

Agenda Item	7.
Report No	SCC/10/21

THE HIGHLAND COUNCIL

Committee: Sutherland County Committee

Date: 17 May 2021

Report Title: Dornoch Common Good Fund – Consultation on proposal to dispose, by lease, and changes of use of Common Good land at Dornoch Links to Royal Dornoch Golf Club

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 dispose, by lease, and changes of use of Common Good land at Dornoch Links to Royal Dornoch Golf Club (RDGC).

2. Recommendations

2.1 Members are asked to:

- i. Note the outcome of the consultation process undertaken as contained in the analysis at **Appendix 1**.
- ii. Approve the responses to the issues raised in connection with the proposal as outlined in the table at paragraph 2 (b) of **Appendix 1**.
- iii. Note the estimated value of RDGC against the full value of Dornoch Common Good Fund will mean it must be referred to a meeting of full Council for a decision.
- iv. Agree that a recommendation should be made to full Council to approve the proposal to dispose, by lease, of the area of Dornoch Links to RDGC.
- v. Agree that a recommendation should be made to full Council to approve the proposals to change the use of part of the land to allow construction of a new

clubhouse and part of the Bowling Club land and tennis court for improved access and parking.

- vi. Note that, if agreed, it will be necessary to seek Sheriff Court consent because the land is classed as inalienable.
- vii. Note that other permissions may be required relating to planning however, this is a separate process to that required under Community Empowerment legislation.

3. Implications

- 3.1 Resource implications – the proposals will allow for a new lease to be entered into which will generate increased income for Dornoch Common Good Fund. The proposed new lease terms are contained in the consultation document attached at **Appendix 2**. The prospective tenant has agreed to meet the costs associated with the consultation and Court proceedings. As the new lease footprint will be of a reduced area to the exiting leased area, there may be some additional costs involved in the Common Good taking over the maintenance of the surrendered parts of the Links land. How much any such maintenance coats will be dependent on how the Common Good decide to manage the area. For instance, allowing it to return to a more natural state as a habitat for wildlife would have minimal cost.
- 3.2 Legal implications – the statutory requirement to consult under the terms of the Community Empowerment Act on the disposal of an asset by long term lease 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.

The Council's Estates Team has given a suggested value of £625,000 with the new lease in place. This will increase the total value of Dornoch Common Good Fund to £1,490,000 or thereby. The Council's Scheme of Delegation provides that decisions related to assets of the Common Good where the asset value is 10% or less of the total value of the fund rests with the Area Committee. Where the asset value is above 10% of the fund, decision making rests with the full Council. In the case of RDGC, 10% of the fund is £149,000 and as a result the new value of the lease will exceed this level and therefore the final decision to dispose by long lease rests with Highland Council.

- 3.3 Community impacts (Equality, Poverty, Rural and Island) – The proposal will allow for improved clubhouse facilities which will attract visitors resulting in benefit to local businesses and community. The current Bowling Club and tennis court are located on Common Good land. The consultation document at **Appendix 2** explains the proposal to change the use of all or part of this land to improve access and car parking. In return, RDGC will be funding (up to £100k) the provision of a new sports facility at Dornoch Academy to replace the area of the existing tennis court which is proposed to be used to improve car parking at RDGC. The new tennis court will be located on Council land and will be a Council asset. The Care & Learning Estates Team have confirmed agreement to taking on responsibility for the tennis court. The report outlines the community consultation that has taken place and the feedback received as part of that.

3.4 Climate Change / Carbon Clever implications – none.

3.5 Risk implications – none.

3.6 Gaelic implications – none.

4. Proposal to dispose, by lease, and changes of use of Common Good land at Dornoch Links to RDGC.

4.1 RDGC currently lease an area of Dornoch Links land. The lease was granted in 1973 for a period of 99 years at a fixed rent of £150 per year. Subsequently, additional areas have been leased and areas surrendered and, as a result, the plan appended to the original lease does not reflect accurately the area currently utilised. RDGC would also wish to construct a new clubhouse providing larger and more up to date facilities as well as improve access and expand the parking area.

4.2 It is proposed that all existing leases should be surrendered, and a new lease granted which will allow for an accurate reflection of the lease footprint and for a more up to date and improved rental arrangement to be put in place that better reflects the value of the assets. The terms of the proposal subject to consultation were as follows:

- Disposal, by 99 year lease, of 85.629 hectares or thereby (a reduction from the original 123 hectares) of Common Good land at Dornoch Links to RDGC upon surrender of all existing leases.
- Change of use of part of the land used to play golf to allow construction of a new clubhouse.
- Change of use of part of the Bowling Club land for improving access and part of the tennis court land for car parking.

