

Agenda Item	7(a).
Report No	SCC/02/21

THE HIGHLAND COUNCIL

Committee: Sutherland County Committee

Date: 1 March 2021

Report Title: Dornoch Common Good Fund – Consultation on proposed change of use of an area of Dornoch Links for the location of a takeaway food van

Report By: Executive Chief Officer – Communities and Place
Executive Chief Officer – Resources and Finance

1. Purpose/Executive Summary

- 1.1 This report provides information on the outcome of the public consultation under section 104 Community Empowerment (Scotland) Act 2015 in respect of the proposal to change the use of an area of Dornoch Links (forming part of Dornoch Common Good) for the location of a takeaway food van.

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. Agree the suggested amendment to the proposal regarding location.
- iii. Agree the proposal to change the use of the amended area of Dornoch Links for the location of a takeaway food van subject to the consent of the Sheriff Court being obtained.
- iv. Note that other permissions may be required relating to planning and environmental health in connection with the operation of the business however, these are separate processes and procedures to that required under Community Empowerment legislation.

3. Implications

- 3.1 Resource – the change of use will allow for a new lease to be granted which will generate income for Dornoch Common Good Fund. The prospective tenant has agreed to meet the costs associated with the consultation and Court proceedings.
- 3.2 Legal – the statutory requirement to consult has been complied with. Where land is also considered to be inalienable, there is a statutory requirement to seek Court approval to the change of use or appropriation. In this case the proposed location is on Dornoch Links which is inalienable Common Good land. Therefore, this requirement must also be complied with. Members attention is drawn to the fact that the Community Empowerment consultation is a separate process to any planning process or requirement to register under Environmental Health provisions.
- 3.3 Community (Equality, Poverty, Rural and Island) – The proposal to lease the area for a takeaway food van has been submitted by a person local to the area and is seeking to source local products in order to provide a food service to visitors and residents in the area. The report outlines the community consultation that has taken place and the feedback received as part of that.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.

4. Proposal to change the use of an area of Dornoch Links to a site for the location of a takeaway food van

- 4.1 An approach was received from a local resident regarding the possibility of leasing a small area of Common Good Land for the location of a takeaway van. The initial suggestion is that the lease should be for a period of 1 year to assess the potential of the business with the possibility of a further lease thereafter.
- 4.2 The Council is required to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015 where a proposal regarding the use of Common Good property constitutes a change of use. In the current case, the proposal is to change the use of an area of Dornoch Links land that has previously been used as public amenity land to the site of a takeaway van. As this will change its use from public amenity it is considered to trigger the requirement to consult.
- 4.3 In Highland a disposal of Common Good property includes a long lease of 10 years or more. At this stage, this proposal does not constitute a disposal however, in the event that any subsequent lease is for a period of 10 years or more, there would need to be a fresh consultation on this as it would then become a disposal.
- 4.4 The Community Empowerment consultation is a completely separate process to any requirement to apply for a change of use under planning legislation or to register the building as a food business under Environmental Health regulations. In Highland, we recommend undertaking and concluding the Community Empowerment consultation prior to any planning or other applications are made.

- 4.5 Members were briefed by email dated 14 September 2020 and confirmed they were supportive of commencing the public consultation. The public consultation commenced on 12 October 2020 and concluded on 9 December 2020. An analysis of the outcome of the consultation has been prepared – **Appendix 1**
- 4.5 18 representations were received within the consultation.
- 6 were fully supportive. Examples of the comments in support are contained in the analysis at section 2a of **Appendix 1**,
 - 6 representations objected outright with a further 6 representations being supportive in principle but raising some issues that the Council is required to respond to. Information has been collated to respond to the matters raised. Details of the issues raised and the responses to be given are provided in the table in the analysis at section 2b of **Appendix 1**.
- 4.6 Whilst all issues raised have been given careful consideration and responses prepared, it was felt that the specific concerns regarding parking, traffic management and location were best addressed by considering a change in location. This has been done in consultation with the applicant. It is now proposed that the location for the food van should be moved approximately 50 metres to the north from the original proposed location into the area used for the overspill car park as shown at section 4 of **Appendix 1**. This will be reflected as an amendment to the proposal however, due to the proximity of the 2 locations and the fact that, in all other respects the proposal is identical, it is not considered to be a significant amendment and will not trigger a fresh consultation process.
- 4.7 The area of land proposed for the new location of the food van is considered to derive title from the Burgh Charter of 1628. It is necessary to consider if the proposal raises a question of inalienability. If such a question is raised, then it is necessary to apply to the Sheriff Court for permission to appropriate (change use) of the property under section 75 Local Government (Scotland) Act 1973. The proposed location on Dornoch Links has been public access amenity land for time immemorial, it is considered that a question of inalienability exists and therefore, a Court application is required. How long such an application will take to conclude will be entirely contingent upon Court timescales.
- 4.8 Members are now asked to note the outcome of the consultation. The available options for the next steps are:-
- Agree that the proposal for change of use of an area of Dornoch Links should go ahead subject to Sheriff Court approval
 - Amend the proposal (any significant amendment would require a new consultation process)
 - Decide that the proposal should not go ahead.

On the basis of the outcome contained in **Appendix 1** it is recommended that Members agree that the proposal is amended regarding location in the suggested terms and that the proposal to change the use of the amended area of Dornoch Links to a site for the location of a takeaway food van should go ahead.

Designation: Carron McDiarmid, Executive Chief Officer, Communities and Place
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Date: 15 February 2021

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Background Papers:

Received by Committee Services on 15 February 2021 at 5.12pm.

