

The Highland Council

Agenda Item	4
Report No	LA/9/24

Committee: Lochaber Committee

Date: 14 May 2024

Report Title: Fort William Common Good – Asset Register

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 title and ownership investigations that have taken place with a view to identifying Common Good property relating to the former Burgh of Fort William. It also details what steps will be necessary to commence a public consultation under section 102 Community Empowerment (Scotland) Act 2015 leading to the establishment of the Fort William Common Good Asset Register.

2. Recommendations

2.1 Members are asked to:

- i. **Note** the contents of the list of property proposed to be included in the Common Good Asset Register for Fort William (**Appendix 1**).
- ii. **Agree** the commencement of the public consultation on the list of proposed property in accordance with the Community Empowerment (Scotland) Act 2015 (the Act).

3. Implications

- 3.1 Resource - there are financial implications in re-activating the Common Good Fund in Fort William. This property has been mis-classified for a number of years and, as a result, it will initially have property assets but no funds. The current arrangement is that all Highland Common Good Funds bear a proportionate cost of central overhead costs and any liabilities attributable to the particular fund. The same will be expected of Fort William once the Asset Register is established and in the event that the assets generate income for the fund. In addition, it will become subject to the regular monitoring and reporting in line with the other Highland Common Good funds.

- 3.2 Legal - section 102 Community Empowerment (Scotland) Act 2015 introduced statutory duties which the Council must comply with to identify and establish a Common Good Register.
- 3.3 Community (Equality, Poverty, Rural and Island) - the duties contained in Part 8 of the Community Empowerment (Scotland) Act 2015 are designed to increase communities involvement in decisions affecting Common Good assets. This includes consultation on establishing an asset register and consultation on the disposal (by sale or long lease) or change of use of Common Good assets.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk - once the consultation commences timescales will apply and there is always a risk of non-compliance due to the requirement to fully investigate any representations received and the length of time these investigations may take, but this is mitigated by having clear processes in place.
- 3.6 Health and Safety (risks arising from changes to plant, equipment, process, or people) – none.
- 3.7 Gaelic – none.

4. Background

- 4.1 Common Good assets are property including buildings, land, rights (e.g. fishing), artwork, regalia, furniture, stocks and shares and cash funds that belonged to the Burghs of Scotland (pre-1975). They are held by the Council principally for the benefit of the local community within the specified geographical boundary of the former burgh to which each fund relates and must be accounted for separately to other Council property.

Some burghs were royal burghs established by Royal Charter whereas others were burghs of Barony. Although the powers conferred were less than those of royal burghs, they were nonetheless broadly similar and able to undertake activities to earn income for the common good. Fort William is a burgh of Barony.

The Local Government (Scotland) Act 1973 brought an end to the burgh system in 1975 by abolishing the town councils which had responsibility for the burghs. Their Common Good assets were, however, transferred to the new district or islands councils and then, in 1996, to the current unitary local authorities by the Local Government etc. (Scotland) Act 1994. Common Good property is, therefore, limited to those assets held by the burghs at the time of their abolition and no new Common Good property can now be created. Any property acquired since the abolition is held as investment property.

- 4.2 There is no firm definition of Common Good property however established case law states that all property held by a former burgh prior to 1975 is Common Good property unless it has been acquired using statutory powers or acquired and held under a special trust. Therefore, Common Good property would have existed in Fort William prior to 1975 however, at some point in the intervening period, it has been misclassified.