4.3 The Council is required to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015 where it is proposing to dispose or change the use of Common Good property. In Highland a disposal of Common Good property includes a long lease of 10 years or more. In the current case, the proposal relates to both disposal and change of use.

4.4 The Community Empowerment consultation is a completely separate process to any requirement to submit any applications under planning legislation. 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 at a Ward Business Meeting on 8 December 2020 and confirmed they were supportive of commencing the public consultation. The public consultation commenced on 17 December 2020 and concluded on 12 March 2021. An analysis of the outcome of the consultation has been prepared – **Appendix 1**

4.5 31 representations were received within the consultation period.

- 27 were fully supportive. Examples of the comments in support are contained in the analysis at section 2a of **Appendix 1**,
- 2 representations raised concerns but made no comment on whether they supported or objected to the proposals and a further 2 representations were generally supportive but also raised some issues. The Council is required to

respond to any issues raised and information has been collated to allow such responses to be prepared. 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 The area of land forming the footprint of the proposed new lease 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 and has been utilised for the playing of golf, tennis and bowls for a significant period. 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.

5 Governance and decision making

- 5.1 Decision making in respect of the Community Empowerment Act section 104 consultations follows the governance contained in the Council's Scheme of Delegations. Where the asset being consulted upon has a value of 10% or less against the total value of the particular area Common Good Fund, the decision is competent to be made by Area Committee. If the asset value exceeds 10% the decision must be made by full Council.
- 5.2 The Council's Estates Team has provided a suggested valuation for RDGC with the new lease of £625,000 which will increase the total value of Dornoch Common Good Fund to £1,490,000 or thereby. As 10% of that figure will be £149,000, the decision on this consultation will need to be referred to full Council for the final decision.
- 5.3 Members of Sutherland County Committee are now asked to consider the outcome of the consultation and make a recommendation to the full Council. The available options for recommendations to full the Council are as follows:-
- Agree that the proposal for disposal and changes 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 of the Sutherland County Committee recommend that full Council should agree that the proposal as contained in the consultation document should go ahead.

Designation: Carron McDiarmid, Executive Chief Officer, Communities and Place
Liz Denovan, Executive Chief Officer, Resources and Finance

Date: 28 April 2021

Author: Sara Murdoch, Common Good Fund Officer

Background Papers:

DORNOCH COMMON GOOD

PROPOSAL TO DISPOSE, BY LEASE, AND CHANGE OF USE OF COMMON GOOD LAND AT DORNOCH LINKS TO ROYAL DORNOCH GOLF CLUB (RDGC)

ANALYSIS OF COMMUNITY CONSULTATION

1. Number of responses received

The public consultation period ended on 12 March 2021 with a total of 31 responses having been received. Responses were received from both local residents and visitors/members from other countries. These responses are broken down as follows:

- 27 were fully supportive
- 2 raised only concerns and made no comment regarding support/objection
- 2 were 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:-

- The new proposals will help safeguard the future of Dornoch as a town and the golf club. The success of the Golf Club is intrinsically linked to the economic wellbeing of Dornoch itself.
- The plans for the new clubhouse have been thoroughly thought through with community consultation and involvement at each step. It will enhance Royal Dornoch's profile resulting in more visitors which will benefit local jobs and businesses.
- The golf club is a wonderful amenity for the town and whole Highland area. It is the biggest generator of employment either directly or indirectly in the area.
- Proposal will result in significant community benefit by increasing funds into the Common Good whilst also protecting RDGC in the event that a situation such as the current pandemic occurs again, and their numbers fall below point of financially breaking even.
- RDGC will be investing up to £100k in a new sports facility to compensate for loss of tennis court as part of golf club development which will benefit the community.
- RDGC is one of the top golf courses in the world and is a great accolade for Scottish golf and the Highlands. The proposed new clubhouse will enhance this image and continue to encourage visitors nationally and internationally to the area.
- The new agreement fairly balances the interests of the town and the golf club. It is substantially more lucrative for Dornoch yet also allows RDGC to continue to prosper.

