- Do you have any other relevant comments not covered by the above questions?

1 person responded by email and by online form answering no in each case with additional comments (refs EP7 & OL55) – responses have been reproduced verbatim in each case but the “no” answer has only been counted once.

REPRESENTATIONS RECEIVED AND RESPONSES		
ID ref no (prefix with EP for email/post)	Representation received reproduced verbatim	Council's responses
EP1	As a resident of Invergordon I was very interested to learn about Bouchardon's Bust of Sir John Gordon. My personal view is as the bust cannot be displayed in Invergordon due to issues of security, it should be sold and the proceeds donated to the Common Good Fund for Invergordon.	Thank you for your comments which have been noted within the consultation process.
EP2	I think this bust should be sold and that the money should be returned to the town of Invergordon's Common Good Fund. Invergordon does not get very much funding in	Thank you for your comments which have been noted within the consultation process.

	<p>comparison to Alness and Tain. The town is looking very rundown and extra funding would hopefully be put to improving it, especially as it has so many visitors from the Cruise ships.</p>	
<p>EP3</p>	<p>Dear Ms. Murdoch,</p> <p>Common Good Consultation.</p> <p>Re The Sir John Gordon Bust by Edmé Bouchardon.</p> <p>My late brother, [REDACTED] was instrumental in both tracing and confirming the Edme Bouchardon bust.</p> <p>For your interest I have enclosed a copy of the Rubbing, from the base of the bust, which was requested by Monsieur Scherf from the Louvre. Also enclosed are copies of relevant correspondence required at the time.</p> <p>Regarding the proposal to the sale of the Sir John Gordon bust. [REDACTED] was always of the opinion that the bust should remain in Scotland, in a Scottish museum, as part of Scotland's heritage.</p> <p>This is also the view held by myself and my family. I hope that this backdrop will be of some interest to your Consultation.</p> <p>With kind regards,</p>	<p>Thank you for your comments which have been noted within the consultation process. (the copy correspondence is of historical relevance but does not respond directly to the consultation. As a result, it is not reproduced here)</p>
<p>EP4</p>	<p>Saltburn and Westwood Community Council (SWCC)'s response to Highland Council's consultation on the proposal to dispose, by sale, of the bust of Sir John Gordon by Esme Bouchardon</p> <p>Brief history of the bust of Sir John Gordon by Adme Bouchardon The marble bust of Sir John Gordon was made by Adme Bouchardon in 1728. The bust survived a fire at Invergordon Castle in the 19th century and was bought by Invergordon Town Council at auction in Kindeace for £5:00 in 1930.</p> <p>It is understood that the intention was to display the bust in Invergordon Town Hall, unfortunately it was never displayed as originally intended and was misplaced, later being discovered propping open a shed door on an industrial estate in Balintore in 1998.</p> <p>This response is based on the following beliefs:</p> <ul style="list-style-type: none"> • The bust was purchased on behalf of the people of Invergordon due to the town being named after Sir John Gordon and forms part of the Common Good Fund. • Given the above, the people of Invergordon have the right to be fully consulted on all options for the future of the bust. From the Highland Council Documents, highlighted in the consultation document as relevant background reading, the sale of the bust has been the 	<p>The Community Empowerment consultation is the format by which members of the community can participate in the decision making process. Whilst the consultation document outlines the Council's current proposal, any consideration of a decision must have regard to all representations received.</p>

only option considered. It is the view of SWCC that the reasons for this, outlined in the document, are based on false reasoning or information which is not true

- To allow the people of Invergordon to make a robust, fully informed decision, they require each option to be clearly outlined, giving detailed information on the benefits to them and the town of Invergordon

SWCC challenges the consultation process on the following grounds:

1. lack of accessibility of all the relevant information
2. readability of the information
3. lack of a clear, robust decision making process
4. all options for the future of the bust are not included

We will now detail the reasoning for each of these.

1. Lack of accessibility of all the relevant information

Community Empowerment (Scotland) Act Feb 2017 - The Highland Council, on its Website's Community Empowerment page, states under Common Good Property, that one of the key elements of the Act is *'provisions have introduced duties to increase transparency about common good assets and improve community involvement in their identification, disposal and use of them'*

SWCC is of the opinion that the presentation of the information, the terminology in the consultation document, and the additional expectation that readers will also read minutes of meetings means that the information is not easily accessible.

SWCC sees no evidence of transparency in the consultation on the disposal of the bust of Sir John Gordon.

2. Readability of the information

The Scottish Survey of Adult Literacies 2009 highlights that *'one person in 28 faces serious challenges in their literacies practices'* and *'people who live in the 15% most deprived areas in Scotland tend to have lower literacy scores than those who live in the rest of Scotland'*.

Following the survey, The Scottish Government on mygov.scot resources - Readability, states;
'A lot of what the Scottish and UK governments publish, either on line or in print, is too complex for at least half of our readers. This is mirrored across agencies, services and the general public sector' 'we know this complexity confuses the public' 'Close working across government is needed to further improve content. We need to make sure that any language produced for the general public has been written in an accessible way'

1. Lack of accessibility of all the relevant information

This consultation is presented in the same format and style to all previous Community Empowerment consultations. Additionally in respect of this consultation the availability of an online form for responses was provided which has received a positive response. Other responses have been by email and post. It has been validly and correctly conducted.

2. Readability of the information

Past consultations have, on occasion, received requests for hard copy documents or to raise questions for clarification before responding and Council officers have replied speedily to ensure the appropriate information is received as requested.

No such request has been made within this consultation but had it been made; it would have been responded to speedily and in appropriate terms.

SWCC sees no evidence that an attempt has been made to ensure the consultation document is readable by the residents of Invergordon.

3. Lack of a clear, robust decision making process

The reports and minutes of the Easter Ross Area Committee Meetings from 17th February 2022 - 30th October 2023 do not demonstrate a robust decision making process

Extracts from Item 11- Invergordon Common Good, Easter Ross Area Committee meeting held on 17th February 2022

2 'Members are asked to consider and agree one of the following two options:

- *Option 1: To commence a statutory consultation to sell the Bouchardon Bust to repair the Town Hall. Said sale to be conditional on a robust business case OR*
- *Option 2: To recommend to Highland Council to dispose of Invergordon Town Hall by sale. This follows the concluded consultation regarding disposal and would include a requirement for approval from the Sheriff Court as it is an inalienable asset.*

Extracts from Minutes of Easter Ross Area Committee Meeting held on 17th February 2022

'It was generally considered preferable to sell the hall, even if only for a nominal sum, to enable the building to be preserved for the future, the council having no budget to do anything other than mothball it. Assurance was sought that the Town Hall belonged to the Common Good Fund and not Highland Council. It was suggested that it would be preferable for any proceeds from the sale of the Bust to be used to form a fund, such as a common good fund, to which local groups could apply for the benefit of the local community.'

*'The Committee: **AGREED:***

- a. to commence work on an options appraisal and outline business case for a use of any seed corn money returned from the sale of the Bouchardon Bust, ie setting up of an Invergordon common good fund which would generate substantial income for the community to use for local projects for the future; and*
- b. TO RECOMMEND to Highland Council to dispose of Invergordon Town Hall by sale, after considerable years of attempting to bring it into viable use to provide sufficient income for its continued use.'*

Extracts from Item 7 – ERA Invergordon CGF Q1, Easter Ross Area Committee meeting held on 5th September 2022

'3.4 Risk Implications: *As noted previously to this committee, before considering sale of the Bouchardon Bust it is critical that the wider implications of any such sale are considered. If sale is likely to be considered unfavourably this could result in some significant heritage funders not supporting funding to the Highland Council as a whole. This could have*

3. Lack of a clear, robust decision making process

Invergordon Town Hall is not within this consultation. A decision to sell the Town Hall has been made following 2 consultations and Sheriff Court approval has been received. Whilst the Town Hall has been marketed, any steps to take a sale forward have been paused to allow for a community group to, again, have the opportunity to develop a business case to take over the building.

"It is important to note that, at this stage, the proposal was to set up a new Common Good Fund which would not necessarily have the same restrictions placed on it by Highland Council as the existing fund." – This is a misunderstanding. Currently Invergordon does not have the level of available income reserves in a Common Good fund that would make having a grants budget viable. There is no suggestion of setting up a **new** Common Good fund – that is not legally possible.

Please note the consultation document clearly states – *"the bust is a Common Good asset and therefore the proceeds from any sale would be a capital receipt belonging to the Invergordon Common Good Fund."* Further clarifying in the same paragraph – *"This would offer the potential for investment that would generate an ongoing income for Invergordon Common Good fund which, in turn, would be used for the benefit of the Invergordon community."*

significant implications for the wider Highland Council, and this will be required to be considered as part of any options appraisal on the potential for sale.'

'5.1 Invergordon Town Hall

In February 2022 Members agreed to recommend to Highland Council that the Town Hall be disposed of by sale following a second disposal consultation under the Community Empowerment Act. This was agreed and following that Sherriff Court approval for such a sale was granted on 31May 2022. The property will therefore be marketed shortly.'

'5.2 'Initial discussions took place with a representative of Sotheby's to obtain specialist advice and information given the nature of the asset involved. Detailed information will be compiled into a full report to be brought before a future meeting of Easter Ross Area Committee.'

Extracts from Minutes of Easter Ross Area Committee held on 5th September 2022

7. Invergordon Common Good Fund'

• 'information was being sought on the value of the Bust in order to put together an option appraisal which would be brought to committee for consideration. Should any proposal to sell come forward in the future, this would be subjected to a full public consultation under the Community Empowerment Act. Assurance was provided that Invergordon Community Council would be kept fully up to date'

Extracts from Item 7 - Invergordon CG Q2 of the Easter Ross Area Committee meeting held on 8th November 2022

5.2 Bouchardon Bust Work is ongoing to explore the issues associated with any potential sale of the Bust. Detailed information will be compiled into a full report to be brought before a future meeting of Easter Ross Area Committee'

Extracts from the minutes of the Easter Ross Area Committee Meeting held on 23rd January 2022

'Members queried the downward revaluation of the Bouchardon Bust and an explanation would be sought from Finance outwith the meeting. A brief summary was provided of the comprehensive statutory process, including public consultation, that would be required to sell the Bust should members decide to initiate this.'

Extracts from minutes of Easter Ross Area Committee meeting held on 7th August 2023

7. Invergordon Common Good Fund

• In relation to the Bouchardon Bust, the options appraisal had not yet been progressed due to staff vacancies. The history of the discovery and subsequent considerations about what to do with the Bust were summarised'

Extract from minutes of Eater Ross Area Committee meeting held on 30th October 2023
'10. Invergordon Common Good Fund - the bust of Sir John Gordon by Esme Bouchardon.

Following a summary of the report, the following issues were raised:

- *there had been speculation online about what would happen if the bust was sold but it was clarified that a decision was only being sought at this stage on whether to proceed with a consultation on whether to sell it;*
- *if the bust were to be displayed locally, the costs of insurance and security to display it would be prohibitive;*
- *in response to comments, a summary was provided of the statutory consultation process. There was no legal requirement for a public meeting but a public awareness raising session, with a defined agenda, could be beneficial. The permitted uses of Common Good Fund assets and who was permitted to benefit from them was outlined, as was the lengthy legal process that would be undertaken if a sale was the preferred option from the consultation, and that any investment decisions on the proceeds would be taken in line with legal procedure, at the appropriate time;*
- *the importance of clear communication with regard to the consultation was emphasised;*
- *Members were keen to hear the public's view on the possible sale of the bust;*
- *assurance was provided that the bust was being stored in a safe and appropriate location; and*
- *Members thanked all involved in the process over the previous 25 years and asked that they be involved in the preparation of the consultation document.*

The Committee:-

- **NOTED** *the update on the work undertaken to explore the potential of selling the Bouchardon Bust;*
- **NOTED** *the assessment of the various sale options and the advice from Sotheby's that a sale by private arrangement might be most beneficial in financial terms; and*
- *in light of this information, **AGREED** to commence a Community Empowerment consultation to inform the decision making in respect of a proposal to sell the Bouchardon bust.*

After reading all available documents and information SWCC's understanding of the process is as follows:

At the start of the process, in February 2022 members were asked to agree to sell the Bouchardon Bust to repair Invergordon Town Hall or to dispose of the Town Hall. No other options for the future of the Bust were put forward and fully explored. **(Although, at later stages reasons why other options were not viable were put forward. SWCC believes that these reasons are based on false reasoning or information which is not true. This will be discussed in more detail later.)** The members considered it preferable to sell the Bust and to sell the Town Hall.

As the monies raised would not be needed to repair the Town Hall, it was agreed the members would consider options for the use of the monies raised from the sale of the Bust ie the setting up of an Invergordon Common Good Fund which would generate substantial income for the community to use for local projects. It is important to note that, at this stage, the proposal was to set up a new Common Good Fund which would not necessarily have the same restrictions placed on it by Highland Council as the existing fund.

However, later in the document this appears to have change to the monies being placed in the current fund, which does have restrictions placed on it. It is important that this is clarified and the implication of the restrictions clearly highlighted as part of the consultation process.

In September 2022, discussions took place with a representative of Sotheby's **(SWCC has major concerns about this which will discussed in more detail later)** to obtain specialist advice and information which was to be compiled into a full report. Highland Council states that there was an assessment of the various sales options and advise from Sothebys was that a sale by private arrangement might be the most beneficial in financial terms.

Highland Council stated that any proposal to sell would be subjected to a full consultation under the Community Empowerment Act. They also stated that a public awareness raising session could be beneficial and the importance of clear communication with regard to the consultation was emphasised.

SWCC is of the opinion that the consultation process and resulting consultation document do not meet the expectations of the Act nor of Highland Council itself.

Highland Council has acknowledged that there has been speculation online as to what would happen when he bust was sold and they clarified that the decision was only being sought at this stage on whether to proceed to a consultation on whether to sell and that investment decisions on the proceeds would be taken at the appropriate time.