5. Fort William Common Good Asset Register and consultation process

- 5.1 The first step to formally establishing a Common Good fund for Fort William is to establish an asset register. Before the Council can establish an Asset Register, it must first publish and conduct a public consultation on a list of property it is proposing to include – land, buildings, moveable property, investments and funds.
- 5.2 Part 8 Community Empowerment (Scotland) Act 2015 which covers Common Good property came into force on 27 June 2018 with the statutory guidance being published a month later. Section 102 places a duty on local authorities to establish and maintain a Common Good Register. The statutory guidance provides the procedure for the consultation and a recommended format for the Asset Register. The Council already held a number of existing Common Good Funds across the Highlands. The public consultation was undertaken on those Registers and they were established and published in February 2020. Thereafter, the Council has investigated and consulted on property identified in the remaining burghs in the Highlands with Fort William being the final consultation to be undertaken. It is proposed that the Fort William Asset Register should be in the same format as the other Highlands Common Good funds.
- 5.3 The list of property the Council is proposing to include in the Common Good Asset Register for Fort William can be found at **Appendix 1**. To assist anyone wishing to make representations in the consultation, a document entitled Common Good Property Asset Register – Process has been produced and published on the Council website. A copy is also attached at **Appendix 2**.
- 5.4 The process for the public consultation is:-
- The Council must publish the list on its website. It should also be available for viewing in Council offices, hubs and libraries.
 - The Council must advertise the fact the list is available to view on its website and social media pages. Members may consider there might also be merit in an advert in the local press to ensure wide notification.
 - The Council must notify Community Councils and any community bodies of which it is aware and invite representations.
 - The Council will also accept representations from any member of the public.
 - The list must be publicly available for comment for 12 weeks.
 - All representations must be in writing, either email or letter.
 - The Council should seek to respond to representations within 12 weeks.
 - Representation(s) and the Councils final response(s) should be published in the same place as the asset list.
 - The Council should publish its Common Good Asset Register as soon as practicable after the initial 12 week consultation period and, in any event, within 6 months of the end of the consultation.
 - The Register must be available to view free of charge on the Council's website and in Council offices, hubs and libraries.

The guidance states that once the Council has fully considered a representation, its decision is final unless significant new information comes to light or a court decides otherwise. This effectively removes the potential of the Council receiving repeated representations in respect of the same asset where there is no new information and the query has already been dealt with.

- 5.5 If a representation is received it will be fully investigated by the Common Good Fund Officer. Area Members will be kept up to date on any representations received and the outcome of any investigations.
- 5.6 The guidance envisages the possibility that some representations may result in protracted enquiries extending beyond the date by which the Register is to be published. Provision is made to allow for the Register to be published in partial form. However, based on the experience of the consultations resulting in the publication of the existing Registers, it is preferable to be in a position to publish the Register in its final form rather than piecemeal.

6. Review of the Fort William Common Good Asset Register

- 6.1 The duty in section 102 to maintain the Asset Register includes undertaking regular reviews. The guidance states that the process for this should be published and it is contained in the final part of the document at **Appendix 2**.
- 6.2 The Asset Register will be updated in the event of a disposal of an asset or if any new property (either newly identified or acquired investment property) needs to be included. In any event, the guidance provides that a review must happen at intervals of no more than 5 years.

7 Practical considerations and next steps

- 7.1 The current focus has been on identifying possible property that needs to be reclassified as Common Good. However, it must also be recognised that there is not, at present, a fund of income reserves available to be considered as Common Good unless or until any of the reclassified assets earn an income for the fund. As far as Fort William is concerned, one of the properties proposed to be reclassified as Common Good is already income generating which may result in the possibility of funds accumulating for future use.
- 7.2 Following the abolition of the burghs in 1975, Common Good property passed to the new authorities (District and Island Councils). As part of this, a requirement for the authorities to account separately for the Common Good funds was imposed. Highland Council provides financial monitoring reports to all Area Committees in respect of the Common Good funds within their area and all funds are included in a separate section in the Annual Accounts. The process to facilitate the appropriate form of accounting procedures for re-activated funds has been established and will be applied to Fort William once an asset register is published.
- 7.3 In Highland, the general Common Good policy is that Common Good property is maintained, where possible, by the relevant fund. In respect of most (although not all) of the already established Highland funds, they have financial assets, income generating assets and reserves which allow them to undertake such maintenance. The recently re-activated funds were not in this position as they had property but little if any cash funds or generated income. As mentioned at 7.1 above, one of the proposed Common Good properties for Fort William is already income generating but it would take time for funds to accumulate. Work will be required to review the other Common

Good assets to assess whether there are any other possible opportunities for income generation.