- The proposal does not change the original intent of the lease which has worked harmoniously for many years. A new clubhouse will be able to be more energy efficient materials which will benefit the environment.
- The proposal represents sound financial judgement for the Highland Council, the Dornoch community and RDGC.
- It is great to see a lease proposal that will benefit the Common Good, RDGC and the community of Dornoch – the Common Good will gain from increased rent which can be used to benefit the community, RDGC gain from being able to build a new clubhouse and the community will benefit from the contribution to funding towards the new sports facility at Dornoch Academy.

b. Objections or issues raised for response

4 representations were received that raised issues that require responses from the Council. The issues raised are summarised in the table below.

Questions/issues/concerns	Council's suggested response
<p>There is no worked out proposal for replacement of tennis courts</p> <ul style="list-style-type: none"> ➤ Who will be responsible for upkeep & who will pay for it? ➤ What will facility be? ➤ What happens if costs are over or under £100k? 	<ul style="list-style-type: none"> ➤ Highland Council will take on responsibility for maintenance of the facility once complete. ➤ The facility will be a multi sports pitch. ➤ Golf Club has offered to pay for a facility with a cost of up to £100k, there will be a competitive tendering process to find a suitable contractor willing to carry out the work for an agreed price.
<p>What is rationale for rental proposed?</p> <ul style="list-style-type: none"> ➤ Is the value of the lease £50k or £25k? ➤ Has £50k been divided in to 2 parts – 1 for most of land & 1 for proposed new clubhouse to incentivise RDGC to sign lease? ➤ If RDGC decide not to “break turf” & build clubhouse, will the lease remain at £25k for next 99 years? 	<p>Rent is in 2 parts – base rent of £25k then an additional rent set at £2 per visitor round. For first 10 years the additional rent will be subject to a minimum of £25k therefore, during this period, rent will be at least £50k. After first 10 years, the base rent of £25k will remain supplemented by the visitor levy but with no minimum figure. Therefore, the rent will then be dependent on number of visitors. The base rent and £2 visitor levy will increase every 5 years to keep track with inflation.</p>
<p>Maps are too small to see full area lease will include.</p>	<p>It is accepted that the full image is quite small however, it is still possible to form an understanding of the area to be contained within the new lease footprint. If required, the Council Estates team can provide full size versions of the plan.</p>

<p>Given there is a pandemic & first rental payment is not due to be made until Dec 2023, can the decision be delayed for a year to allow Dornoch community to engage in a proper communal discussion about the future of our common good land?</p>	<p>The consultation concerns land already rented to RDGC with the new lease proposed actually resulting in a reduction to the area covered in the current lease plan. The time allowed for the consultation was extended from 8 weeks to 12 weeks to allow for the fullest possible community involvement. Going ahead with the consultation now will allow a decision to be made and, if approved, will allow RDGC to begin to make appropriate plans for commencement of the works proposed. The delaying of first rent payment is not uncommon in commercial leasing and, in this case, reflects both the situation that has occurred with restrictions and also acknowledges RDGC plans to fund works from their available reserves.</p>
<p>Concerns that Dornoch & wider area community are effectively being asked to underwrite the financial risk of the proposed new clubhouse due to the staged payment structure and its link to the requirement for RDGC to break even financially each year. This seems to take no account of the club's financial reserves and, as a result, seems an inappropriate basis for a lease renewal.</p>	<p>The Dornoch Common Good Fund is not underwriting the development of the clubhouse. The costs of developing the clubhouse will be in excess of RDGC's current cash reserves and the lease negotiations have agreed, in principle, to flexible terms to take account of the risks being taken by RDGC. The existing lease is due to run until 2072 with a rent of £150 per year and no break clause so can only end if parties agree or there is a significant breach of lease terms. The proposed new lease resulting from prolonged negotiations will see Dornoch Common Good benefitting significantly from a major increase in income. During negotiations the Common Good interests were represented by a Chartered Surveyor.</p>
<p>It would be useful to include an artist impression of the proposed new clubhouse to let people understand the likely visual impact.</p>	<p>The consultation relates to the proposal for disposal by lease of the land and change of use. Any comments relating to the details of the new clubhouse will be dealt with under the formal planning process. However, it is understood that RDGC have released images of the proposed design online.</p>
<p>Why is lease rental not calculated on a £ per acre basis in the same way as for the caravan park?</p>	<p>The caravan park lease was not calculated on the basis of a rate per acre. Valuers often use rates per acre to help compare</p>