<p>SWCC is of the opinion that for the people of Invergordon to make a fully informed decision regarding the future of the Bust they require, at least, an estimate of the potential sums of money available and what type of projects they could be used for.</p> <p>The only advice Highland Council has sought is from Sothebys, whose primary purpose is to sell Art. Regardless of the type of sale, Sothebys will gain financially, therefore Sothebys has a vested interest in the Bust being sold. The advice they have given on other options cannot be seen as impartial.</p> <p>SWCC has sought independent advice from a British art historian and former art dealer who lives in Scotland. As a dealer they specialised in Old Masters, with a particular interest in Anthony van Dyck. Therefore, whilst they are extremely knowledgeable about the art work both in Scotland and worldwide, they do not have a vested interest in the sale of the Bouchardon Bust, which makes their advice they have given robust and impartial in nature.</p> <p>The advice is as follows;</p> <ul style="list-style-type: none"> • The bust could be on public display. The point about insurance is misguided because it ignores options like government indemnity cover. The security risk is overestimated as marble busts are not thieves usual targets. • There is no evidence that the market may ‘crash’. The fact that the bust was loaned to both the Louvre and Getty Museum in 2016, testifies to its value in the art world. The previous record price for a similar bust was around £2.5m in 2012. It’s not impossible the market has risen since then. • There is no requirement for the council to pay auction costs in excess of 10%, the 40% figure quoted by Highland Council is wildly incorrect. It should be possible to negotiate a zero commission deal with Sotheby’s for a sale by auction as well as a private sale. It should be essential that both Sotheby’s and Highland Council confirm that no introductory commission is to be paid to anyone for arranging the sale. • Stating that the replica is a ‘pro’ for a private sale is misleading, as such replicas are not that expensive therefore, the offer of one should not be an inducement for a private sale. • A private sale could set a potentially quite dangerous precedent of someone being able to buy valuable artworks from councils directly, without testing the open market. • There are plenty of examples of councils selling artworks which then leads to a negative view from funders in the future. It is completely inadequate for Highland Council to rely solely on Sothebys view as they have a clear conflict of interest. Since there is a risk that 	<p>The Highland Council has had a professional relationship with Sotheby’s for approximately 40 years and they continue to provide expert advice to the Council in connection with required insurance valuations of the numerous art works owned by the Council. In addition they have a large team of Sculpture experts working within the fine art world.</p> <p>As a result the Council sought Sotheby’s expert and trusted advice in connection with the business case and options appraisal work following Area Committee recommendation in February 2022. Sotheby’s advice was given in the clear knowledge that no decision to sell had been made nor could be made without the required public consultation and subsequent Court approval. With regard to this matter, Sotheby’s are acting on the Council’s (ICGF) behalf and their provision of advice has been on the basis of the Council’s best interests.</p> <p>In consideration of representations received, it remains open to Members to instruct a second opinion be sought for such advice.</p> <p><u>General comments on SWCC expert views</u></p> <ul style="list-style-type: none"> • Louvre and the Getty. However both cases were by arrangement with those institutions and they bore the full financial implications. It is understood that the GIS scheme would not apply to the Council wishing to display the bust in one of its own institutions. In that case the cost would fall to Invergordon Common Good fund which has insufficient funds to provide the cover. • The recent unsolicited offer received by Sotheby’s is in excess of £2.5m which is more than the record price achieved in 2012 and not far short of that attained in 2023 for a bust by Canova. This is all detailed in the consultation document. • The figures mentioned in the report include possible figures for advertising, storage etc in addition to actual auction costs. Sotheby’s have reviewed their fee
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<p>selling the bust will impact negatively on museums, within the Highland Council area, future bids for funding or receiving donations, the council should seek museum sector/ other professional views.</p> <ul style="list-style-type: none"> • Whilst both Highland Council committee papers and the consultation document claim the bust can be sold without causing problems as it was never ‘accessioned’. It is far from clear this is the case as the bust was bought by the council for public display. All options for the bust are not included. <p>Art historian Caroline McCaffrey-Howarth has said that it is likely to be the only Bouchardon sculpture in Scotland and that rules around the export of significant works of art might prevent its overseas dispersal.</p> <p>SWCC have no confidence that the advice provided by Sotheby’s is impartial.</p> <p><u>4. All options for the future of the bust are not included</u></p> <p>SWCC are of the opinion that the people of Invergordon, as rightful owners of the bust of Sir John Gordon by Adme Bouchardon, have the right to be fully consulted on all options for the future of the bust. Each option should be fully explored and presented for consultation along with a financial appraisal. The potential uses of any money raised should be detailed, including into a new Common Good Fund with criteria in line with Scottish Government recommendations. It is just as important that areas the money cannot be used for are clearly highlighted.</p> <p>Options to be explored should include:</p> <ul style="list-style-type: none"> • The bust is returned to the people of Invergordon, to be displayed in the town as a significant cultural attraction • The bust is leased to Inverness Museum and Art Gallery • The bust is leased to a national gallery eg the National Gallery for Scotland • The bust is sold to a national gallery eg the National Gallery of Scotland • The bust is sold by auction which means, if the buyer lives abroad, it will be lost to the country • The bust is sold privately which means, if the buyer lives abroad, it will be lost to the country • There may be other options not listed here. <p><u>FINAL CONCLUSION</u></p>	<p>structure which will come into force from May 2024. Details can be found on their website online. However in respect of the unsolicited offer received, Sotheby’s have confirmed that they will waive any sale fees in respect of the Council.</p> <ul style="list-style-type: none"> • The Council considers that the acquisition of a high quality replica should be essential in the event of a sale proceeding regardless of whether this is by private or public sale. The difference between the 2 options is that, in respect of a private sale, it may be possible to negotiate that the potential buyer funds the replica in addition to the sale price. Whereas, if it were to be sold by public auction, the Council would be providing the replica from the sale proceeds received. <p>In respect of the unsolicited offer received, it is confirmed that the interested party would pay for the provision of the replica.</p> <p>Sotheby’s have recommended a company that use cutting edge 3D technology to create a replica. They regularly work with major museums to produce facsimiles for display. The cost of the replica will depend on the quality of the material used to create it. The Council’s intention as advised by Sotheby’s is that it should be recreated in marble as this is the best quality and will be as close to the original as it is possible to be. The cost of such a replica is likely to be in excess of £50,000. However price can fluctuate depending on material costs, transportation etc.</p> <ul style="list-style-type: none"> • The pros and cons of public versus private sale are fully outlined in the report to Easter Ross Area Committee in October 2023. Link Easter Ross Area Committee The Highland Council Any sale would be on its own merits and no precedent would be set. • This comment is noted.
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SWCC formally challenges this current consultation and request that a further, fully informed consultation allowing for proper consideration of all the options available is conducted prior to any decision being made.



Chair, Saltburn & Westwood Community Council
21 February 2024


- The bust is not recorded as a Highland Council accessioned item within Council records. Advice has been taken from High Life Highland who manage the Council's museums' collections. There was no specific collecting policies for Inverness Museum in 1930s and this is likely to be the same for other parts of the Highlands. When the bust was acquired by Invergordon Town Council minutes record that the purpose of the acquisition was because Sir John Gordon was "*said to be the founder of Invergordon*". At a later meeting it is noted that "*The Council agreed to have the Sir John Gordon bust placed in the Town Hall, the position to be pointed out*". There is no indication the steps have been subsequently taken to accession the bust into any of the Council collections.
- Comment on rules regarding export of art works is referred to in the consultation document – known as the Waverley Criteria.

4. All options for the future of the bust are not included

Common Good property is owned by the Council, title having been legally vested following the abolition of the Burghs in 1975. Therefore, the Bust is owned by the Council. In making any decision regarding the future of the bust, the Council must have regard to any representations received during the consultation period.

As stated in both the consultation document and the report before Easter Ross Area Committee referred to above, precise plans for the use of any funds received cannot be made at this stage. In the event Council approves the proposal to sell, there is then the requirement to seek Court approval and thereafter, the Waverley Criteria process to be complied with. What might be economically recommended currently may not be appropriate when all the required processes have been completed.

Any funds received from the sale must be received as a capital receipt into the existing Invergordon Common Good fund and can

		<p>only be used to fund capital projects or generate revenue which may be applied for community purposes. The consultation document refers to the Common Good Policy which is publicly available online for more information.</p> <p>Invergordon Common Good does not have the funds to insure the display of the bust in Invergordon. When items are loaned to museums/galleries for display, the costs associated for packing, transporting, protecting and insuring the item are understandably high. As a result of this and the fact museums tend to be public organisations with limited funds, it is usual that no rental would be paid.</p> <p>Museums tend to rotate their collections therefore, much of what they own spends a significant time in storage.</p> <p>Whilst the Council is consulting on the proposal to sell, all representations received will be considered within the decision making process. A second consultation is not justified.</p>
EP5	<p>Dear Sara,</p> <p>I am now writing to you as Chair of Invergordon Development Trust to say that our board fully endorses the response from SWCC and would like our response to be the same. Hopefully if you can log that as a separate response, that would be great but if you would prefer/require me to send an amended version so that it can be considered as a separate response please let me know.</p> <p>Kind regards,  Chair Invergordon Development Trust</p>	<p>As this representation repeats that contained at EP4, please see the full response to that representation.</p>
EP6	<p>As a resident of Invergordon I am against selling the bust. Invergordon has very few assets and we should keep them in the community— that goes for the townhouse as well.</p> <p>I feel there should be consultation with the Minister of Culture, as well as other departments that could offer alternatives to selling, and these should be explored extensively before any decision is made. This is too big and too valuable an asset to be left to the council alone.</p>	<p>Common Good property is property legally owned by the Council. In making any decision regarding a proposal to dispose or change toe use of such property, the Council must have regard to any representations received within the consultation process.</p> <p>The Government Indemnity Insurance scheme would not apply to the Council wishing to display the bust in one of its own institutions and Invergordon Common Good does not have the funds to insure the display of the bust in Invergordon.</p>

	<p>One idea is to put it on loan to the National Museum and proceeds from that could go to the common good.</p> <p>Another is to put it on display in Invergordon for the benefit of tourists , especially the cruise ship passengers, with an entry fee to defray costs and possibly provide some income. Help could be obtained from the UK government with regard to safeguarding and insurance.</p> <p>I beg the Highland Council to take all the time necessary to investigate all avenues and all sources of potential help that would enable the community of Invergordon to retain this important part of its heritage and history. What would future generations say if we sold their inheritance for a short term monetary gain?</p> <p>Where there is a will there is a way. I sincerely hope the Highland Council will find the will and the way.</p>	<p>When items are loaned to museums/galleries for display, the costs associated for packing, transporting, protecting and insuring the item are understandably high and, as a result, it is usual that no rental would be paid. Museums are on likely to seek to borrow an artifact if they a running a particular display of a certain category of items. Otherwise their collections tend to be rotated meaning much of what they own spends a significant amount of time in storage.</p> <p>Whilst the Council is consulting on the proposal to sell, all representations received will be considered within the decision making process.</p>
<p>EP7 – see OL55 - same person so combined & counted as 1 response.</p>	<p>Hi Sarah</p> <p>I am writing this letter in response to the consultation for the proposed disposal of the Buchardon Bust.</p> <p>As I understand it there is a group within the Invergordon Community Council looking into the Bust remaining an Invergordon asset, being used to create revenue from the growing numbers of tourist visiting the town.</p> <p>To Dispose of it without this group being given the chance to work up a plan would be outrageous. The bust has been unseen by the community for decades so I see no problem in postponing any sale until any avenues for revenue have been explored fully by the interested parties.</p> <p>Revenue from the sale of Common good assets also has strict spending restrictions which needs to be fully explained to the local community. Online surveys are only accessible to those with internet access and is leaving out key members of our community who would likely have more to add on this matter.</p> <p>If disposal is decided on. How is the best price achieved if a buyer has already been found? Lots more questions to ask in my opinion. To rush this would be a mistake. It is unlikely that such a valuable item will reduce in value so let's make sure the best outcome is achieved for the people of Invergordon.</p> <p>I look forward to the results of this consultation.</p>	<p>Whilst representations have been received commenting on the proposal, no specific approach has been received as suggested by a community group.</p> <p>The consultation document, report before Easter Ross Area Committee in October 2023 and the Common Good Policy all provide detailed information on how capital receipts can be used.</p> <p>This is the first time an online response form has been used in a full Common Good consultation. In addition email and postal responses could also be submitted. Whilst all have been utilised, the online form has proved the most popular.</p> <p>The expert advice of the world renowned sculpture team at Sotheby's is important in considering what may or may not be considered the best price for such an artifact. With regard to this matter, Sotheby's are acting on the Council's (ICGF) behalf and their provision of advice has been on the basis of the Council's best interests.</p>

<p>EP8</p>	<p>To who it may concern,</p> <p>I as a resident of Invergordon do not wish the John Gordon Bust to be sold. I feel the community have not been given enough information to make a informed decision. I have not seen any posters advertising this consultation. Not everyone has social media and I feel the elderly residents in the town have no way of knowing about this. On your consultation information you have stated the bust can not be insured so can not be displayed. This is incorrect the Scottish Government have a indemnity scheme to insure artifacts.</p> <p>I feel that more than 1 valuation has to be sought as Sotherbys have a vested interest in selling the Bust as they will receive a hefty commission. I do not feel this valuation by Sotherbys is impartial.</p> <p>No other option has been considered other than selling the Bust. Invergordon is a very busy port with cruise liners docking here between April and September. Over 100,000 visitors came to Invergordon during last season (2023). I think a visitor centre with the Bust as the central artifact would be able to generate an income and the town would retain the Bust.</p> <p>I feel that the consultation should be extended and I believe the Community Council should be consulted, all options should be put before the towns residents so they can make a informed decision.</p> <p>I feel that we do not know enough information around The Common Good Fund and the rules and regulations of how the monies can be spent and who holds the purse strings.</p>	<p>It is not the case that the bust cannot be displayed – on 2 occasions it has formed part of exhibitions at the Louvre and the Getty Institute. . However both cases were by arrangement with those institutions and they bore the financial implications.</p> <p>The Government Indemnity Insurance scheme applies to museums/galleries seeking to borrow artifacts for display and would not apply to the Council wishing to display the bust in one of its own institutions. In that case the cost would fall to Invergordon Common Good fund which has insufficient funds to provide the cover.</p> <p>The Council has a longstanding professional relationship with Sotheby’s (approx. 40 years). They have a renowned team of sculpture experts. The Council sought their expert advice as part of developing the options appraisal and business case. The fact this work was ongoing was in the public domain which resulted in wide press and media interest. Sotheby’s subsequently received an unsolicited approach asking them to put forward an offer to the Council for consideration. They did not take any proactive steps to seek out the interested party. With regard to this matter, Sotheby’s are acting on the Council’s (ICGF) behalf and their advice is provided on the basis of what is considered to be in the Council’s best interests. However, they are a commercial institution the same as any other auction house and any fees received as part of the auction process would apply in every case.</p> <p>The consultation document, report before Easter Ross Area Committee in October 2023 and the Common Good Policy all provide detailed information on how capital receipts can be used.</p>
<p>EP9</p>	<p>I think the community need more information with regards to the sale of the bust. They need to know exactly how much money that Invergordon in reality would receive from the sale of the bust and what they could hope to spend it on along with a realistic idea of the monies being spent on invergordon. They also need to know the alternatives.</p>	<p>Thank you for your comments which have been noted within the consultation process.</p>

EP10

**Invergordon Community Council (ICC)
Council's consultation on the proposal to
bust of Sir John Gordon by Edme Bouchardon.**



**response to Highland
dispose, by sale, the**

Regarding the history of the bust, it was made by Edme Bouchardon in 1728. It was commissioned by Sir John Gordon, thought to be the founder of Invergordon.