It is important to understand that Common Good property is owned by Highland Council and managed by them having regard to the inhabitants of the former Burgh. It is a requirement that Common Good funds are accounted for separately. Therefore, whilst any income earned from a Common Good asset must be received in full into the Common Good fund, there is likely to be an expectation that some or all of the income should be applied against any liabilities arising from Common Good assets.

A piece of work is currently ongoing with a view to developing a model for use Highland wide to measure the funds and reflect their need for services and level of liabilities as well as their respective abilities to be responsible for those costs. Progress in this regard will be reported to subsequent Area Committee meetings.

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

Date: 10 April 2024

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Appendices: Appendix 1 – List of property proposed to be included in the Common
Good Asset Register for Fort William
Appendix 2 – Common Good Asset Register - Process

Appendix 1

LIST OF PROPERTY PROPOSED TO BE INCLUDED IN THE HIGHLAND COMMON GOOD FUND ASSET REGISTER IN RESPECT OF THE FORMER BURGH OF FORT WILLIAM

LAND AND BUILDINGS		
Fort William was established as a Burgh of Barony in 1618. The Burgh underwent a number of name changes (Maryburgh, Gordonburgh and Duncansburgh) before becoming known as Fort William.		
Name of asset	Location	Description
The Parade including: Putting green and putting green shed, peace monument (with bell from former Town Hall), Sir Donald Cameron of Lochiel Memorial, war memorial and sundial.	High Street. CAGUPRN: 130113413 Bordered on the south west by Parade Road, on the north west and north east by High Street and on the south east by the rear of the properties Alexandra Hotel, Duncansburgh Church, Manse and Parade House.	Area: 4046.86m ² or thereby Title deed: Feu Charter by Mrs. Cameron Lucy of Callart in favour of Provost, Magistrates & Councillors of the Burgh of Fort William registered 17 June 1914. The deed states that the land is disposed to be held for “behalf of the whole body and community of the said Burgh of Fort William”. The deed contains a condition that the area of ground shall be forever held as “a pleasure ground for the residents of Fort William” and that no building shall be erected on the land other than of an ornamental character. Inalienable.
Foreshore, amenity land and part of West End car park.	Achintore Road. Car park CAGUPRN: 130087702 Bordered on north west partly by Mean Low Water Mark on foreshore and partly by area of reclaimed land acquired from Crown Estates in 1977 which forms the car park extension. Bordered on north east by road leading to car park from A82 island, on south east by A82 leading to Ballachullish and extending to a line opposite the south western edge of the access road adjacent to the south western border of the property known as Myrtle Bank.	Area: 10,290m ² or thereby. Title deeds: 1. Feu Charter by Donald Cameron of Locheil in favour of Provost, Magistrates & Councillors of Burgh of Fort William registered 7 October 1904. Land between public road and High Water Mark. Disposed for “use and benefit of the inhabitants of the said Burgh” and to be converted into “an ornamental and recreation ground for the use and enjoyment of the inhabitants of the Burgh of Fort William”. 2. Charter of Novodamus and feu charter by Colonel Donald Walter Cameron of Locheil in favour of Provost, Magistrates & Councillors of Burgh of Fort William registered 8 June 1914. Confirms above deed and adds the adjacent part of foreshore up to Low Water Mark.

