

HIGHLAND COUNCIL

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| Agenda Item | 7 |
| Report No | SCC/05/19 |

Committee: Sutherland County Committee

Date: 25 February 2019

Report Title: Dornoch Common Good – Assignment of Lease for Dornoch Caravan Park

Report By: Depute Chief Executive/ Director of Corporate Resources and Acting Head of Policy

1. Purpose/Executive Summary

- 1.1 This report provides information on the proposed assignment of the lease for Dornoch Caravan Park to a new operator.

2. Recommendations

2.1 Members are asked to:

- i Approve the assignment of the lease for Dornoch Caravan Park to Lynn Redfern and Darren Redfern or Dornoch Caravan and Camping Park Ltd, subject to the fulfilment of the Council's conditions and on any other of terms as agreed by the Depute Chief Executive/ Director of Corporate Resources and the Acting Head of Policy.

3. Background

Caravan Park

- 3.1 Dornoch Caravan Park, Shore Road, Dornoch is located on Common Good land between Shore Road and the beach. It provides pitches for permanent, privately owned caravans and pitches for touring caravans and tents. The company operating the Caravan Park also has its own caravans that it rents to holidaymakers. The Caravan Park is a significant asset of Dornoch Common Good Fund and its rent forms the principal source of income for Dornoch Common Good Fund (roughly three quarters of total income). The Caravan Park is also an important tourism asset for the town. It is in the interests of Dornoch Common Good Fund and the wider Dornoch community to have a successful business operating the site and paying rent to Dornoch Common Good Fund.

Lease

- 3.2 Dornoch Caravan Park is operated by the leaseholder as a private business. The lease covers the site and buildings and on expiry of the lease these revert to the ownership of Dornoch Common Good Fund. The role of Highland Council is that of landlord as per the terms of the lease, and largely involves ensuring that rent is collected and that the landlord's assets (buildings and infrastructure) are maintained to an acceptable standard. The Council has no responsibility for or dealings with the caravan owners and other users of the site – their contractual relationship is with the operators of the Caravan Park.
- 3.3 The current lease, between Highland Council and Billy Macrae Snr. dates back to 1 April 1992. The lease was varied in 2011 to extend the term to 31 March 2038. Billy Macrae Snr. passed away in 2014. Since then the business has been continued by his son Billy Macrae Jnr. and the lease has been held by Arthur and Carmichael, Solicitors, Executors to Billy Macrae Snr. Given that the leaseholder is deceased the lease needs to be assigned to a new leaseholder before the estate of Billy Macrae Snr can be concluded. The lease terms allow for the leaseholder (in this case the Executor) to propose that the lease be assigned to a new leaseholder. The terms of the lease stipulate that any assignation requires the agreement of the Council. The terms of the lease also stipulate that the Council cannot unreasonably refuse an assignation request.

Governance

- 3.4 Under the Highland Council Scheme of Delegation, the Council delegates the responsibility for the management of Common Good Fund assets to Area Committees. As this is not a disposal or a change in usage there is no legal requirement for community consultation under the terms of the Community Empowerment Act, however in recognition of the considerable community interest, the Ward Manager, who was unable to attend Dornoch Community Council meeting on 20 February 2019, provided the Community Council with a written briefing on the proposed assignation and met with the Chair and Treasurer on 13 February 2019.

4. Proposal

- 4.1 The Executors for the estate of Billy Macrae Snr. initially approached the Council requesting the assignation of the lease to Lynn Redfern, however the Council has also

been contacted directly by the lawyer acting for Lynn Redfern and Darren Redfern proposing the assignation to be to Dornoch Caravan and Camping Park Ltd. The Executor is expected to confirm this request. Dornoch Caravan and Camping Park Ltd. was incorporated on 14 January 2019. The directors and joint shareholders (50% each) of Dornoch Caravan and Camping Park Ltd are Lynn Redfern and Darren Redfern.

4.2 As stated above the Council cannot unreasonably refuse a request to assign the lease, however the Council is entitled to protect its interests and those of the Dornoch Common Good Fund. To this end the Council can specify reasonable conditions that must be met before the Council agrees to the assignation of the lease.

4.3 The Council has replied to the Executor outlining the following conditions:

On the current leaseholder

- Rent to be paid and up to date at the proposed date of assignation
- Dilapidations – all repairs required under the terms of the lease to be made good, or a schedule for completion and a transfer of that responsibility to new leaseholder agreed

On the proposed leaseholder

- Credit check/ Bank reference for proposed leaseholder(s)
- Evidence of sufficient funds to cover rent
- Business plan for the operation of the business

4.4 Members are asked to note that when the Council leases property to a Company rather than a named individual, the Council requires 3 years' worth of trading accounts. If these are not available, as is the case for Dornoch Caravan and Camping Park Ltd because it is a newly formed company, the Council will require personal financial guarantees from the Company Directors. The Council cannot reasonably refuse an assignation solely on the grounds that it is to a Ltd Company rather than a named individual.

5 Recommendation

5.1 At the time of writing the report the Executor has not replied with detailed proposals that fulfil the stated conditions. However, given that the Caravan Park is due to reopen in time for the Easter holidays it is anticipated these will be received shortly.

5.2 In order not to delay the assignation of the lease, and to allow the new operator to open the Caravan Park as soon as the lease is assigned, Members are recommended to approve the assignation of the lease subject to the fulfilment of the conditions outlined above (section 4.3) and on any other of terms as agreed by the Depute Chief Executive/ Director of Corporate Resources and the Acting Head of Policy.

6 Implications

5.1 Resources – The Executor will meet the Council's legal fees.

5.2 Legal – Under the terms of lease the Council cannot unreasonably refuse a request to assign the lease. There is legal precedent / case history which defines "reasonable". If the Council did unreasonably refuse an assignation request it would be in breach of the lease and would leave itself open to legal challenge and the associated costs.

- 5.3 Community (Equality, Poverty and Rural) – none
- 5.4 Climate Change / Carbon Clever – none
- 5.5 Risk – The principal risk is that any delay in the decision will leave the Caravan Park without an operator and unable to open in time for the start of 2019 season. This would have an impact on the local economy and would be likely to cause reputational damage to the Council. This risk is mitigated through the recommendation that Members conditionally approve the assignment, subject to the Council's conditions outlined in Section 4.3 being met.
- 5.6 Gaelic – none

Designation: Depute Chief Executive/ Director of Corporate Resources and Acting Head of Policy

Date: 8 February 2018

Author: Phil Tomalin, Ward Manager Sutherland