	rents of comparable properties. However, there is very limited evidence of Golf Clubs being let on the open market in Scotland, most golf courses that have been let have generally been at very low rents.
If the base rent is to be implemented in July 2021 why does payment not start until January 2023?	It is common in commercial leases to agree rent free periods at the start of the lease. In general, these are to allow the tenant to develop the property for intended purpose. It is understood that the new clubhouse will cost several million pounds and the rent free period was agreed to assist RDGC with cash flow.
Rental should always be in advance – why is the rental here proposed to be in arrears? It would be more appropriate to have the rental payable quarterly in advance.	The tenant requested this during negotiation. The point was conceded as it would have no material impact on the income generated over the course of the lease. The Dornoch Common Good fund has significant cash reserves and does not spend money quickly after receipt. Therefore, it was determined that this was a reasonable concession.
Rent reviews should state “upwards only”.	The rent review will be upwards only.
If it is to be a 99 year lease, it should be non-assignable.	To prohibit assignation completely is a highly restrictive and onerous clause and would have a significant detrimental impact on the marketability of the asset for lease and future rent reviews. Highland Council on behalf of the Common Good will have the right to refuse an assignation provided the refusal is reasonable.
Concerns regarding ongoing impact of Covid if new strains continue to appear and vaccines are not as robust. The proposal has built in some safeguards with rental delay and levels set to whether financial breakeven is achieved, but if the situation continues for a longer period will there be any provision to review the arrangements?	The current pandemic had an impact on negotiations and the proposal was agreed in light of this. The parties are able to modify the lease terms by mutual agreement however, it is not envisioned that this will be required.

3. Next steps

- Sutherland County Committee and, following that, the full Council will consider 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.
- Sutherland County Committee Members will be asked to consider the outcome following the consultation process and make a recommendation to the full Council. Given that the value of the proposed disposal is greater than 10% of the Fund value, the decision on the proposal falls to full Council.

4. Recommendation options for decision by full Council

- Agree that the proposal for disposal and changes of use of an area of Dornoch Links should go ahead subject to Sheriff Court approval.
- Amend the proposal – any significant amendments will trigger a fresh consultation process.
- Decide that the proposal should not go ahead.

5. Additional information

The proposal constitutes a disposal and changes 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.

Sara Murdoch
Common Good Fund Officer
28.04.2021

CONSULTATION on:-

**Proposal to dispose, by lease, and change of use of Common Good land at
Dornoch Links to Royal Dornoch Golf Club (RDGC)**

What is proposed?

- A disposal, by lease, of 85.629 hectares or thereby of Common Good property located at Dornoch Links to RDGC upon the surrender of the existing lease.
- Change of use of part of the land currently used for playing golf to allow the construction of a new clubhouse facility.
- Change of use of part of the Bowling Club land for improving access and change of use of part of the tennis court for car parking.

RDGC's current occupation is governed primarily by a lease which was granted in 1973 (recorded 3 April 1974) for a period of 99 years at a fixed peppercorn rent of £150 per year. However, since the granting of the original lease, there have been additional areas leased as well as areas of land surrendered. As a result, the current area utilised does not accord to the plan appended to the original lease. The new area of 85.629 hectares now proposed to be leased is substantially smaller than the area of 123 hectares contained in the original lease.

In addition, RDGC now wish to undertake the construction of a new clubhouse that will provide larger and more up to date facilities for members and course visitors alike.

It is proposed that all existing leases should be surrendered, and a single new lease be granted which will allow for an accurate reflection of the land footprint and the negotiation of a more up to date rental arrangement.

Proposed new lease terms

- Lease term of 99 years with option to extend for a further 99 years on basis of future terms to be agreed.
- Subject to the outcome of this consultation and subsequent Court proceedings, the proposal is for the lease to commence in or around July 2021.
- A base rent of £25,000 per annum due from 1 January 2023 payable in arrears with first payment due on 31 December 2023.
- An additional £25,000 per annum rent will be payable upon breaking ground for the construction of the new clubhouse subject to visitor numbers being such as to allow RDGC to break even financially in that year.
- During the first 7 years of the lease no rent will be payable in any year when visitor numbers are less than that required for RDGC to break even financially in that year. The calculation of the break even point is to be based on a tapering off of the rent if visitor numbers fall from 7000 to 5000 or less in a year.
- Both elements of the rent will be subject to 5 yearly rent reviews to increase in line with CPIH.