		Both deeds state that the areas of land are disposed for “use and benefit of the inhabitants of the said Burgh” and to be converted into “an ornamental and recreation ground for the use and enjoyment of the inhabitants of the Burgh of Fort William”. In respect of the 1914 deed, it also states that it is desirable in the public interest for the Provost, Magistrates & Councillors to have control of that part of the foreshore. Inalienable.
Alma Road/Victoria Road play area	Alma Road/Victoria Road CAGUPRN: 130113122 Located between Victoria Road (opposite Belford Hospital) on the north west and Alma Road (opposite 19-41) on the south east and adjacent to property known as Rhu Mhor on the north east and property known as Ardyne East on the south west.	Area: 9,900m ² or thereby. Title deed: Feu Charter by Dame Ada Christina Cameron Ramsay Fairfax-Lucy in favour of Provost, Magistrates & Councillors of the Burgh of Fort William registered 15 June 1937. Given as a Coronation Gift to the Burgh “for behoof of the whole body and community of the said Burgh” to be used exclusively as amenity, pleasure, or recreation grounds. Inalienable.
Grange Road play area (includes part of the car park)	Grange Road/Lundavra Road CAGUPRN: 130113123 Located in the triangular corner area where Grange Road and Lundavra Road meet.	Area: 950m ² or thereby. Title deed: Disposition by Thomas Lawrie Brander and Elizabeth Anne Brander in favour of The Provost, Magistrates and Councillors of the Burgh of Fort William registered 16 September 1937. Although there are no specified purposes in the deed it was gifted to the Burgh “for certain good causes and considerations”. This makes it more likely than not to be Common Good. Inalienable by virtue of the public nature of the land use.
Amenity ground	Junction of Union Road and Fassifern Road just before the road island. Narrow strip of sloped land between the 2 roads.	Area: 882m ² or thereby. Title deed: Feu Charter by Trustees of Dame Ada Christina Cameron Ramsay Fairfax-Lucy in favour of Provost, Magistrates & Councillors of the Burgh of Fort William recorded 5 October 1960. Area of land is disposed “for behoof of the whole body and community” of the Burgh of Fort William. The deed also specifies that the area of land “should be preserved in all time coming as a pleasure or garden ground for the benefit of the people of Fort William” and is subject to

		the condition that it cannot be built upon and must be “used exclusively as a pleasure ground or garden in all time coming”. Inalienable.
Amenity ground	Junction of Victoria Road and Hill Road adjacent to the west border of the property known as Mulroy, Victoria Road. The piece of land is a planted area with a footpath running through it.	Area: 329m ² or thereby. Title deed: Disposition by Ben Nevis Distillery (Fort William) Ltd in favour of Provost, Magistrates & Councillors of Burgh of Fort William recorded 22 June 1960. The deed is silent as to specific purpose and was sold to the Burgh under exception of a small area of land previously sold for road improvement. There is no indication in the deed that this piece of land was anything other than a general acquisition by the Burgh and appears to have only been used as amenity land. As it was not acquired for statutory purpose or held on a special trust it is considered to be Common Good and may raise a question of inalienability if its consistent use has been for public access amenity.
Part of King George’s Field (Town Park) includes cadet centre. (original acquisition of Victoria Park 1931 and Mill Dam 1937 are now held on trust following a disposition by the Burgh to itself in trust in 1939 and, therefore, not considered Common Good)	Belford Road, PH33 6BU Two further acquisitions of land as additions to King George’s Field: <ol style="list-style-type: none"> 1. Irregular shaped parcel of land bordered on the north by the existing King George Field and running westwards from a point 12 metres or thereby east from the south east corner of the tennis courts tapering to a point 21.5 metres south east of the property known as Rowan Cottage then running north east to a point 26.5 metres south of the start point. 2. Irregular shaped parcel of land known as Whin Croft bordered on the north west and south west by King George’s Field. Original north border was 37.5 metres south of Glen Nevis Place following the curve of that road. Then bordered on the east and 	Total area: 20,850.00m ² or thereby Title deed area 1: Charter of Novodamus and Feu Charter by the Trustees of Dame Ada Christina Cameron Ramsay Fairfax-Lucy in favour of the Provost, Magistrates & Councillors of the Burgh of Fort William recorded 30 November 1950. Area in this title – 3,173.4m ² or thereby. Title deed area 2: Charter of Novodamus and Feu Charter by the Trustees of Dame Ada Christina Cameron Ramsay Fairfax-Lucy in favour of the Provost, Magistrates and Councillors of the Burgh of Fort William recorded 20 August 1952. Area in this title after 1974 sale – 17,676.6m ² or thereby. The Cadet Centre is located on this land and leased out. Both of these areas seem to have remained as amenity land. The original Feu Charter of Victoria Park in 1931 (subsequently King George’s Field) was for the exclusive use of pleasure and