The ICC completely supports and agrees with all the comments made by our neighbours, Saltburn and Westwood Community Council namely:

1. The bust was purchased on behalf of the people of Invergordon due to the town being named after Sir John Gordon and forms part of the Invergordon Common Good Fund.
2. The community of Invergordon have the right to be fully consulted on all options relating to the future of the bust. From the documents presented by the Highland Council, as highlighted in the consultation document as relevant background reading, it seems the sale of the bust has been the only option considered. Decisions have been based on inaccuracies and information that is not true.
3. To allow the people of Invergordon to make a robust and fully informed decision, they require each and all options to be clearly outlined, giving detailed information on the benefits to them and Invergordon.

ICC challenges the consultation process on the following grounds:

1. Lack of accessibility of all relevant information. The Highland Council had failed to respond adequately to several Freedom of Information requests referring the ICC to the appeal process not leaving enough time to consider the information requested.
2. Information has not been clearly presented. The terminology used in the consultation document and the expectation that readers will be able to easily find the relevant minutes of meetings would indicate that there has been no attempt to present any information contained in the consultation document in an easy to read and/or understandable manner.

The report to the Easter Ross Area Committee on 30 October 2023 which was linked in the consultation document provided full information about this matter. The Community Empowerment consultation is the appropriate forum for the Community to make representations. In reaching any decision, the Council must have regard to the representations received as well as what is considered to be in the best interests of Invergordon Common Good fund.

Comments on ICC challenges

1. The Freedom of Information process is separate to the Common Good consultation process. The Freedom of Information legislation allows an applicant to request that the Council reviews its FOI response within 40 working days of that response being received. The applicants would have been informed of that right in the response they received.
2. All reports and documents referred to were accessible by the links provided. The use of this option was to avoid the consultation document itself becoming too lengthy and difficult to digest. By using links it allowed the relevant reports to be read at the appropriate time in the consultation document.
3. This consultation is part of the information gathering process that will be used to inform the decision making. No formal decision about the future of the bust has yet been made.
4. This is noted but not accepted. The report before Area Committee on 30 October details issues that relate to other options as follows:
 - The bust cannot be displayed locally due to security and insurance issues – Invergordon Common Good cannot afford to insure. The


<p>3. There appears to be a distinct lack of a robust decision-making process.</p> <p>4. All options for the future of the bust are not included.</p> <p>Having watched the recordings of the Area Committee meetings where the future of the bust was discussed, we were dismayed to hear that one of our elected members when asked if there should be a public consultation replied that there would be nothing to be gained by holding such a meeting as it would be taken over by “Nay Sayers”.</p> <p>ICC would respond that accurate information is not available to the public to allow them easy access to all and any relevant information to allow for informed decisions to be made. We do not consider that a full and robust consultation process has been carried out.</p> <p>As noted in the minutes of the Easter Ross Area Committee meeting held on 30 October 2023 emphasis was placed on the importance of clear communication about the consultation process – this has not happened. Again, ICC would reiterate that we do not consider that full consultation under the Community Empowerment (Scotland) Act 2015 has happened. In fact, Highland Council had stated that any proposal to sell the bust would be subjected to a full consultation process under the Community Empowerment (Scotland) Act 2015. They also stated that a public awareness raising session could be beneficial and the importance of clear communication with regard to the consultation was emphasised. ICC can see no evidence of this and would refer again to one members comment stating ”nothing would be gained by holding such a meeting as it would be taken over by “Nay Sayers”.</p> <p>ICC is of the opinion that the consultation process and resulting consultation document do not meet the expectations of the Act nor of Highland Council.</p> <p>The ICC does not agree with statements regarding the display of the bust. To imply that the cost implications to insure the bust prevents the bust being on display are wholly inaccurate. A government insurance indemnity scheme exists that allows privately owned items to be on public display.</p> <p>Again, we refer to comments made during a meeting of the Easter Ross Area Committee where one member stated that she did not care how long the process to sell the bust takes, 1 year, 2 years or more. The ICC therefore requests that the Town be given that time and opportunity to see what income can be generated from</p>	<p>government indemnity scheme covers borrowing accredited museums.</p> <ul style="list-style-type: none"> • No request has been made to borrow for display. The Louvre and Getty requests related to specific Bouchardon exhibitions. • As display is not a current option, all that remains is retaining it in secure storage which achieves little by way of benefit for Invergordon Common Good. • Donation to a national museum achieves no financial benefit for Invergordon Common Good. • Potential sale to a national museum will be triggered by the Waverley Criteria as referred to in the report. <p>Comments on the consultation process are noted however, the Council maintains that the consultation has been validly conducted. Reference to individual Members comments are outwith the ambit of the consultation.</p> <p>The Government Indemnity Scheme covers accredited museums wishing to borrow artifacts for display in accordance with a stated policy. It would not cover the Council seeking to put the bust on display in a Council establishment.</p>
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<p>displaying the bust. The Port of Cromarty Firth /Cruise Scotland indicated that 100,000 cruise ship passengers alone visited Invergordon High Street last season. Numbers are set to increase year on year. No account has been taken of non-cruise or NC500 visitors to the area.</p> <p>The ICC believes there is an opportunity for the Town to generate an income from the bust that can benefit the Common Good Fund and allow the Town to potentially retain the bust for future generations if a decision not to sell is taken.</p> <p>Highland Council committee papers and the consultation documents state that the bust can be sold without issue as it was never “accessioned”. ICC believes this is not the case as the bust was originally purchased by the Old Town Council for public display.</p> <p>ICC are also aware that specific rules around the export of significant works of art might prevent any overseas sale as identified by Sotheby’s. Commission and a replica bust does not the original equal! Sotheby’s had not been impartial in the advice given to Highland Council, given their client is the potential buyer.</p> <p>ICC is of the opinion is that the people of Invergordon are the rightful owners of the bust and as such have a right to be consulted on all options regarding the future of the bust. Each option should be fully explored and properly presented to the community of Invergordon, including any financial appraisals.</p> <p>Details on potential uses of any monies raised should be detailed – it is equally important that areas the money cannot be used for are also clearly highlighted to prevent public confusion and quell any misguidance on how any monies raised could be spent.</p> <p>Options to be explored should include</p> <ol style="list-style-type: none"> 1. The bust is returned to the people of Invergordon for display in the town as a significant local and national cultural attraction. 2. Lease options should be considered. Potentially the National Gallery of Scotland. 3. The bust is sold by auction. 	<p>The request regarding considering possibilities for income generation will be referred for Members to consider within the decision making. The issue of costs for display and security would still be relevant in connection with this.</p> <p>The bust is not recorded as a Highland Council accessioned item within Council records. Advice has been taken from High Life Highland who manage the Council’s museums’ collections. There was no specific collecting policies for Inverness Museum in 1930s and this is likely to be the same for other parts of the Highlands. When the bust was acquired by Invergordon Town Council minutes record that the purpose of the acquisition was because Sir John Gordon was “<i>said to be the founder of Invergordon</i>”. At a later meeting it is noted that “<i>The Council agreed to have the Sir John Gordon bust placed in the Town Hall, the position to be pointed out</i>”. There is no indication the steps have been subsequently taken to accession the bust into any of the Council collections.</p> <p>The Waverley Criteria which cover overseas sale is referred to in both the Area Committee report and the consultation. Should the Council and the Court approve disposal, the Waverley Criteria is likely to be triggered.</p> <p>Whilst a replica is not the same as the original, the quality of the replica being proposed is such that only an expert could distinguish it from the original.</p> <p>The bust was purchased by the Town Council of Invergordon. It is classed as Common Good for the reasons outlined in the Committee report and the consultation document. All property held by the Councils at the time of both local government reorganisations (1975 & 1996) was legally vested into the</p>
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	<p>4. The bust is sold privately which could result in the bust being lost to the country if it goes abroad.</p> <p>5. There may be other options that have not been listed here.</p> <p>Finally, the ICC challenges the current consultation and requests that a further, fully advertised and informed consultation allowing for proper consideration of all the options available is conducted prior to any decision being made. Information needs to be freely available and easily accessible to allow people to make a fully informed decision and allows them to fully understand the implications of the decision they are making.</p>	<p>ownership of the succeeding Council format with special provisions in respect of Common Good (and other specific types of Council property) that it should be managed and accounted for separately to other Council funds.</p> <p>The current consultation is the legal format for consulting the community.</p> <p>Both the report before Area Committee on 30 October 2023 and the consultation document detail the position regarding any funds received as far as it is possible to do so at the present time. The consultation and decision in respect of that process is the first step in a lengthy process. In the event that it is approved, a Court application would need to be made which, if successful, would lead onto the Waverley Criteria process. These have timescales outwith the Council control. All of this must happen before the Council could receive any sale proceeds. It is impossible to predict economic situation which may occur in the future for investment. The Common Good Fund Policy was also linked from the consultation document. This is publicly available to view on the Council's website and provides more detail in respect of the financial position for Common Good funds both income and capital.</p> <p><u>Comments on options suggested</u></p> <ol style="list-style-type: none"> 1. The required insurance and security costs which would need to be met by Invergordon Common Good fund make this unattainable. 2. When museums borrow they agree to pay all associated costs – insurance, transport etc. Museums are often publicly funded with limited funds and the payment of the associated costs would be accepted in lieu of rent. This is what happened in the cases of the Louvre and the Getty. 3. This option has been covered in detail in the Committee Report. 4. This has also been covered in the Committee Report.
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		The Council considers that the issues raised within this representation have been covered within the consultation document and the reports linked in that document.
EP11	<p>Response to Public Consultation on Bouchardon/Gordon Bust 14/3/2024) I believe the bust should not be sold at this time for the following reasons:</p> <ol style="list-style-type: none"> 1. No full and proper public consultation has been carried out. There is confusion in the Town as to how this money can be spent and what it can be spent on. People have been led to believe £2.5 m is going to be available to the town and this is not the case. This money can not be used to repair roads, build schools etc. This money can be spent on capital projects only. Full consultation via the presentation of all pertinent documentation and an explanation of how the Common Good Fund works has not been available. Any such consultation should have been done via a public meeting or series of public meetings. Information hidden in the depths of the Highland council Website does not a consultation make! The consultation appears to have been almost “underhand”, due to lack of information and proper consultation with the people of Invergordon. It is weighted heavily in favour of the Highland Council to go ahead with a sale. The consultation document – should you be able to find it directs people to further background information that can be found on-line - you are assuming that everyone is able to access this on-line information. 2. There is no easily accessible information on which to make a fully informed decision and what the possible outcomes and benefit of a sale might be. Scrutiny of the Highland Council website does not provide access to this information either. 3. I do not consider that all possible options have been considered. To say that insurance costs preclude the bust from being displayed are false. Government indemnity schemes exist to cover the insurance on such items to allow for them to be on public display. Given the number of visitors to the area via Cruise, NC500 and other visitors there is an opportunity for the bust to generate an income for the Common Good Fund whilst also retaining ownership. This option has not been explored and should be. There may be other options also that should be considered. Sell or keep hidden away in storage are not the only options available! 4. Invergordon already has a Common Good Fund – although currently dormant. No new Common Good Fund should be set up. Th current fund has rules that 	<p>The Council considers that the issues raised within this representation have been covered within the consultation document and the reports linked in that document.</p> <ol style="list-style-type: none"> 1. The consultation has been validly conducted in accordance with statute and the guidance. Full information has been supplied via links to detailed documentation for ease of access. No information was hidden as suggested. The consultation document and supporting documentation clarifies how the money may be spent with the October committee report explaining why specific proposals cannot be developed at this stage. This is referred to in responses above. Public meetings are not a statutory requirement however all representations must be made in writing. The Council offered various formats for this purpose – post, email and online form. All were used with the online form being the most popular. In making any decision in respect of this matter, the Council must have regard to the representations received. 2. The consultation document states that capital receipts can only be used to fund capital expenditure which <i>“would offer the potential for investment that would generate an ongoing income for Invergordon Common Good fund which, in turn, would be used for the benefit of the Invergordon community”</i>. 3. The Government Indemnity Insurance scheme has been covered in responses above. Any accredited museum seeking to utilise such a scheme would have to satisfy necessary conditions on security and display conditions. 4. There is no suggestion about setting up a new Common Good fund. Any capital receipt from the sale if approved would be received into the existing Invergordon Common Good fund. This would be administered and managed in accordance with Common Good statutory provisions and Council governance.