The provision for reduced/no rent in the first 7 years reflects the intention of RDGC to utilise most of their profits for the developing of the new clubhouse facility and to allow the club some security in the event of ongoing or recurring restrictions for visitors as has happened this year with Covid19. In the absence of such difficulties, RDGC would expect to receive between 10,000 to 14,000 visitors per year.

Images of proposed area to be leased to RDGC and associated changes to the Bowling Club and area occupied by the current tennis court.

In addition to the rationalisation of the lease footprint and the proposed construction of the new clubhouse, this consultation also includes a change to the access road (see image 4). This will address any safety issues with the current access provision (any access rights for the Bowling Club will be dealt with in the proposed new lease). Also, RDGC would wish to layout additional and improved parking facilities.

It is proposed that the Bowling Green will be moved 4 metres to the east into part of the existing tennis court (see image 2). The remainder of the tennis court will form part of the new lease to RDGC and be incorporated into their parking area. The area of land surrendered by the Bowling Club be added to the width of the existing access road and also be included in the proposed new lease to the golf club.

RDGC will be covering the costs of the changed layout to the land in the area highlighted in image 2 and have also agreed to fund the construction of a new sports facility at Dornoch Academy campus subject to a cap of £100,000.

Image 1

This image shows the full area now proposed to be leased to Royal Dornoch Golf Club

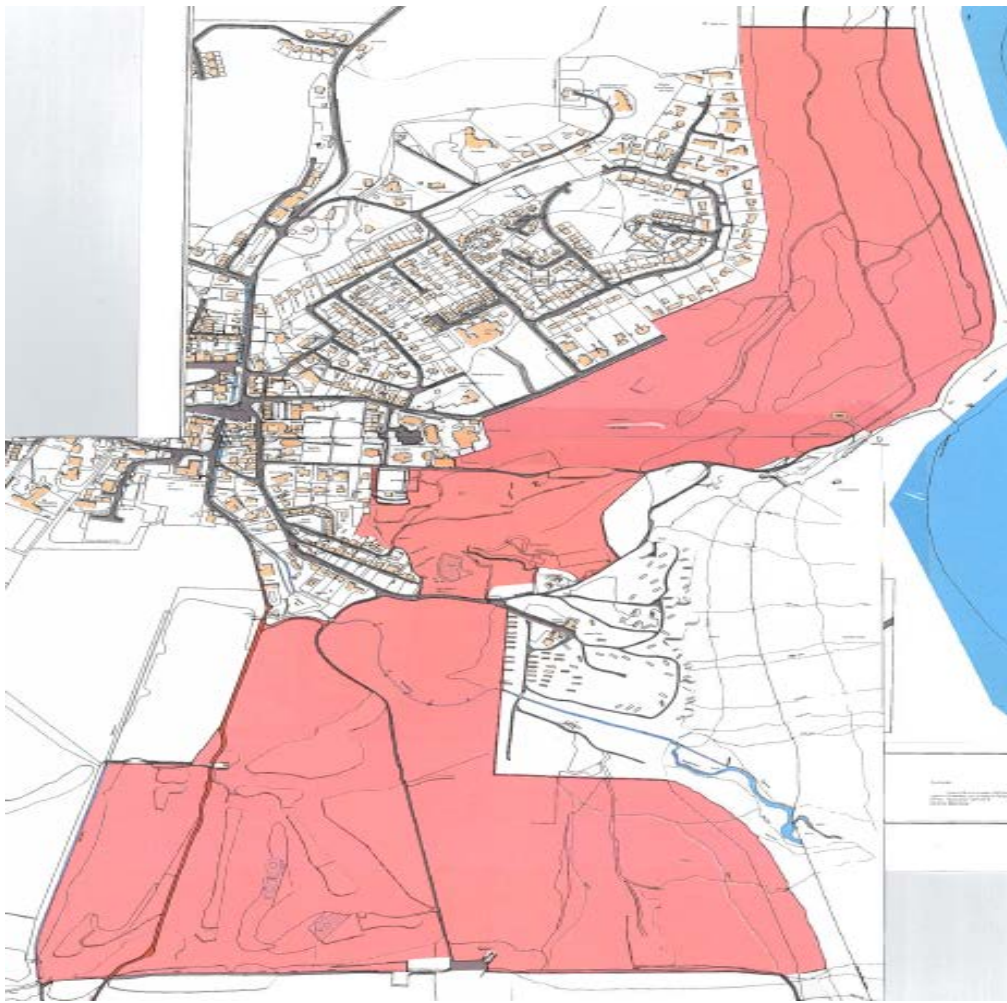


Image 2

This image shows the close up of the change proposed to the access road, Bowling Club and tennis court.