	<p>south east by Glen Nevis estate land. Area of 2,590m² was subsequently sold in 1974 (area south of northern border referred to above and to the west of Croft Road).</p>	<p>recreation or for naval or military purposes (drilling of units). This and the additional area of Mill dam in 1937 we then contained in a trust disposition for the purposes of the National Playing Fields Association.</p> <p>Although the two areas referred to above under title deeds areas 1 & 2 were not expressly brought within the trust, they were acquired as additional areas for the playing fields and clearly for the purposes of recreation. As such they are assessed to be Common Good and inalienable.</p>
<p>Claggan Park Playing Field Including football pitch and Claggan Park grandstand.</p>	<p>Achintee Road, PH33 6TE. CAGUPRN: 130113309. Playing field bordered on the south west by Achintee Road, on the north west by the boundary of Willow Cottage and continuing in a straight line along land held on the Council's HRA account to wooded land not owned by the Council, on the north east by this wooded land and on the south east by land within the title of the former Achintee tip. (area of land this land and part of HRA land seems to have been sold for building of Willow Cottage.</p>	<p>Area: 26,305m². Title deed: Feu disposition by The Trustees Corporation Limited in favour of Provost, Magistrates and Councillors of the Burgh of Fort William recorded 16 January 1969. The title deed contains the condition that the land is not to be used for any purpose other than as a public recreation ground although the erection of pavilions of other buildings appropriate to a recreational use are permitted. Inalienable by virtue of the public nature of the land use.</p>
<p>Croft tea room land (site of former Croft tea rooms)</p>	<p>Belford Road. Area of land that was the former site of the Croft tea rooms. Bordered by the Belford Road on the south west, the curling rink pond on the north west, the river bank on the north east and open land on the north west. North west corner is located approximately 9 metres east of the footbridge and on the opposite side of the river to Claggan Park.</p>	<p>Area: 1780m² or thereby. Title deed: Disposition by David Mackie Rollo & Barbara McLean Curtis or Rollo in favour of Provost, Magistrates and Councillors of the Burgh of Fort William recorded 19 August 1971. No specific purposes for purchase stated in the deed. At the time of purchase there were buildings (tea room and possibly accommodation) but these have subsequently been demolished and the land is now open access amenity land.</p>

ART AND ARTIFACTS

Name of asset	Location	Description
<p>Provosts Chain of Office</p>	<p>Charles Kennedy Building Fort William In safe.</p>	<p>Gold double chain. Pendant is broadly oval in shape comprising a garland of thistles containing a banner surrounding a shield bearing an oak leaf and acorn design. Banner has relief lettering stating "A DH'AINDEOIN C'O THEIREADH E'".</p>

		Pendant is engraved in the reverse – “Presented by Sir Henry and Lady Cameron-Ramsay-Fairfax-lucy 1930”.
COMMON GOOD FUND		
The Fort William Common Good Fund is in the process of being re-established therefore, as yet there are no Annual accounts or monitoring reports available.		

HIGHLAND COUNCIL

COMMON GOOD PROPERTY ASSET REGISTER – PROCESS
REVIEWING COMMON GOOD PROPERTY ASSET REGISTER - PROCESS

A. INTRODUCTION

The Community Empowerment (Scotland) Act 2015 Part 8 came into force on 27 June 2018. It seeks to increase transparency about the existence of common good assets and to ensure there is community involvement in decisions taken about their identification, use and disposal.