	<p>it operates under. Any new fund could be subject to more relaxed rules allowing access to monies not available under the rules of the current fund.</p> <p>5. I question Sotheby's involvement. Having identified a buyer during what was an appraisal process - Is it really impartial? Surely there is a conflict of interest here. There is probably a financial benefit for Sotheby's should a sale to their identified buyer go ahead.</p> <p>6. The sale of the bust fits all categories of the Waverley Criteria. The bust is very closely connected to the town of Invergordon and our local area with Sir John Godon thought to be the founder of the town. It is an important piece of artwork – originally bought because of the subject but now because of the artist. To offer a replica of the bust that could be displayed is not acceptable and would appear to be a “sweetener” to encourage a sale in the hope that the estimated value of £250,000 for a replica blinds the community to the fact that they would be giving up a £2.5 million original. It is worth bearing in mind also that any sale to an overseas buyer could be stopped given the local and national importance of this piece. The 300 year anniversary of the bust will be in 2028 – that pre-dates the Highland Clearances!</p> <p>7. I note from the consultation document under the section headed “Recent Offer” and I quote “<i>As work on the options appraisal and business case was ongoing, discussions took place between Council officers and Sotheby's representatives...</i>” I would like to know that when a Freedom of Information request was made via Invergordon Community Council for all and any correspondence relating to the Gordon/Bouchardon bust including that between Council elected members, Council Officers, Council employees and Sotheby's this information was not provided. There is obviously correspondence of some sort available that has not been provided under this request. To keep deferring the request up the “ladder” until the consultation deadline has passed is unacceptable and could indicate an unwillingness to share appropriate information to allow an informed decision.</p> <p>8. Having watched recent recordings of the area committee meetings where agenda items have included the Common Good Fund and the Bouchardon bust. An elected member is on record as saying she doesn't care how long the process to sell takes 1 – 2 years. I believe the community should be given this time to see if an income can be generated from the bust. I was dismayed to find that a significant part of one meeting where Common Good Assets were discussed was missing. The recording was not re-started following a comfort</p>	<p>5. Sotheby's are acting on the Council's behalf in providing expert advice. The Council has had a professional relationship with Sotheby's for approximately 40 years. The offer that has been received was unsolicited. It should be noted that the possibility of the sale of the bust received widespread press attention prior to the offer being received.</p> <p>6. The Waverley Criteria is covered fully in the consultation document and the October committee report. In the event of Council and Court approval for the proposal to sell, the Waverley Criteria would be triggered. The suggestion that a replica is an inducement for a sale is denied.</p> <p>7. The Freedom of Information requests are separate to the Common Good consultation process and are covered by their own processes. Any issues relating Freedom of Information should be referred via the correct channels. In relation to the referred to FOI, all reasonable searches for information were carried out and the information supplied with some redactions. The Freedom of Information process is separate to the Common Good consultation process. The Freedom of Information legislation allows an applicant to request that the Council reviews its FOI response within 40 working days of that response being received. The applicants would have been informed of that right in the response they received. Please note meetings with Sotheby's also took place in person and online.</p> <p>8. This comment is noted. It is understood that the recording was not restarted immediately following the comfort break. This was entirely accidental and rectified as soon as it became apparent.</p>
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	<p>break. It is understood that a significant chunk of the discussion is missing from that recording.</p> <p>All information available should be easily and readily available to the people of Invergordon. Any confusion regarding the use of any funds generated need to be clarified.</p> <p>Highland Council should have been more visible during this consultation process making themselves accessible to the people of Invergordon. I believe a further full, open and honest consultation with the people of Invergordon is warranted. It is nothing more than the town deserves given the importance of the decision you are asking us to take.</p> <p>At a recent open meeting arranged by Invergordon Community Council, Councillor Maxine Smith kindly attended to provide information regarding the Consultation. She took notes and supported a request for a second consultation to include a leaflet drop to all households within Invergordon that would contain information to allow people to make an informed decision. She agreed to take this to the next Area Committee Meeting.</p> <p>To conclude I would confirm my decision is to NOT SELL the Bouchardon bust at this time.</p>	<p>The contents of the final paragraphs of this representation are noted and will be considered as part of the decision making process.</p>
<p>EP12</p>	<p>The Bouchardon bust is tantamount to the modern-day Gordon Legacy to Invergordon</p> <p></p> <p>The Highland Council is to be complemented on launching a public consultation. This is both a summons and an appeal to the community at large to make its wishes known and to contribute any available insight on the question.</p> <p>It is understandable to view the ‘Bouchardon bust’ (Figure 1, below) as manna from the sky, surely the luckiest of windfalls to be found as a doorstep. Still, the Highland Council has a governance responsibility to look beyond its material value and consider this asset’s larger cultural and historical implications for Invergordon. It is – by all accounts (because who in Invergordon today, apart from the few who attended to its humble discovery, have actually seen it?) – an exquisitely carved block of marble. Is it mere, fortuitous financial capital upon which only the interest earned may be spent, or is there more value to it than meets the eye for Invergordon?</p> <p>The Highland Council has announced a potential project to sell the bust, use the money to make a reproduction of it, and invest the rest as a capital investment for Invergordon’s</p>	<p>The historical information provided in this representation provides interesting background in relation to Bouchardon and Sir John Gordon. It will be considered within the consultation.</p> <p>Responses to comments specific to the consultation are given below.</p> <p>As stated in the consultation document, when the bust was acquired in 1930 it was because of who the subject was and not because of who had created it. The Provost and Town Clerk were instructed by Council to offer up to £5 to secure its purchase.</p>

<p>Common Good fund, which will be able to spend the interest. In considering the key questions of the consultation document, I do not support the sale of the bust at this time. The consultation document in its current form is incomplete:</p> <ul style="list-style-type: none"> • it does not sufficiently represent the stature of Edmé Bouchardon (1698-1762) as an 18th century French artist; • it does not sufficiently represent the historical significance of Sir John Gordon’s commissioning of this work during his Grand Tour nor the historical implications for Invergordon; • it does not provide a theoretical budget to indicate likely interest return, on, for example, an annual basis and the scale and type of projects it might finance. <p>I will develop the first two points in particular, before ending with recommendations.</p> <p>How difficult it is to appreciate an artist’s stature based on a stark photograph alone and an auctioneer’s dry assurance that the bust is “brilliant in execution”. We need to know more about this artist, get a sense of his other works and know more about the context of how Sir John Gordon came about to be in Rome at that time and sit for the artist.</p> <p>Edmé Bouchardon’s stature as a French 18th century artist has only recently begun to be rediscovered and reassessed. In his lifetime, Bouchardon enjoyed both royal acclaim and aesthetic celebrity: the exquisiteness of his copy of the antique Faune endormie caused Louis XV to summon him back from Rome as his royal sculptor; it was the view of the oft-cited contemporary engraver Charles-Nicolas Cochin that Bouchardon was “the greatest sculptor and the finest draughtsman of 18th century France”. But even before leaving Rome in 1732 at the still young age of thirty-four, Bouchardon had gained stature for his busts, including that of Sir John Gordon (1702-1783), whose patronage, along with that of other British sitters, has been credited with contributing to the artist’s reputation¹. Indeed, Bouchardon took great pride in the fact that Pope Clement XII honoured him by sitting “three or four times” for his bust (Figure 2). Upon his return to France, Bouchardon would be installed at the Louvre, a great honour. He would execute the Grenelle Fountain, in addition to</p> <p><i>1 See Baker, Malcolm, Colin Harrison and Alistair Laing, “Bouchardon’s British Sitters: Sculptural Portraiture in Rome and the Classicising Bust around 1730”, The Burlington Magazine, Dec., 2000, Vol. 142, No 1173 (Dec., 2000), p. 753.</i></p> <p>twenty-four statues of saints in the choir of the Saint-Sulpice church in Paris. Louis XV first installed the artist’s breathtaking Cupid Carving a Bow from Hercules’s Club (Figures 3 and 4) at Versailles, and later at the Château de Choisy, site of the king’s trysts with Madame de</p>	<p>The quality and significant style of the sculpture is acknowledged in both the consultation document and the October committee report. However, as advised by the Council’s nominated experts, Sotheby’s, interest in Bouchardon within the art world remains small when compared to other sculptors.</p> <p>The consultation is only the first part of a lengthy process in the event that the Council approves the proposal to sell. Thereafter, Court approval will be required. If granted, the Waverley Criteria will need to be complied with. Both of these processes have their own timescales outwith the control of the Council. The economic situation could change within that period which is why any financial considerations can only be in broad terms at this stage. The consultation document and the October committee report state that, as a capital receipt, any funds can only be used for capital expenditure and investment. Any specific projects would be appropriately considered at the relevant time.</p>
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Pompadour. But perhaps the most monumental work affirming his reputation is one that no longer exists. His bronze equestrian portrait of Louis XV, which he began in 1748, was erected seven months after his death in 1762. It stood in the Place Royal, now Place de la Concorde, in Paris. It did not survive destruction during the French Revolution thirty years later, when it was sawed down and the bronze melted. The revolutionaries did show a small measure of restraint, preserving one vestige of the sculpture, the king's hand (**Figure 5**), on display in the 2016-17 Bouchardon exhibition, A Sublime Idea of the Beautiful, organised by the Louvre in Paris and the J. Paul Getty Museum in Los Angeles.

Bouchardon executed only about sixty sculptures but more than eight hundred drawings (**Figures 6- 8**), mostly in red chalk, a medium unforgiving for being uneraseable. He was an inveterate perfectionist and would make many drawings, an average eight or nine angles of live models for each sculpture. There exist one hundred fifty-seven drawings for the Louis XV statue (**Figure 6**).

It is a mark of how overlooked Bouchardon has been that the 2016-17 exhibition was the first retrospective devoted to this virtuoso artist, sculptor and draughtsman of the Enlightenment. Malcolm Baker, a Bouchardon specialist, stated at a Getty Research Centre lecture that there has been a surge of art-historical interest and scholarship into Bouchardon that will surely continue. As Jean-Luc Martinez, then President of the Louvre affirmed, Bouchardon was referred to as "the new Phidias, the modern equivalent to the greatest artist of ancient Greece". Martinez and his coorganiser, Timothy Potts, Director of The J. Paul Getty Museum leave us in no doubt as to the artist's stature: "Bouchardon is one of the most creative and fascinating of the French 18th century artists, playing a decisive role in the transition between Rococo and Neo-Classicism".

Invergordon would benefit from greater transparency about who was consulted. The documentation seems to indicate that only an auction house – Sothebys Auctioneers – was consulted. This creates the impression that no other sources of expertise were invited to weigh in on the matter. Sothebys, esteemed as it is, is an interested party: were it to steward the sale of the sculpture, it would surely benefit from the commission, not to mention the prestige, of the sale. Its apparent estimate that the value of the statue "may have already peaked" is surely classic 'salespeak' to, not unwittingly, create a sense of urgency to sell. It is natural that a private auctioneer would seek to position its advice in such a manner as to hasten a commitment to sell to the highest bidder at the time. This is not a critique of Sothebys, rather it is surely a reality of the private art market.

However, the Highland Council was perfectly right in consulting a prestigious auctioneer, just not exclusively so, as would appear to be the case here. The auctioneers would seem to have neglected the historical significance of Sir John Gordon's commissioning of this work

The Council has a longstanding professional relationship with Sotheby's (approx. 40 years). They have a renowned team of sculpture experts. The Council sought their expert advice as part of developing the options appraisal and business case. With regard to this matter, Sotheby's are acting on the Council's (ICGF) behalf and their advice is provided on the basis of what is considered to be in the Council's best interests.

The fact this work was ongoing was in the public domain which resulted in wide press and media interest. Sotheby's subsequently received an unsolicited approach asking them to put forward an offer to the Council for consideration. They did not take any proactive steps to seek out the interested party. However, they are a commercial institution the same as any other auction house