DORNOCH COMMON GOOD**PROPOSAL TO CHANGE THE USE OF AN AREA OF DORNOCH LINKS TO A SITE FOR THE LOCATION OF A TAKEAWAY FOOD VAN (site forms part of Dornoch Common Good)****ANALYSIS OF COMMUNITY CONSULTATION****1. Number of responses received**

The public consultation period ended on 9 December 2020 with a total of 18 responses having been received.

These responses are broken down as follows:

- 6 supportive
- 6 objections
- 6 generally supportive in principle but raising some issues.

2. Representations, questions and issues distilled from the responses received**a. Supportive comments received**

The types of supportive comments received can be summarised in the following examples:-

- Good to support smaller business in smaller, rural communities.
- Encourage visitors to location to buy food.
- Great to support local person.
- Will follow successful example of Seafood Shack in Ullapool.
- Location is low lying so will minimise visual impact.
- Very good for community and will increase the popularity of the Dornoch area.
- Idea of a takeaway van selling local quality produce is very positive for locals and tourists.
- There is nothing similar in the area.

b. Objections or issues raised for response

The outright objections and the responses that supported in principle but raised issues were all focussed on similar areas namely – parking, litter/rubbish, location and impact on the surrounding area. The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
There are already issues with parking at the beach area particularly in high season. This proposal will increase these issues.	These concerns are accepted. A change of location for the proposed site is being considered – see below.
The road is narrow, and cars/campervans often struggle to pass each other. This was made worse by the erection of the	These issues have been noted and accepted as valid.

<p>bollards. This proposal could see cars parking along the road nearby which will make this problem worse and increase the potential for accidents to vehicles, children, pedestrians.</p> <p>There is also a possibility that the road could become obstructed which would prevent access to the Coastguard and Lifeboat station and restrict access for play park users.</p>	<p>It has been agreed that the existing passing places will be extended, and additional ones added to ease the flow of traffic.</p> <p>These issues could also potentially be mitigated by moving the proposed site to an alternative location – see below.</p>
<p>There will be an increase in litter. If the bins are not emptied regularly and often this could spread to the wider Links and beach area. It may also exacerbate the seagull problem.</p> <p>Extra waste from packaging etc could have an environmental impact on the area.</p>	<p>Keeping the area around the food van clean, tidy and litter free will be the responsibility of the operator who will be expected to provide sufficient litter bins for the purpose.</p> <p>A clause can be included in the lease detailing the tenant’s responsibility in this regard. In addition, such matters are usually contained in the licence to operate.</p>
<p>Increase of people in the area may result in extra wear and tear to existing paths to beach or the creation of new paths. There may be a need to factor remedial work into the project.</p>	<p>This will be addressed by a change in location for the food van site as direct access to the beach will then be along existing paths.</p>
<p>The food van will detract visually from the beach and surrounding area.</p>	<p>The current proposed location is low lying which should minimise any visual impact.</p>
<p>There are inadequate toilet facilities – this proposal will increase demand.</p>	<p>The nearest toilets are located opposite the entrance to the caravan park – approx. 200m from original site and approx. 300m from proposed alternative. There is no current proposal to increase toilet provision in this area.</p>
<p>This proposal will take business away from existing providers that are already struggling in the current times.</p>	<p>There is no evidence to indicate it will have this effect. Indeed, it is hoped it will encourage visitors to the town which in turn will benefit other businesses.</p>
<p>Common Good land should not be used for business concerns.</p>	<p>Common Good land is regularly used for business concerns across the Highlands. Income generation is beneficial to the sustainability of Dornoch Common Good.</p>

<p>Rather than allow the development proposed, the Council should focus on providing toilet facilities, more litter bins and facilities to address the existing problems.</p>	<p>Please see responses to issues above concerning toilet provision and litter.</p>
<p>2 responses suggested other locations:-</p> <ul style="list-style-type: none"> • Rear of overflow parking area. • Opposite and west of 3rd tee on Struie Course. 	<p>The concerns regarding location have been noted and are valid. Suggestions of using an alternative location have been considered with the preferred proposal for the alternative site being the “overspill” car park. This has been discussed and agreed with the prospective tenant – see section on amendment to consultation below.</p>

3. Next steps

- Consider and agree responses to the above questions/issues raised. Once approved they will be included in a document for publication on the Council website and notifying to those who have responded within the consultation process.
- Members to consider the outcome following the consultation process. If the value of the proposed disposal is up to 10% of the Fund value, the decision in respect of the proposal rests with Area Committee. If the value exceeds 10%, the decision falls to full Council. In this particular case, the value will be less than 10% therefore, the decision can be made at Area Committee.
- In this particular case, an amendment to the proposal is being suggested in light of some of the representations received. The amendment is to propose a new location for the site for the food van. Please see section below for details.

4. Amendment to proposal

The concerns raised in the representation regarding the original location are accepted as being valid. Therefore, it is suggested that the proposal should be amended with the new location for the site being within the overspill car park. See images below.



The difference in distance between the 2 locations is approximately 50 metres. In all other respects the proposal is identical. As a result, it is considered that this amendment is not a significant amendment and therefore, it will not trigger the requirement for a fresh consultation.

5. Decision making options

- Happy with proposal going ahead and agree with proceeding to Sheriff Court for authority to dispose.
- 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. In this case the proposal is being amended to reflect a change in location.
- Decide that the proposal should not go ahead.

6. Additional information

The proposal constitutes a change of use or appropriation. As the area of land concerned is considered to derive title from the Burgh Charter of 14 July 1628 and has been used as public amenity land for time immemorial, it raises a question of inalienability and therefore an application to the Sheriff Court for permission to dispose is required.

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

Sara Murdoch
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09.02.2021