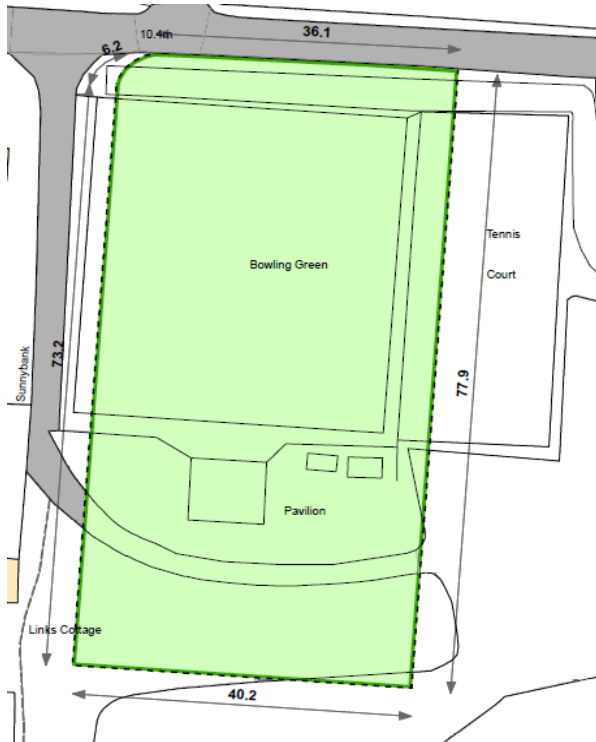


Image 3

This image relates to the parcel of land leased to RDGC in 2014 for the location and construction of the Green Keepers buildings. It is proposed that this lease will be surrendered, and this area of land incorporated into the new proposed lease.