<p>and the implications for Invergordon. The bust attests to the place of Invergordon’s founders in the tradition of The Grand Tour, in which artists, musicians, poets, collectors and patrons, indeed, anyone seeking to broaden their horizons through cultural adventure, toured Europe in the 18th -19th centuries. The travelers would discover the great art collections of Europe, both private and public, attend concerts, visit architectural monuments, come into contact with and attend to literary salons on the continent.</p> <p>The bust an important work of art by an important artist inscribing the sitter – not just any patron but a founding family member of Invergordon itself – within the tradition of the Grand Tour, and much more specifically, of Bouchardon’s British sitters in Rome, all on the cusp of the Scottish Enlightenment. What an extraordinary cultural dimension it adds to the history and origins of Invergordon, and it may even contribute to Scottish history more broadly! David Hume was 3 seventeen when Bouchardon completed the bust in 1728; Adam Smith, five. This was a formative moment for Sir John Gordon, a young baronet, who, like others, would partake of the burgeoning Enlightenment community on the continent as part of his education before returning to later serve as a member of parliament. He inherited the seat from his father, Sir William Gordon, the first baronet of the family, who “bought the estate of Inverbreakie in Ross-shire from the Macleod family (who had borrowed the money from his father), and rechristened it Invergordon”².</p> <p>While Sir John’s letters during the 1745 rebellion, which he robustly opposed, have been published, correspondence relating to his Grand Tour seems scant³. Indeed, Baker et al. (2000, p. 753) assert that “nothing is known of his early life or visit to Rome” but that “Gordon may have sat to Rosalba Carriera at Venice in 1728 and was presumably on his Grand Tour”. It is interesting that it is Bouchardon himself who referred to Sir John Gordon directly in a letter to his father, dated 28th October 1728: “I undertook the bust of the gentleman John Gordon, gentleman of the son of the King of England, the deal was done at two-hundred Roman ecus, I made the model that people find a likeness, I already have the block of marble [...] I must work on it at once and when it is sketched out, I’ll finish it as best I can”.⁴</p> <p>As mentioned above, Gordon, as a British sitter, is associated with consolidating Bouchardon’s reputation for portraiture in Rome. The bust is therefore a rare material connection to this period in his life. The value of the work is clearly not merely financial. This historical dimension has been given short shrift in the consultation documentation, and the people of Invergordon deserve to be as informed they wish to be about the historical significance of this Gordon legacy before making such an important decision. Early defenders of the bust’s destiny after its 1998 discovery were Charles Pearson and Catherine Niven, former curator at the Inverness Museum. Bendor Grosvenor, an art historian, told BBC Radio Scotland: “Here is this work of art that has fallen into the lap of Highland council for no money at all and it seems all they want to do is sell it for a lot of money to someone</p>	<p>and any fees received as part of the auction process would apply in every case.</p> <p>The assessment of the figure offered is based on current comparators as stated in both the consultation document and October committee report. The 2012 auction record for Bouchardon resulted from a proposed auction sale in France when the state pre-empted acquisition at a high auction that may have been set in the knowledge this would happen. The other comparator is the 2023 sale of a Canova – significant because it is not far off the current offer and would always be expected to achieve more than Bouchardon.</p>
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<p>outside Scotland, when really there is no reason they can't lend it to Inverness Museum or National Galleries of Scotland or National Museum of Scotland.”⁵</p> <p>The principle of inalienability applies – as cited by the consultative document – only to works which have already been integrated into public museum or library collections. There is something paradoxical about citing a principle, which might robustly justify the ethics of this decision, only to declare that the principle in question is inapplicable. Surely, if it cannot be applied, then neither can it remove the ethical responsibility inherent in such a decision, albeit in a different context.</p> <p>To ensure responsible cultural governance, it would no doubt be wise to include the consultation of at least one art historian (preferably a French Bouchardon specialist – why not Juliette Trey or Guilhem Scherf, one of the curators of the 2016 exhibit at the Louvre?), a cultural policy professional,</p> <p><i>2 See J.M. BULLOCH: The Families of Gordon of Invergordon, Newhall, also Ardoch, Ross-shire, and Carroll, Sutherland, n.p. [1906], p. 14. 3 See R. SEDGWICK: The History of Parliament: The House of Commons 1715-1754, London [1970], pp. 68-69. See also The Correspondence of Sir John Gordon, Bart. of Invergordon, on occasion of the Rebellion, Autumn, 1745, Edinburgh [1835]. 4 My rough translation from the French, cited in Baker et al. (2000, p. 753). Baker suggests that this reference indicates the regard in which Gordon was already held by the Prince, who would name him Secretary of Scotland in 1745. 5 Cited in https://www.theguardian.com/uk-news/2023/oct/30/bust-of-john-gordon-could-fetch-25m-atauction-if-highland-town-agrees-to-sale</i></p> <p>in addition to consulting on a national level with The National Trust, the Scottish National Gallery, and the Scottish Minister for Culture. They will surely have ideas not only about the broader ethical issues involved for the community in separating itself from its material culture, but beyond that, they would have ideas about more sophisticated legacy financing options, in addition to attentiveness to other aspects of such negotiations, including branding and copyright, which could have an impact on Invergordon's cultural imprint.</p> <p>At the time of this consultation, Britain is in the midst of a recession. Councils throughout the entire country are in dire economic straights and major cuts have been announced in the Chancellor's latest budget. It is a difficult time and need is great. And yet, and yet, it is important to give this very important decision its due. Consider that the “long game” is not merely selling to the highest bidder. The real long game is Invergordon's material culture, its ownership of all the diversity of its history and what makes it truly unique. The Bouchardon bust is indeed manna from heaven in drawing attention in such a compelling way to this unusual community that has played a role in two world wars with its marine presence, its lifeboat tradition of public service, its welcoming of a Polish community, its strategic location for both the energy and the tourism industries, and now its status as a freeport.</p>	<p>The principle of inalienability and the process of accessioning or integration into a collection are entirely independent of each other. Inalienability occurs if there is a restriction to the disposal (sale, long lease or other beneficial right) and appropriation (change of use) of Common Good property. Common Good property is considered inalienable in the following situations:</p> <ul style="list-style-type: none"> • Public purpose is expressly stated in the deed • Council dedicates it for a public purpose after acquisition • Uninterrupted public use for time immemorial <p>The statutory provisions that govern the requirement to obtain Court approval (section 75 Local Government (Scotland) Act 1973) refers to land not moveable property but there has been historical case law that extended it to cover a Burgh Charter. Therefore, it is the Council's view that, notwithstanding the lack of specific application to moveable property, if sale is approved then Court approval should also be sought. Integration/accessioning is completely different and governed by its own policies and processes in respect of the relevant museum/gallery concerned. The bust is not accessioned into any of the Highland museum collections but is considered to be inalienable notwithstanding this.</p> <p>Sotheby's are acting on the Council's behalf with regard to the provision of advice. They have a dedicated team of sculpture experts and are able to access significant resources to ensure the advice provided is as far ranging as possible. However, it will be a matter for Members during the decision making process to decide whether a second opinion should be sought.</p>
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<p>The Bouchardon bust of Sir John Gordon offers yet another unique facet of this community's story, which needs to be continually retold. The argument that not having a satisfactory suggestion for its disposal at the moment would justify its sale on this basis alone is inadequate. How terrible it would be for future generations to have sold the bust merely because one didn't know what to do, the equivalent of throwing one's hands up in the air.</p> <p>The Highland Council should extend this consultation more broadly and completely – there would be no shame in doing so – ensuring that the consultation be well publicized and that the people of Invergordon can have as much information as they need to make the right decision. How this community meets this opportune moment together is the real long game.</p> <p>This piece should ultimately find its way into a museum collection, but not by just any means. Presently, I recommend the following:</p> <ul style="list-style-type: none"> - consult a broader array of experts of national standing in art history, cultural and public policy, as mentioned above - ensure that people get a chance to see the bust and can learn about its history and its historical and cultural significance for Invergordon; this could be in the form of a video, which could be attached to the consultation materials. Ideally, the bust could be featured in a small-scale exhibit in the National Gallery of Scotland, which would engender research and the creation of a video. This would also enable people to see for themselves the extent to which the sculpture qualifies for the Waverley criteria, i.e., closely connected with history and national life, of outstanding aesthetic importance, and of outstanding significance for the study of early neo-classic French sculpture and 18th c. British patronage in Rome. - make sure that the consultation is broadly advertised in Invergordon; I had the impression not too many people knew about this one. - provide a theoretical budget to indicate likely interest return, on, for example, an annual basis and the scale and type of projects it might finance. This would give people a better sense of the tradeoff between selling the bust and the material benefits for the community. <p>Figures:</p>	<p>The Council considers the consultation has been validly conducted. Anything further is for Members to debate and consider at the upcoming committee meeting on 13 May.</p> <p>As the Waverley Criteria would be triggered by any approval to sell, the possibility of museum interest in acquiring the bust would be considered as part of that process.</p> <p>Comments on recommendations:</p> <ul style="list-style-type: none"> • The Council is satisfied that Sotheby's has the experts and access to resources to provide full and balanced advice on this matter. • The intention to obtain a high quality replica would allow for a proper, regular display to be created. Whilst the bust could be lent to a museum, this is entirely dependent on a museum undertaking a relevant exhibition. There has been no request to borrow the bust since it went to the Louvre and the Getty. • In addition to the advertising as required by the consultation process, the knowledge that the Council was undertaking an assessment of the potential; for sale was in the public domain via committee meeting and had received widespread press and media coverage. With regard to interest and possible projects, this has been replied to above.
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Figure 1: Sir John Gordon, 1728, Edmé Bouchardon.

Invergordon Common Good Fund.



Figure 2: Bust of Pope Clemence XII, 1731 – Palazzo

Corsini, Florence. The young artist's talent meant that during his time in Rome, he received commissions of prestige, most notably here of the pope.



Figure 3: Cupid, 1750, Edme Bouchardon. Marble, 68 1/8 in. high. Musée du Louvre, Département des Sculptures, Paris. Image © Musée du Louvre / Hervé Lewandowski



Figure 4: Installation view at the Getty Center of Cupid Carving a Bow from Hercules's Club, 1750 (detail) by Edme Bouchardon, courtesy Musée du Louvre, Paris



Figure 5: Main droite de la statue équestre de Louis XV 1758, RF 94 ; D 1990.1.6, Département des Sculptures du Moyen Age, de la Renaissance et des temps modernes © RMN-Grand Palais (musée du Louvre) / Photographe inconnu



Figure 6: Bouchardon's 'Horse head, front view, study for the Monument to Louis XV' Photo: Musée du Louvre, dist. RMN-Grand Palais/Suzanne Nagy



Figure 7 : « Homme nu assis », d'Edmé Bouchardon. Montpellier, Musée Atger. © BIU DE MONTPELLIER/SERVICE PHOTOGRAPHIQUE



Figure 8: Self-portrait in red chalk. Edmé Bouchardon, around 1730, Rome. The Pierpont Morgan Library, New York

ONLINE FORM RESONSES

The online form contains 4 questions but with filters dependant on answer to yes/no as follows:-

- If no is selected the person is taken straight to the question asking what they think should be done with the bust instead. If yes is selected this question is not asked.
- If yes is selected the person is then taken to the question asking if they have any further comments.
- Both yes and no progress to the question asking if there are any relevant comments not covered by the previous questions.
- Not every person responding answered all questions available to them. The verbatim reproductions below relate only to those questions answered by each person taking part.
- 1 person responded twice – personal details are identical and both responses are a simple “yes” so this has been counted as a single response only.

Online responses answering “YES” to question 1

ID ref no (prefix with OL for online)	Questions asked on online form for those voting yes	Representation received reproduced verbatim	Council’s responses
OL1	Do you have any further comments?	A replica should be displayed locally. Monies gained through the sale should be put to a clearly discernable local project, benefitting as many folk as possible	If a sale is agreed it is intended that a replica should be commissioned for local display. Any funds recovered will form part of the capital of Invergordon Common Good which will be available for investment to generate income which, in turn, can be used to benefit the community.

OL2	Do you have any further comments?	I support the sale but am concerned about the handling of the monies raised and how it is funded to prevent fraudulent activity by any stakeholders involved in handling the finances.	Any sales receipt will be considered a capital receipt and can only be used in connection with capital projects which may include investments for income generated. Any decision in relation to spend will be subject to due diligence and scrutiny by Area Committee before agreement.
OL3	Do you have any further comments?	I think it would be amazing for Invergordon to have such an amount in its common good fund Goodness knows this town needs to be restored to it's former glory	Thank you for your comments which have been noted within the consultation process.
OL4	Do you have any further comments?	Hopefully this money and the interest it accrues will be used for the good of the community	This would be central to any plan for the use of interest earned.
OL5	Do you have any further comments?	Money should be used to help invergordon come back up to the standard of town it was years ago.	Thank you for your comments which have been noted within the consultation process.
OL6	Do you have any further comments?	It serves no useful purpose being locked away in a secure location that is not the location of its rightful owners. The money raised by a sale would be helpful in helping regeneration of the town.	Thank you for your comments which have been noted within the consultation process.
OL7	Do you have any further comments?	Pointless having an asset which can never be displayed securely	That is why a museum quality replica is being suggested to allow for display without the associated security issues.
OL8	Do you have any further comments?	Aslong as the money is definitely going back into invergordon community	Available Common Good funds will be used for the benefit of the residents of Invergordon.
	Do you have any other relevant comments not covered by the above question?	The children definitely need better parks around the area as there is nothing around the all ages to do in invergordon and the high street could do with a good clean up aswell	Suggestions of use for income generated will be considered in the event that the proposal to sell goes ahead. In the meantime, your comment is noted.
OL9	Do you have any further comments?	The money should be used to improve facilities in Invergordon	Your comment is noted.
OL10	Do you have any further comments?	Since it's too valuable to be on display it makes sense to sell providing that any money raised by this sale benefitted the town which sadly is badly needing a 'boost'. My concern is that this money will not be spent wisely and squandered.	Any funds received must be held on behalf of Invergordon Common Good and managed and accounted for separately from other Council funds. Any use of funds generated will be subject to due governance and scrutiny by Area Committee. In making any decision regard must be had to the interests of the residents of the former Burgh area of Invergordon.
OL11	Do you have any further comments?	The proceeds must be used for the benefit of Invergordon and its people. Any money being used from the proceeds of the sale should be openly	Please see the answer above. Common Good property is owned by the Council and, as a result, the responsibility for decision making rests

		accounted for. The money should be used within the Town and surrounding area. A committee should be appointed by the people of Invergordon and there must be a majority vote for use of the funds. The people residing in Invergordon must be in control of the allocation of funds.	with the Council in accordance with the governance within the Scheme of Delegations. The Black Isle & Easter Ross Area Committee contains Councillors who have been chosen by the people of Invergordon. Therefore it is not possible for the community to be in control of the funds. In the event that the sale progresses, it would create the opportunity for income generating investment which would provide revenue which could be used for Invergordon.
OL12	Do you have any further comments?	Funds raised from the sale should be invested in long term community projects.	The direct funds from any sale will be capital receipts and can only be used for capital projects/investment. Any income generated from those investments can, in turn, be used to benefit Invergordon.
OL13	Do you have any further comments?	All the money should go towards a revamp of the town.	This point has been answered above.
OL14	Do you have any further comments?	So long as a museum quality replica can be obtained as part of the deal	Such a replica is part of the plan in the event the sale proceeds.
OL15	Do you have any further comments?	Please spend the funds fairly for whole community	This point has been answered above.
OL16	Do you have any further comments?	Considering it was unknown and lay in a shed for x number of years. It should be sold, other wise it will only cost money for insurance, storage and be unseen. A replica could be obtained and put on show.	Thank you for your comments which have been noted within the consultation process. Such a replica is part of the plan in the event the sale proceeds.
	Do you have any other relevant comments not covered by the above question?	Invergordon public would have to be consulted for ideas and benefits for the public, and all money to be accounted for with receipts for money spent.	Common Good funds must be managed and accounted for by the Council separately to other Council funds. A quarterly monitoring report is taken to Area Committee to update and address any specific matters such as forward planning for any use of income generated from investment of the capital receipt. The manner of planning and consulting for such use will be decided at a later date in the event the sale proceeds. This is a lengthy process of which this consultation is just the first step.
OL17	Do you have any further comments?	The money is invested in low risk stock or bonds and the yield is used for the benefit of the residents of Invergordon only.	In the event of a sale, expert advice will be sought on the most appropriate form of investment to protect the capital receipt whilst also achieving the best possible gain for the fund.

	Do you have any other relevant comments not covered by the above question?	A residents committee, chaired by an elected official, voted for by the residents committee is set up to decide what the interest on the investment is spent on.	This is not possible as a result of statutory provisions. Common Good is owned by the Council and responsibility for decisions rests with the Council in accordance with governance provisions. As this is only the first step in a potentially long process, any decision on how to best plan for and consult on the use of income generated from any investment will be made at a later date.
OL18	Do you have any further comments?	Makes sense to sell to benefit the town but this money must be used wisely, not squandered and be openly accounted for	The Council is required by law to manage and account for Common Good funds separately to other Council funds. Any use will be subject to the due governance and scrutiny of Area Committee and in some cases full Council.
OL19	Do you have any further comments?	Sell it and let Invergordon prosper from this good fortune. One of the most popular ports in the world. With this money Invergordon could do so much to improve the town and turn it in to an even more attractive visitor experience for guests to the Scottish Highlands.	Thank you for your comments which have been noted within the consultation process.
	Do you have any other relevant comments not covered by the above question?	Sell it.	Thank you for your comments which have been noted within the consultation process.
OL20	Do you have any further comments?	I believe the funds would be better used to regenerate the Invergordon area.	Thank you for your comments which have been noted within the consultation process.
OL21	Do you have any further comments?	Provided the Wavwrlly criteria is followed and if sold a replica be commissioned for display in the town	Advice obtained from Sotheby's is that, if the proposal to sell is approved, the Waverley Criteria would indeed be triggered. That will then be subject to the relevant timescale for consideration over which the Council has no control. A replica forms part of the plan in the event of a sale.
	Do you have any other relevant comments not covered by the above question?	Although it would be sad to see this go it will be costly tp insure in the long term.	Thank you for your comments which have been noted within the consultation process.
OL22	Do you have any further comments?	I believe this bust should be sold ONLY if the full proceeds of the sale will be received by the Common Good Fund for Invergordon. Highland Council itself should not benefit in any way, nor should any other town or area in the region.	The capital receipt for the sale of any Common Good asset must be received into the relevant Common Good fund which, in this case, is Invergordon. The capital receipt can only be used in connection with capital spend or investment.