The Act places duties on local authorities to establish and maintain a common good register (section 102) and to undertake a consultation process before taking any decision to dispose of or change the use of a common good asset (section 104).

This document details the process the Highland Council must follow to establish the register and to review the register. The process for disposing of or changing use of a common good asset is contained in a separate document.

B. ESTABLISHING THE COMMON GOOD REGISTER

1. First step

Before establishing the register, the Council must publish a list of all the property it is proposing to include. This list must include not just land and buildings but also the moveable items like official regalia (chains and robes), furniture and art works as well as a reference to the income funds.

The list must include enough information about each item to allow it to be identified. The type of information might be – name, postcode, property reference number, description, whether it is leased out (information disclosed in this regard will be subject to commercial confidentiality).

The Council must undertake consultation on the contents of the list to allow the community the chance to make a case for property to be included in or excluded from the register.

2. Consultation

2.1. Publishing and advertising the list

- The list will be published on the Council’s website. It will also be available to view in person at local council offices, council hubs and libraries. Availability in these places may be by paper copies or staff assistance to view online. Copies of the list will also be made available in other languages or formats if requested.
- The Council will advertise the fact the list is available to view on its website and social media pages.
- The Council must make contact with community councils and any community bodies and tell them of the availability of the list so they can consider it and make any representations. The

Council will use such means as are available to identify community bodies and seek to ensure that all relevant bodies are notified.

- It is not only community councils and community bodies that can make representations and the Council will accept representations from any person/body wishing to make them.
- The list will be publicly available for viewing for a minimum of 12 weeks to allow for consideration and representations to be made.

2.2. Making representations

- All representations must be made in writing either by letter or email stating clearly the land, building or item referred to and giving reasons why it should or should not be included in the register. The contact for submission of representations will be clearly stated in the proposal document.
- When the consultation is opened a closing date for the receipt of representations will be stated.
- All representations received will be published on the Council's website in the same place as the list.

2.3. Responding to representations

- The Council will investigate the contents of any representations received. Common good property is unique and historical and some investigations may need to be more extensive involving other agencies and will take longer than others to resolve as a result. However the Council will aim to respond within a 12 week period.
- The Council will publish its final response alongside the original representation. The Council is only required to consider a similar representation in respect of the same asset if there is significant new information or a court decision.

3. Publishing the common good register

- The Council has from the end of the initial 12 week period to 6 months after the end of the consultation to publish the common good register.
- The register will be published even if there are still ongoing investigations in respect of some assets. This will be noted on the register and an appendix produced giving information on progress and the expected date of completion of enquiries. In the event of a number of ongoing enquiries, the appendix will give an indication of the order that the enquiries will receive attention.

4. Accessing the common good register

- The register will be publicly available to inspect free of charge.
- The register will be accessible on the Councils website. It will also be available in local Council offices, hubs and libraries. Availability in these places may be by paper copies or staff

assistance to view online. Copies of the register will also be made available in other languages or formats if requested.

5. Updating the register

- The Council must update the register if new property is identified or any existing property is disposed of.
- Any amendment following acquisition or disposal will be done in the same financial year as the property is acquired or disposed of.

C. REVIEWING THE REGISTER

- The Council aims to conduct an annual review of the common good register to ensure details held for any property continue to be up to date and any conditions/requirements are being complied with.
- For Inverness, the review process will be undertaken by the Common Good Fund officer and involve City Area Manager, Community Development Managers and officers from the finance, property and estates teams as required.
- In respect of the other Highland common good funds, the review will be conducted by the Common Good Fund officer and involve the Community Development Managers for the area concerned.
- The register will be updated with any amendments resulting from the reviews of the various Highland funds as soon as practicable but in any event **within 4 weeks of the final area review having been completed.**