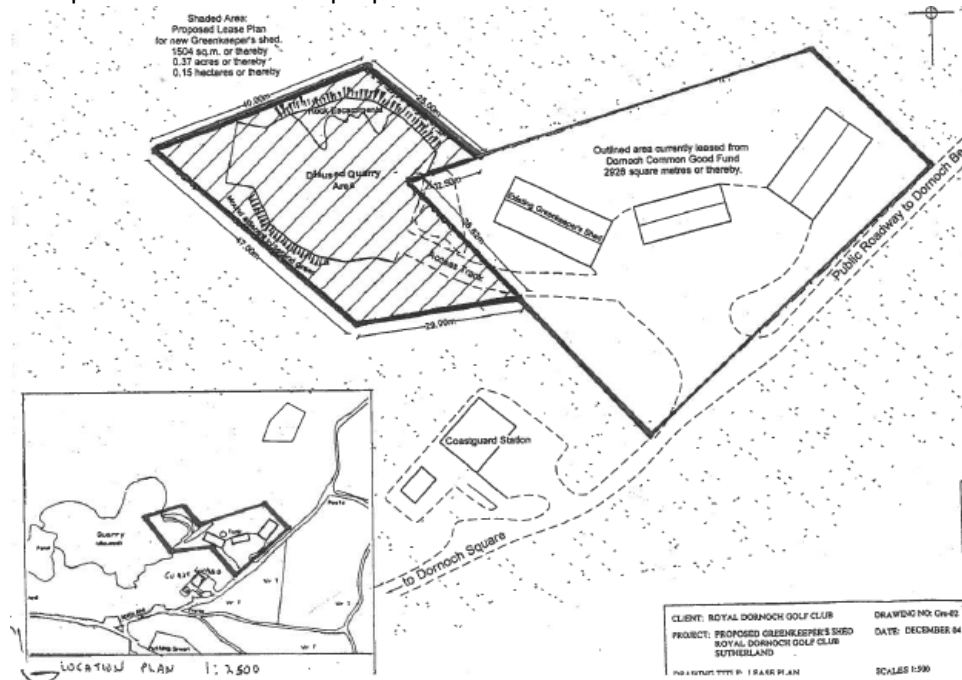
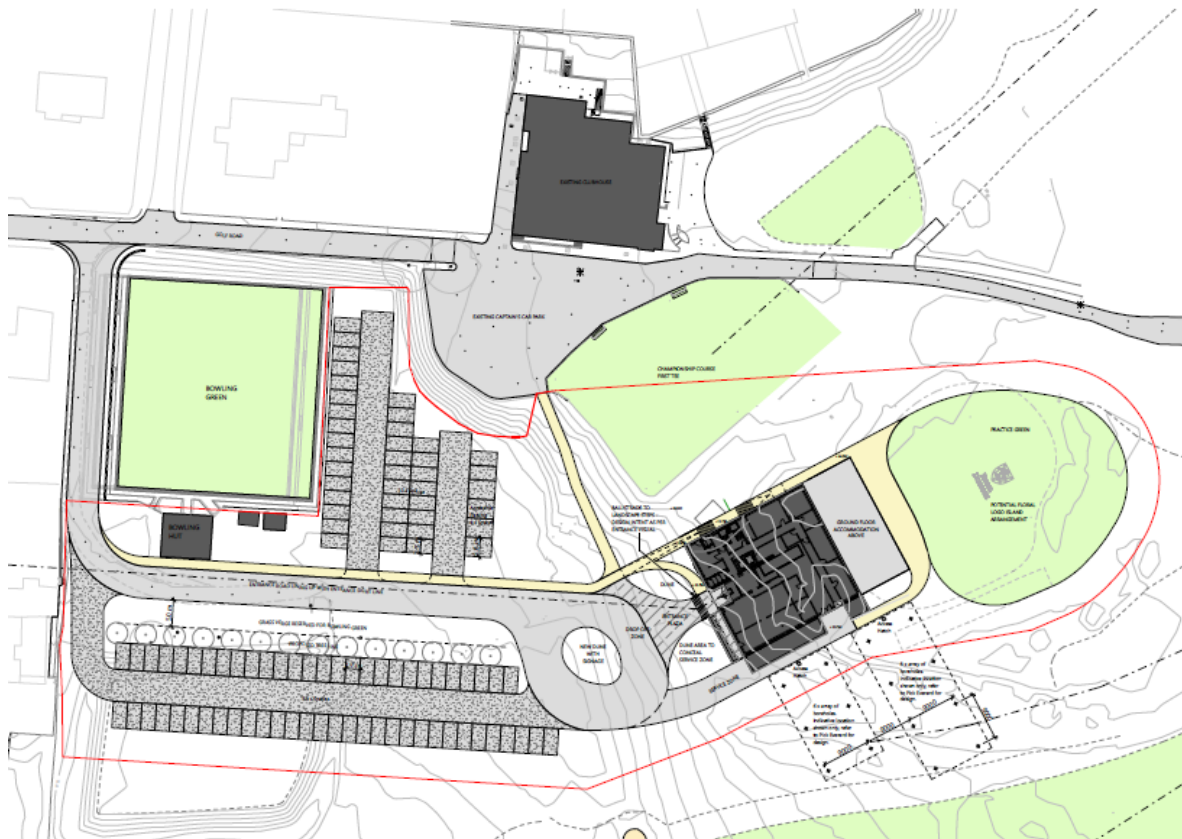


Image 4

This shows the planned location for the new clubhouse (lower right quadrant of the image) and also shows the proposed improved access and parking facilities.



Consultation

Section 104 of the Community Empowerment (Scotland) Act 2015 requires the Council to consult local communities when considering disposing or changing the use of Common Good assets. This includes where the proposal is to grant a lease of over 10 years. Therefore, before taking any decision, and to inform the decision making process, we are keen to hear the views of the community, in particular:

- What are your views on the proposed disposal by lease of this piece of Common Good land?
- Do you have any views on potential benefits of the proposal?
- Do you have any issues or concerns arising from the proposal?
- Do you have any additional comments?

The Council will take all representations into account in reaching a decision.

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

Consultation closing date – **12 March 2021**

Please submit written representations to:-

Email: common.good@highland.gov.uk

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

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.

The piece of land that is the subject of this proposal derives its title from the original Burgh Royal Charter dated 14 July 1628 and has been used for recreation purposes for time immemorial.

Therefore, the proposed lease and change of use cannot be concluded until Sheriff Court consent has been obtained. If after this consultation, the proposal progresses to a court application the public will have a further opportunity to make representations within that process. A statutory advertisement will be placed in the Northern Times to inform the local public that the court process has been commenced.