			<p>The Common Good fund policy available on the Council website Common Good Fund Policy (highland.gov.uk) states <i>"The Council has a wide discretion over the use of Common Good funds as long as it is for the benefit of the relevant community following the application of reasonable judgement and having regard to the interests of the inhabitants of the former burgh. This can include purposes that may also be covered by the Council's statutory responsibilities however this should only be where the funding is for service provision over and above that which the Council has agreed to provide under its mainstream budget."</i></p> <p>Whilst there is no legal restriction on area of spend provided it is in the interests of the residents (e.g. capital investment to generate income by purchase of an asset outwith Invergordon), in practice the Council has only used funds for use in the area of the relevant fund.</p>
OL23	Do you have any further comments?	I think that the proceeds from the sale should be used to support the renovation of Invergordon Town Hall and the community campaign to develop the building as a theatre and cinema.	Thank you for your comments which have been noted within the consultation process. Any decision on use of funds in the event of the sale will be considered at a later date.
OL24	Do you have any further comments?	I would like there to be an annual community day where food and entertainment is free.	Thank you for your comments which have been noted within the consultation process.
OL25	Do you have any further comments?	It does depend who it is being sold to and what they intend to do with it. It's especially important to consider how safe the bust will be with future owners.	Thank you for your comments which have been noted within the consultation process.
OL26	Do you have any further comments?	There are more options to consider than "sell - yes or no?". And very few people seem to really understand what the significance of the sale is, or what happens to any money received.	Thank you for your comments which have been noted within the consultation process.
	Do you have any other relevant comments not covered by the above question?	This consultation is not wide enough in its reach, nor does it offer all the possible alternatives to selling - yes or no, and should be put ACCESSIBLY with clear facts and options before the general population of Invergordon, e.g. via mail-drop by Community Council and in shops etc. Many people wrongly believe that Invergordon would get the full selling-price of the bust (if sold), and that this would be available to the town	<p>The options appraisal was detailed in the report before Easter Ross Area Committee on 30 October 2023. Link Item 10. Bouchardon Bust (2).pdf</p> <p>This report also detailed full information regarding the financial considerations at paragraph 11.</p>

		<p>for all kinds of improvements such as building a new school. Or think that Highland Council will get all the money for its general expenditure and that this will be spent elsewhere. And many others don't really know what's going on at all due to lack of concerted, clear information. This is not appropriate background for a decision. This consultation needs to go out again in amended form, to take into account these misapprehensions and ignorance.</p>	<p>The consultation document provided links to relevant Committee reports and Council policy documents for more information.</p> <p>When the consultation commenced in January 2024, the Community Council was given notice, served with a copy of the consultation documents and invited to make representations. The email notifying the Community Council included the following information <i>"It is important that this proposal is advertised widely within Invergordon to allow for full public consultation and we are happy for you to bring this to the attention of the wider community to encourage involvement in the process."</i></p> <p>The consultation with associated details contained in linked documentation has been validly conducted.</p>
OL27	Do you have any further comments?	<p>I would be in favour of the sale only if the capital raised remained in the common good fund and only the interest was spent. I would also not be in favour of any spending from this fund on things that the council already has an obligation to fund.</p>	<p>The consultation document states that any sale proceeds will be a capital receipt belonging to Invergordon Common Good fund.</p> <p>It also provides a link to the Council's Common Good Policy published on the Council website which provides detail on the use of capital funds and revenue expenditure. Capital receipts can only be spent on capital projects or used to increase the fund capital. The Council has a wide discretions on the use of revenue funds (e.g. income earned from investments) provided regard has been had to the interests of the inhabitants of the former Burgh. This can include purposes under the Council's statutory responsibilities but only over and above that which the Council is providing within its mainstream budget.</p>
OL28	Do you have any further comments?	<p>I believe the money should be invested long term with the annual interest being used for the town's common good in perpetuity, so protecting the legacy for future generations. It is very important that it is the town's folk who decide how the money is spent, through it's</p>	<p>The proposal is to use any capital receipts for investment opportunities generating income for the Invergordon Common Good fund. Whilst there may be discussions with the Community Council and community groups, the management and decision</p>

		community council or equivalent. Ideally there would be a copy of the bust to display in the town.	making in respect of Common Good matters rests entirely with the Council. A museum quality replica for local display forms part of the proposal.
	Do you have any other relevant comments not covered by the above question?	I believe the criteria that covers how the current common good fund can be spent should remain the same. I also believe that this consultation is flawed as it hasn't been well publicised and there is no way of knowing whether the responders to this consultation are from Invergordon. I have lived in the town for over 30 years, but for all you know I could be from Crimea.	Common Good funds must be administered by local authorities in accordance with statutory and governance provisions. Please see the Highland Council's Common Good Policy published on its website and accessible from this link: Common Good Fund Policy Common Good Fund Policy (highland.gov.uk) Regarding location of responders, there is not restriction within either the Community Empowerment (Scotland) Act 2015 or the guidance that precludes anyone from residing outwith the former Burgh area from responding. Section 104 (6) (b) states that the local authority must have regard to " <i>any representations made by other persons in respect of its proposals published under subsection (2)</i> ". The former Burgh area is the boundary as at abolition of the Burgh in 1975 and may well be small than the current size of the town of Invergordon.
OL29	Do you have any further comments?	The annual revenue from it in the common good fund could support schemes to enhance the town	Thank you for your comments which have been noted within the consultation process.
	Do you have any other relevant comments not covered by the above question?	Looking back at pictures of Invergordon in the 50s and 60 s it looked so prosperous. Liners docking here with thousands of people have no facilities to keep them in town	Thank you for your comments which have been noted within the consultation process.
OL30	Do you have any further comments?	I have answered Yes but I am not entirely clear on how the proceeds are dealt with and who has control of the proceeds. It could be worrying if just Highland Council reps are the only people with control.	See the response to representation OL27
OL31 – OL46	Respondents answered YES to the "yes/no" question but made no further comments to any of the following questions.		

Online responses answering “NO” to question 1

ID ref no (prefix with OL for online)	Questions asked on online form for those voting no	Representation received reproduced verbatim	Council’s responses
OL47	Please give reasons and comment what you think should be done with the bust instead.	It can either be sent out on loan or can be kept and investment could be made to get the Town Hall into a position where it can be securely housed there and tourists can be charged to enter with funds going to the Common Good Fund.	Due to the value and security issues, a loan arrangement will only occur if the recipient body agrees to insure the bust for that purpose. Prior to the consultation in relation to the Town Hall which resulted in the Council and Sheriff Court agreement that it could be sold, extensive attempts were made to find investment and grants that would allow for renovation but nothing was forthcoming. Invergordon Common Good has very little in reserves and certainly not enough to have paid for the renovations that would be required.
	Do you have any other relevant comments not covered by the above question?	Before any sale, there should be an in person decision consultation and full details of how the revenue will be invested should be provided. There should also be a group set up which includes member of the public and elected representatives to decide how any money is distributed, in order to prevent abuse of the fund.	This is the consultation process that will consider whether the proposal to sell should be approved. Area Committee will make a recommendation to full Council for a decision to be made. The next step will be to seek the approval of the Sheriff Court. Advice from Sotheby’s has already confirmed that the Waverley Criteria will be triggered which allows museums the opportunity to express interest and raise funds to purchase. This process has a time frame outwith Council control. All of this must be completed before it could be sold to a private collector. Such a group as suggested is not possible due to statutory provisions. Common Good is owned by the Council and decision making rests with Council in accordance with governance in the Scheme of Delegations. A decision about planning for and consulting on use of any funds generated as a result can only be considered in the event a sale takes place.
OL48	Please give reasons and comment what you think should be done with the bust instead.	Enough of invergordon has been sold off already	Thank you for your comments which have been noted within the consultation process.

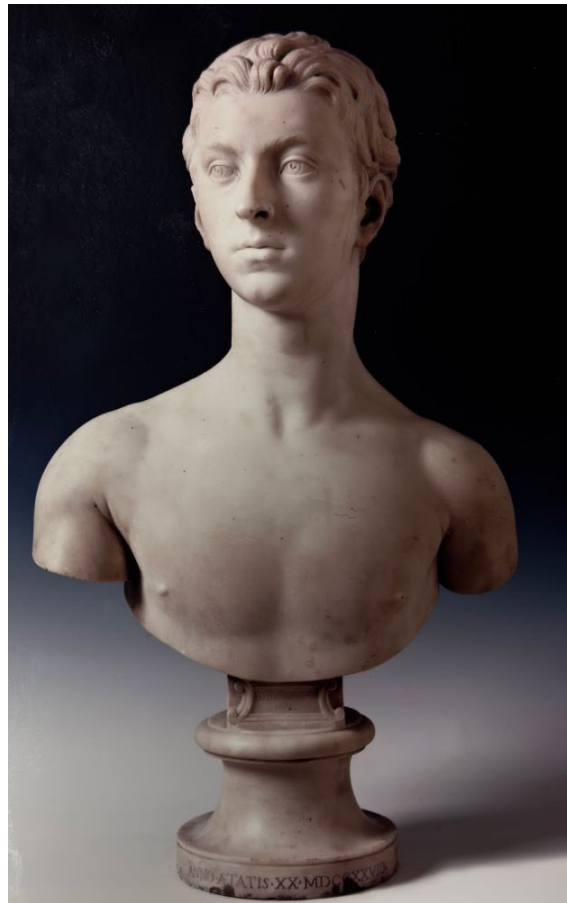
OL49	Please give reasons and comment what you think should be done with the bust instead.	Should stay in Invergordon	Thank you for your comments which have been noted within the consultation process.
	Do you have any other relevant comments not covered by the above question?	Keep it in Invergordon	Thank you for your comments which have been noted within the consultation process.
OL50	Please give reasons and comment what you think should be done with the bust instead.	I don't think enough clarity in what the money would be used for and concerned it won't be used to benefit the town in the correct manner. Also why sell it - display it. It's an amazing piece to have. How fortunate Invergordon is to have it.	This consultation is the first step in a lengthy process involving organisation in addition to the Council. It is not possible to be precise about use and investment until a sale proceeds when expert advice will be sought before decisions on investment would be taken. Any decision relating to the use of income from investment interest would be subject to the due governance and scrutiny of Area Committee and in making any decision, regard must be had to the interests of the inhabitants of Invergordon as required by statute. The consultation document explains the difficulties with display arising from the associated value and security implications.
	Do you have any other relevant comments not covered by the above question?	No	Noted.
OL51	Please give reasons and comment what you think should be done with the bust instead.	The bust should not be sold and potentially lost from the UK forever . Instead it should be, as ██████ had wanted, be displayed in the National Museum of Scotland.	Thank you for your comments which have been noted within the consultation process.
OL52	Please give reasons and comment what you think should be done with the bust instead.	Invergordon museum fully supports IDT and the Community Council objection to the sale of the Bust.	Thank you for your comments which have been noted within the consultation process.
OL53	Please give reasons and comment what you think should be done with the bust instead.	Keep the bust In a secure display case in Invergordon, within a building, to be viewed by the local residents and paying visitors from the cruise liners, approximately 100 thousand visitors each year to the town . This could be part of a museum or heritage centre with added benefits of teas and coffees and local artisan crafts .	Thank you for your comments which have been noted within the consultation process The level of security and insurance costs associated with this suggestion have would make it impractical.

	Do you have any other relevant comments not covered by the above question?	Give Invergordon residents a voice in making the decision , not just a few local councilors .	The current consultation is the statutory vehicle for the community to express their views. The Council must have regard to all comments received when making a decision.
OL54	Please give reasons and comment what you think should be done with the bust instead.	The Bust should go on show in Invergordon, to raise funds for the common good fund. My insurance broker has quoted £6k to insure it.	Insurance costs would be an expense charged against Invergordon Common Good fund. This figure quoted in this representation is in excess of the annual income earned by Invergordon Common Good fund. The report on the 2022/23 annual accounts, 2023/24 monitoring and 2024/25 proposed budget was presented to Black Isle and Easter Ross Area Committee on 22 January 2024. Link: Item 8c Invergordon CGF.pdf
OL55 but same person as EP7 so combined & counted as 1 response.	Please give reasons and comment what you think should be done with the bust instead.	No other options have even been considered.	The options appraisal was detailed in the report before Easter Ross Area Committee on 30 October 2023. Link Item 10. Bouchardon Bust (2).pdf
	Do you have any other relevant comments not covered by the above question?	This item has been hidden away for decades. There is no rush to sell it now. There will always be collectors of this type of artwork if the town decides to sell after all other avenues have been explored.	Thank you for your comments which have been noted within the consultation process.
OL56	Please give reasons and comment what you think should be done with the bust instead.	<p>A yes/no vote is not a fair consultation when Highland Council conducting the consultation are the organisation wishing to sell.</p> <p>Why is it an area ward decision to sell?</p> <p>A second full and honest consultation considering all options should take place.</p> <p>I consider there are other options available and should be explored</p>	<p>Common Good is owned by the Council but required to be managed separately from other Council funds. Statute required the Council to conduct a consultation when proposing the dispose or change the use of Common Good property. Therefore, this consultation is validly conducted.</p> <p>The Council Scheme of Delegation deals with the decision making governance. Area Committee will consider the outcome of the consultation but due to its value against the total value of Invergordon Common Good fund, the final decision will be referred to full Council. All Councillors are ultimately responsible for all Highland Common Good funds.</p>

			When the outcome of the consultation is considered by Members, they must have regard to the representations received before making a decision.
	Do you have any other relevant comments not covered by the above question?	Yes! Not enough consideration is given to arrangements for any funds raised should the bust be sold.	<p>The consultation document states that any sale proceeds will be a capital receipt belonging to Invergordon Common Good fund which can only be used to fund capital expenditure or increase the capital held by the Common Good fund.</p> <p>Even if the proposal is approved, this is still the first step in a lengthy process therefore, financial considerations can only be in broad terms at this stage. In the event of the sale going ahead, expert advice would be sought on investment opportunities based on the economic circumstances relevant at the time.</p>
OL57	Please give reasons and comment what you think should be done with the bust instead.	The council should have taken more time to explore other options and avenues regarding the future of the bust. Informing the community of all possible outcomes is in their duty of care regarding the common good fund. In my opinion.	Thank you for your comments. When the outcome of the consultation is considered by Members, they must have regard to the representations received before making a decision.
	Do you have any other relevant comments not covered by the above question?	A consultation should reflect more than just one avenue to explore. Giving the community a choice rather than direction. That avenue may turn out to be the correct one but options need to be there for people to make informed choices with all the correct and accurate information.	Your comments are noted and will be considered as part of the analysis of the consultation process.

CONSULTATION on:-

Proposal to dispose, by sale, of the bust of Sir John Gordon by Edmé Bouchardon; an asset of Invergordon Common Good fund.



What is proposed?

The Council wishes to consider whether the bust of Sir John Gordon sculpted by Edmé Bouchardon should be sold. The bust is an asset of Invergordon Common Good fund.

The aim of this consultation

Section 104 of the Community Empowerment (Scotland) Act 2015 requires the Council to consult local communities when considering the disposal of Common Good assets. This is the first step in a lengthy process. Before taking any decision, and to inform the decision making process, we are keen to hear the views of the community on potential sale. The Council will take all representations into account in reaching a decision. If the Council chooses to dispose, this will then need to be considered and decided upon by a court because the Bust is considered an inalienable asset.¹

The full background to this proposal can be viewed online via the following reports to the Easter Ross Area Committee, namely:

- Easter Ross Area Committee 17 February 2022 when a decision was made that officers should undertake work on an options appraisal and outline business case for the use of any capital receipt in the event that a proposal to sell was approved. The February 2022 report can be read in full at item 11 from this link [Easter Ross Area Committee | The Highland Council](#) with the decision recorded on the minute at this link [Easter Ross Area Committee | The Highland Council](#)
- In August 2023, Sotheby's Auctioneers received an unsolicited offer to purchase the bust. Details about this offer and the issues that require to be considered can be read in full in the Easter Ross Area Committee report in October 2023 which can be accessed from this link at item 10 - [Easter Ross Area Committee | The Highland Council](#) . This Committee report should be read alongside the consultation document. Following full consideration of the contents of the report, Members agreed to commence a Community Empowerment consultation to inform the decision making in respect of a proposal to sell the Bouchardon bust.

What is the Bouchardon bust and why is it regarded as Common Good property?

The bust of Sir John Gordon was sculpted by Edmé Bouchardon in the early 18th century. It has been described by experts at Sotheby's as being "brilliant in execution" and in a style not to be more widely seen until later in the 18th century.

Sir John Gordon is believed to have been the founder of Invergordon and the original reason for the purchase was for public display because of who the subject was namely, Sir John Gordon, not because of who the sculptor was. The fact that it was acquired for this reason and with clear intent that it should be on public display in the Town Hall means it is assessed as being a Common Good asset.

Where is the bust now?

The Bouchardon Bust is in secure, approved storage in Inverness. Because of the value of the Bust, and security concerns, it has not been possible to put it on public display locally.

Things to consider

- **Title** - Once title had been evidenced, consideration was given to whether the bust was a Common Good or General Fund asset of the Council. The bust was purchased by the Town (or Burgh) Council of Invergordon. There is case law that states that any property acquired by a burgh not for statutory purposes or held on special trusts is Common Good.
- **Ability to display** - With the exception of two occasions when the bust was loaned to the Getty Museum and the Louvre under special arrangements, the high value and associated security issues have prevented it from being on public display locally. The bust is currently held within secure, approved storage in Inverness.

- **Expert advice from Sotheby's** - chosen for their long involvement with the Council both in respect of specific projects and general advice for insurance purposes. They have advised on current market value, estimated to be in excess of £2.5m.
- **Where would the money go if the Bust was sold?** – the bust is a Common Good asset and therefore the proceeds from any sale would be a capital receipt belonging to the Invergordon Common Good Fund. Sale proceeds would require to be dealt with in accordance with Council policy and Scottish Government guidance. The current Common Good Policy (see link [Common Good Fund Policy | \(highland.gov.uk\)](https://www.highland.gov.uk/common-good-policy)) follows the Government guidance with both stating any capital receipts can only be used to fund new capital expenditure. This would offer the potential for investment that would generate an ongoing income for Invergordon Common Good fund which, in turn, would be used for the benefit of the Invergordon community. Any financial considerations can only be in broad terms at this stage.
- **Is it ethical to sell?** – Ethical sale issues are of most relevance when an item is accessioned² into a museum collection and there is a set Code of Ethics for such circumstances including a clear process around deaccessioning³. This is not the case with the Bouchardon bust as it is not accessioned. However, it would remain advisable to consider these criteria and the Code of Ethics as the basis for any sale, if approved. Expert advice from Sotheby's confirmed they were not aware of any examples of loss of access to heritage funding resulting from the sale of a non-accessioned item and, if handled appropriately, any sale of the bust would not have any wider adverse effects to the Council.
- **Waverley criteria** - It should also be noted that if a proposal to sell is approved (by Council and Court) it would be referred to the UK Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest, known as the Waverley Committee, who, if they regard it as meeting the 'Waverley Criteria,' would defer any sale for a period to allow any UK museum to express a serious intention to purchase. If such intention is expressed, a further period of deferral would be allowed for funds to be raised. If no interest is expressed, sale would proceed as originally proposed. The three Waverley Criteria are:
 - Is it closely connected with our history and national life?
 - Is it of outstanding aesthetic importance?
 - Is it of outstanding significance for the study of some particular branch of art, learning or history?
- **Replica for local display** – it is proposed that if a decision was taken to sell the bust, a high-quality replica could be commissioned which would allow for local public display. This would fulfil the original intention of the purchase.

Recent offer

In August 2023 Sotheby's received an unsolicited offer from a private buyer expressing interest in purchasing the Bouchardon bust if it were to be considered for sale. As work on the options appraisal and business case was ongoing, discussions took place between Council officers and Sotheby's representatives. Following negotiations, Sotheby's have secured confirmation of a best and final offer in excess of £2.5m. In addition, if accepted the interested party would pay for the January 2024

provision of a museum quality replica which could then be displayed within the local area without the current restrictions.

It is the considered opinion of the experts at Sotheby's that the current offer received is at the top level of the market and represents peak value for the Bouchardon bust. They have compared it to other works by Bouchardon as well as other artists. The current auction record for Bouchardon was achieved in 2012 in France for a sterling equivalent of £2.4m. The offer now received by Sotheby's is close to the price achieved for the last major work sold by Canova which was £2.9m in 2023. This comparison is significant as Canova is an iconic 18/19 century sculptor whose works command a premium over other 18th century sculptor including Bouchardon.

If the decision is taken to dispose of the bust following the outcome of the public consultation, consideration will be required about whether private sale or public auction presents the best opportunity to maximise the capital receipt for the Invergordon Common Good and specialist advice will be sought.

Key questions

- Do you support the proposal to sell the Bouchardon bust?
- If yes, do you have any further comments?
- If no, please give reasons and comment what you think should be done with the bust instead.
- Do you have any other relevant comments not covered by the above questions?

Potential outcomes

Depending on the representations received the possible outcomes are:

- The proposal goes ahead subject to consent being given by the Sheriff Court.
- The proposal is amended significantly, and a fresh consultation takes place.
- The proposal does not go ahead.

Representations (Personal information provided in any responses will be treated confidentially in accordance with the Council's Data Protection Policy)

Consultation closing date – **15 March 2024**

Please submit written representations to:-

Email: common.good@highland.gov.uk

Post: Sara Murdoch, Highland Council, Headquarters, Glenurquhart Road, Inverness, IV3 5NX.

Microsoft form: complete the online form available from this link

<https://forms.office.com/e/7p7PdjUd4>

Glossary of Terms

1. **Inalienable** – property that is subject to some kind of prohibition or restriction on alienation (disposal or change of use) as a result of being part of the Common Good – usually stated public purpose, subsequent public use dedication or uninterrupted public use for time immemorial.
2. **Accessioning** – formal process by which an item is accepted by a library, museum or gallery creating ethical responsibilities to preserve the item over the long term.
3. **Deaccessioning** – formal process for permanently removing an item from a library, museum or gallery collection to sell or otherwise dispose of it.

Agenda Item	10
Report No	ERA/27/23

The Highland Council

Committee: Easter Ross Area Committee

Date: 30 October 2023

Report Title: Invergordon Common Good Fund - the bust of Sir John Gordon by Edmé Bouchardon

Report By: Executive Chief Officer, Performance & Governance

1. Purpose/Executive Summary

- 1.1 This report details the response to a decision from the Members at Easter Ross Area Committee on 17 February 2022, for work to be undertaken on an options appraisal and outline business case for the use of any capital receipt in the event that a proposal is approved to sell the bust of Sir John Gordon on behalf of Invergordon Common Good Fund.
- 1.2 The report also addresses an approach received by Sotheby's from a private party interested in purchasing the bust.

2. Recommendations

- 2.1 Members are asked to:
- i. Consider and note the update on the work undertaken to explore the potential of selling the Bouchardon Bust;
 - ii. Consider the assessment of the various sale options and note the advice from Sotheby's that a sale by private arrangement may be most beneficial in financial terms;
 - iii. In light of this information, consider whether to agree to commence a Community Empowerment consultation to inform the decision making in respect of a proposal to sell the Bouchardon bust.

3. Implications

- 3.1 Resource – The resource implications are set out in the report. In the event that a sale of the bust is proposed and approved, it would recover a significant capital receipt for Invergordon Common Good Fund which would provide investment opportunities for income generation and rejuvenation of the Common Good fund. This is detailed further in the report.
- 3.2 Legal – as it is a Common Good asset, the Council is required to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015 before

any decision to sell could be made. In addition, it would be necessary to obtain Court approval for the sale pursuant to section 75 Local Government (Scotland) Act 1973. Further details in connection with these processes are contained at paragraph 9.

- 3.3 Community (Equality, Poverty, Rural and Island) – There are no specific equality, poverty, rural or island implications. Invergordon Common Good Fund is a small fund containing the Town Hall, the bust and a few other pieces of art and artifacts. It has little by way of usable reserves or income generation opportunities and cannot afford to operate a community grants budget. Realising the value of this capital asset, if sale is approved, would provide a significant capital receipt that would allow the opportunity of investment for income generation and reactivate the fund for the benefit of the community, that could in turn lead to a positive impact on equalities and inequalities within Invergordon.

It will be important that the community of Invergordon is involved in the decision making process and the Community Empowerment consultation will provide full opportunity for this to happen.

- 3.4 Climate Change / Carbon Clever – none.

- 3.5 Risk – Edmé Bouchardon currently remains very collectable, but this may not always be the situation. This is supported by the recent development that Sotheby's have been approached by a private individual seeking them to put forward an offer to the Council to purchase the bust. It is the view of the experts at Sotheby's that the bust of Sir John Gordon has now reached its peak value.

It is important that any procedure for sale is conducted on an ethical basis. This is referred to in more detail in paragraph 8 below and it is considered that this risk can be successfully managed.

Advice is being sought from the Council's procurement advisors to understand if there are any risks in procurement terms to proceeding with private versus public methods of sale.

- 3.6 Health and Safety (risks arising from changes to plant, equipment, process, or people) – none.

- 3.7 Gaelic – none.

4. Bouchardon Bust - background

- 4.1 The bust is of Sir John Gordon, landowner and MP, and said to be founder of Invergordon. It was sculpted by Edmé Bouchardon in the early 18th century whilst the artist was resident in Rome and Sir John Gordon was on his Grand Tour. It represents an innovative creation in a style not to be more widely seen until the later part of the 18th century. It is described by experts at Sotheby's as being "brilliant in execution".

- 4.2 The bust had been in the physical possession of the Council for in excess of 60 years although the precise ownership details were not clarified until 2019. In 2019 evidence was found of ownership in the Invergordon Town Council minutes held at Inverness Archive Centre. Details are as follows:

- Town Council minutes 06.01.1930 – *“The Provost, Councillor Macleod and the Town Clerk were asked to visit Kindeace House Sale and endeavour to purchase the Bust of John Gordon said to be the founder of Invergordon and to offer up to £5 for same.”*
- Treasurers Ledger entry dated 14.01.1930 – reads *“Paid S R Beauchamp Bust Sir John Gordon”*. Figure shown is £5.
- Town Council minutes 03.02.1930 – *“The Council agreed to have the Sir John Gordon bust placed in the Town Hall, the position to be pointed out.”*

- 4.3 The original purpose for the acquisition of the bust was because of who it was, namely Sir John Gordon believed to be the founder of Invergordon, rather than who the sculptor was.
- 4.4 The bust has been assessed as a Common Good asset. There is case law that states that any property acquired by a burgh not for statutory purposes or held on special trusts is Common Good. The Common Good assessment is supported by the fact the acquisition was because it was believed Sir John Gordon was the founder of Invergordon and there was clear intent that it should be on public display.
- 4.5 The bust is currently in secure storage at Inverness Museum & Art Gallery (IMAG). However, it is only there for storage and has not been accessioned into the Museum’s collection. With the exception of being loaned to the Louvre and the Getty Museum under special arrangements, it has not been possible for the bust to be on public display due to its high value and the associated security implications. No change is anticipated to this position.

5. Sotheby’s involvement and role

- 5.1 Sotheby’s have been involved with Highland Council for nearly 40 years both in respect of specific projects and with more general advice for insurance purposes. They have an extensive knowledge base in sculpture and fine arts and a knowledge of the Bouchardon bust from previous insurance valuations. It was for these reasons that officers sought their advice in this matter.
- 5.2 The advice provided has covered matters such as current valuation, marketability, issues relating to ethical sale and how to manage it, and the pros and cons of public auction versus private sale.
- 5.3 They have confirmed that the bust remains very collectable and therefore, marketable but this is entirely dependent on the market and level of interest.
- 5.4 Sotheby’s have acknowledged the Council’s concern that any sale must be ethical and they have provided advice, with real life examples, to explain how this would be addressed. This is set out in paragraph 8.
- 5.5 In the future, if sale was approved, it will be necessary to consider whether the bust should be offered for public or private sale. Sotheby’s have expert experience of managing both situations in respect of notable items of sculpture. At this stage, advice has solely been sought from Sotheby’s due to the history of their involvement with the Council and they have confirmed that they are acting on the Council’s behalf in this matter. The current focus on actual sale has resulted from the unsolicited offer they have received. However, Members may wish to consider whether other auction houses

should be approached in order to comply with due diligence before accepting Sotheby's as the Council's agent in this matter.

5.6 Public sale – pros

- If there is more than one interested party the bidding may achieve over the reserve price;
- Provides transparency in satisfying best value by testing in the open market;
- Sotheby's now host a specific, dedicated Master Sculpture auction which attracts attention from interested parties.

5.7 Public sale - cons

- A reserve price would be set at the lower end of the insurance estimate (which is considerably less than the private sale offer) to stimulate bidding, but the actual price would be dependent on interest on the day which may result in a lower than hoped for price;
- Unpredictable nature of the international auction market presents a greater risk that the item could go unsold;
- Whilst it may test it in the open market, it may not actually achieve best value;
- The Council would need to pay auction costs in excess of 10% (could be as high as 40% with associated costs such as insurance, advertising etc) which would reduce the cash realised (Sotheby's would also receive a purchaser's fee from the successful bidder);
- No opportunity to negotiate a replica as part of the deal;
- Some prospective buyers may prefer not to bid at a public auction.

5.8 Private sale – pros

- Sotheby's already have a knowledge base of potential buyers who could be offered the chance of buying privately which would allow a premium to be charged and maximise the return for the Council;
- The issues concerning ethical sale and any publicity could be better managed;
- Sale price would be pitched at the highest defensible level without the risk of a disappointing sale at a low auction estimate in the saleroom;
- Allows for the opportunity of provision of a high quality replica to be negotiated as part of any deal;
- If a sale is pursued, Sotheby's have agreed to waive the costs for the Council and only recover purchaser's fees from the interested party.

5.9 Private sale – cons

- Could attract criticism for not testing the open market;
- It needs to be considered whether it satisfies best value principles.

6 **Current Position**

6.1 The existence of the bust is known in the art world and was featured in the local press following the Area Committee meeting of 17 February 2022. Sotheby's have recently received unsolicited contact from a private buyer asking that an enquiry be put forward to ascertain whether the bust is available. A best and final offer has been made to Sotheby's which is in excess of £2.5m. In conjunction with the offer, the buyer has offered to pay for a museum quality replica to be made which could then be displayed within the local area, without the current restrictions.

In these circumstances, Sotheby's is acting on behalf of the Council and providing advice and guidance to the Council not the prospective buyer.

6.2 In assessing the offer and providing advice to the Council, the experts at Sotheby's have compared it to work by the same artist and also works by other artists. The current auction record for Bouchardon was achieved in 2012 when a bust was pre-empted by the French state for €3m (equivalent to £2.4m). The current offer is also close to the price achieved for the last major work by Canova sold at public auction in 2023 which was £2.9m. This is significant as Canova is an iconic 18/19 century sculptor whose works command a premium over other 18th century sculptors including Bouchardon. As a result, it is the considered opinion that the current offer received is at the top level of the market and represents peak value for the bust of Sir John Gordon.

7. Should the Council consider selling the bust?

7.1 It is for Members to balance all of the information received and consider whether or not a proposal to sell the Bouchardon bust should be prepared. This will include seeking views from the Invergordon community. A number of points need careful consideration in reaching any decision and, if required, the experts at Sotheby's are prepared to meet Members to discuss, advise and answer any questions.

7.2 Some points to be considered include:-

- The purpose of the original acquisition – namely that it was of “*John Gordon said to be the founder of Invergordon*”. There is no reference to the sculptor within Burgh minutes relating to the acquisition which indicates that this was not a factor.
- Original intention was that the bust be “*placed in the Town Hall, the position to be pointed out*”. It is not known when it was last on public display in the Highlands. Apart from the 2 loans to the Louvre and The Getty Museum under special arrangements, it has been kept constantly in storage due to its high value and resulting security issues. See reference to pros of a private sale above where it is proposed that provision of a museum quality replica form part of any negotiation. This would allow the original purpose to be fulfilled as it would allow the bust to be on public display.
- Question of ethical sale – see paragraph 7 below.
- Community Empowerment consultation and consequent Court application – see paragraph 8 below.
- “Waverley Criteria” – see paragraph 9 below.

8. Ethical sale

8.1 The direct question of whether what is being proposed is an ethical sale or not is of most relevance where an item has been accessioned into a museum collection. There is a Code of Ethics that covers operations including financially motivated sales from collections. In such cases, and where an asset has been accessioned into an accredited Museum, there is a clear process to be followed involving deaccessioning and approval from the Museums Association.

8.2 Whilst the Bouchardon bust has not been accessioned into IMAG or any other Museum and therefore is not covered by this process, it would still be sensible to base any

assessment of the pros and cons of a potential sale on the requirements of the Code of Ethics and the toolkit for disposal of accessioned items.

8.3 One of the concerns expressed is that if any sale is seen as being unethical funding such as Heritage Lottery could be withdrawn from the Council. This issue was specifically discussed with the experts from Sotheby's. They were able to produce a number of case studies from across the UK of which only one from each perspective is quoted below (in both cases the items were accessioned into museum collections):-

- **Northampton Borough Council (2014) – not handled by Sotheby's** – sale of an Egyptian statue from its museum collection to raise funds for the restoration of Delapre Abbey, improvements to the museum service and/or other cultural or heritage projects. The proposal was considered by the Ethics Committee who noted, amongst other things, a lack of clear proposal for expenditure of funds, it was not clear that other possible funding sources had been fully investigated and the fact the collection area was no longer within the core collection was not reflected in the acquisition and disposal policy. The disposal was considered to be unethical. As a result Northampton Museum and Art Gallery (Council run) had its accreditation status removed for 5 years.
- **Royal Borough of Kensington & Chelsea (2019) – handled by Sotheby's** - sale of a painting by Joseph Wright of Derby to raise funds for renovations to Leighton House Museum (run by the Council). The painting did not form part of the museum's core collection and was not on public display. However, the Council complied diligently with the de-accessioning process and the sale was approved by the Museums Association. There was no loss of funding or museum accreditation status.

8.4 In Sotheby's experience, they are not aware of any previous disposals from non-accredited collections made by other councils that have resulted in any loss of funding. Therefore, it is the considered opinion of the experts at Sotheby's that, handled appropriately, any sale of the bust would not result in any consequential loss of funding to the Council. Similarly, it has not been accessioned into any of the Highland Council/Highlife Highland accredited organisations so any sale should not impact on these accreditations.

9. Community Empowerment consultation and consequent Court application.

9.1 Section 104 Community Empowerment (Scotland) Act 2015 requires the Council to conduct a public consultation when considering a disposal or change of use of Common Good property. This process must be undertaken before a formal decision to dispose is made. In addition, if it is considered that a question of alienability arises, an application to approve disposal must be made to the Sheriff Court pursuant to section 75 of the Local Government (Scotland) Act 1973.

9.2 If Members wish to proceed with a proposal to consider the disposal of the bust, a consultation document containing all the information in connection with the proposal will be prepared. This will cover details including the options appraisal and business case. Information regarding any negotiation, possible sale price and potential purchasers will depend on whether a private or auction sale is favoured. In the event of a private sale, it would not be unusual for the purchaser to wish to remain anonymous.

- 9.3 The consultation must remain publicly open for at least 8 weeks and be advertised and published on the Council website. Community Councils and community bodies must be notified directly and invited to make representations. In light of the nature of the asset, consideration should also be given to a newspaper advert of the consultation and utilising public meetings to answer any questions.
- 9.4 Following the conclusion of the consultation period, any representations received will be analysed and included in a report to be presented to Easter Ross Area Committee. It is only at this point would a decision be taken on whether or not to dispose of the Bust. The governance in respect of decision making is that any disposal of Common Good property with a value of 10% or more of the total area fund sits with full Council. Therefore, Members at Easter Ross Area Committee will be asked to consider the outcome of the consultation and make recommendations to full Council in relation to the decision.
- 9.5 The question of alienability arises where there is some kind of restriction or prohibition on alienation (disposal). In such cases, the Council must seek Court approval of the decision before it can proceed. Although section 75 specifies disposal of land, there has been a case that extended the provision to moveable property. As a result, it would be recommended to undertake an application to Court in the event that the proposal to sell is recommended by Council. The question of inalienability centres on public use – from direct grant in the deed, from dedication after acquisition or by uninterrupted public use for time immemorial. The basis for extending the provision to the bust would be the original purpose of the acquisition – believed to be founder of Invergordon and intention it be on public display.

10. “Waverley Criteria”

- 10.1 Sotheby’s customer base is worldwide. The Bouchardon bust has already attracted international interest as evidenced by its loans to the Louvre and The Getty to form part of exhibitions at those locations. It is likely that any offer for sale would also attract international interest. It is understood that the unsolicited offer received by Sotheby’s has come from an international purchaser.
- 10.2 All applications for export licences for cultural objects which have been in the UK for more than 50 years and valued above certain thresholds must be referred to expert advisors to determine whether they are potentially of national importance.
- 10.3 In assessing any item, the “Waverley Criteria” is used. These are as follows:-
- Is it closely connected with our history and national life?
 - Is it of outstanding aesthetic importance?
 - Is it of outstanding significance for the study of some particular branch of art, learning or history?

If it is considered that the departure of the item in question from the UK falls into one or more of the above criteria, it will be designated as a national treasure and referred to the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA).

- 10.4 The RCEWA is a committee of the United Kingdom government that advises the Department of Culture, Media and Sport (DCMS) on the export of cultural property. If the committee agrees with the expert advisor, a deferral period is imposed in which a UK

museum can express a serious intention to purchase. If no interest is forthcoming, the export licence will be granted, and the sale completed. If interest is expressed a second deferral will be imposed to allow the institution to raise funds for the purchase which would be at a level such as would match the price agreed with any overseas purchaser.

- 10.5 As the offer received has come from overseas, it is expected that the bust would be referred to RCEWA as a matter of course. In Sotheby's opinion it would meet all three of the Waverley Criteria.

11. Financial considerations

- 11.1 In the event of a sale going ahead, consideration has to be given to how the funds received should be held. The bust is considered to be a heritage asset, however it is not this categorisation that may result in the use of any proceeds being restricted. It is because it is a capital asset that may result in any sale proceeds being categorised as a capital receipt which may result in restrictions in its use. If this regard, the bust is the same as any other capital asset owned by the Council.

- 11.2 The bust is an asset of Invergordon Common Good fund. As such any sale proceeds received must be managed having regard to the interests of the inhabitants of the former burgh. Officers have been considering the implications the capital receipt for Invergordon Common Good fund and, in doing so, have investigated how such funds should be held and whether any restrictions on use may apply. As well as considering relevant legislation, guidance, policies and commentaries, advice has also been sought from the Council's external auditors and Scottish Government.

- 11.3 Capital receipts are mentioned in a number of publications as follows:

- Council's Common Good Policy – this document is published on the Council's website. Paragraph 6.2 of the policy states *“Capital assets are used to generate income. Any proceeds from capital sales should be used to increase the capital held by the relevant fund. It may be appropriate to fund the purchase of any capital assets from the capital fund but it should not be used to finance any revenue expenditure”*.
- Community Empowerment and Common Good Property – statutory guidance in respect of part 8 of Community Empowerment (Scotland) Act 2015. Chapter 1 on establishing the register states at paragraph 8 *“When a common good property is sold, the income received becomes a common good income fund.”*
- Scottish Government statutory guidance on capital receipts states *“capital receipts, i.e. money received from selling land, buildings or other capital assets (capital receipts may only be used to fund new capital expenditure or the repayment of debt principal)”*.

- 11.4 It can be seen from the above quoted sections that there is a potential conflict between the Common Good Policy which follows the wider Council position that capital receipts can only be used for capital expenses (or reduction of principle debt) and the Community Empowerment Act guidance which implies capital receipts can be used for income/revenue purposes. This disparity has implications and as a result, the Council's finance team have sought advice from the Council's external auditors as well as Scottish Government. The auditors have confirmed that any Common Good specific guidance does not seem to impose restrictions though they gave a caveat that the Council's own Common Good governing documents may do so which is indeed the case.

- 11.5 The advice received from Scottish Government is that, after considering the Council's query and Scottish Government guidance, they can find no substantiation in legislation for treating the disposal of a capital asset as income. The advice was silent on the apparent inconsistency between regular accounting statutory guidance and that provided for the Common Good. It may be that this inconsistency has resulted from unclear terminology as local authorities are required to record their fund assets as a separate entry in the asset register. There is no stated requirement to differentiate whether these are revenue or capital funds though. If this is the case, the use of the word "income" may simply be a general use to indicate receipt.
- 11.6 Any sale proceeds received could not be used to establish a loans fund nor could they be used for revenue expenditure. The use of any capital receipt for the purchase of other capital assets as an income generating asset for the fund would be acceptable. Any income earned on the investment of the capital receipt would be available for future use to benefit the community. Any investment of the capital receipt must be carefully managed to ensure the sum received is protected as far as can be possibly assured.
- 11.7 The Council already manages investment performance for Inverness Common Good Fund through the Council's Investment Sub-Committee, with an external Investment Advisor appointed to support the sub-Committee. This would provide a route for detailed advice to be sought in relation to potential investment options, which would need consider a range of factors including:
- Investment Objective (capital growth vs income return or both)
 - Income Requirement (ie a targeted level of annual % return)
 - Investment Time Horizon (short vs longer-term)
 - Attitude to Risk (ranging from Nil risk and capital sums guaranteed, through lower risk investments, through to equity and other investments where there capital is at risk)
 - Any investment restrictions/ethical policy considerations that may be applied.
- 11.8 It is proposed that subject to members' considerations of this report, the Council's Investment Advisor is commissioned to explore and provide recommendations in relation to investment strategy and investment options for funds arising from the potential sale.

Designation: ECO Performance & Governance

Date: 23 October 2023

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