

Agenda Item	6.
Report No	SCC/08/23

THE HIGHLAND COUNCIL

Committee: Sutherland County Committee

Date: 16 May 2023

Report Title: Space Hub Sutherland Spaceport Byelaws to Restrict Public Access

Report By: Executive Chief Officer Infrastructure & Environment

1 Purpose/Executive Summary

- 1.1 To seek the Committee's agreement to promote, on behalf of Highlands and Islands Enterprise (HIE), a byelaw under Section 12 of the Land Reform (Scotland) Act 2003 to restrict public access rights during launches at the Space Hub Sutherland Spaceport, Dunbuie, Tongue.

2 Recommendations

- 2.1 To **agree** to promote draft byelaws to restrict public access to the launch exclusion zone associated with Space Hub Sutherland during launches.
- 2.2 To make the proposed byelaws available for public inspection and to consult those persons and bodies set out in Section 12 (7) of the 2003 Act.

3 Implications

- 3.1 **Resource** – Existing staff resources will be used to promote the draft byelaws. Costs for press notices and printing/posting of consultation materials (if this cannot be achieved electronically) will be incurred. Expected additional non staff cost, press notices, will be sought to be recouped from HIE. Staff cost will be met out of the Infrastructure, Environment and Economy budget.

It is anticipated that any enforcement of the byelaw will be undertaken by the holder of the spaceport license under the Space Industry Act 2018. Ongoing press notice and site notice costs will be sought to be recouped from the spaceport operator.

- 3.2 **Legal** – The power to make byelaws sits with full Council. Following public consultation, a report will be prepared for full Council. Scottish Ministers may confirm (with or without modification) or refuse to confirm byelaws.

By Section 203 of the 1973 Act, contraventions of any confirmed byelaw will be an offence for which, upon summary conviction, persons will be liable for a fixed fine.

- 3.3 **Community (Equality, Poverty, Rural and Island)** – The byelaws will restrict the public's right of responsible access as provided by the 2003 Act over a wide area. However, the byelaws are only intended to be in operation for a limited period of time during launch events. Launch events are limited by planning condition to 12 per year.

Statutory undertakers, those with grazing rights, tenants or those accessing the land with the express permission of the landowner(s) will not be committing an offence under the draft byelaw.

- 3.4 **Climate Change / Carbon Clever** – The operation of the spaceport will have a significant carbon footprint. However, the byelaws themselves are intended to reduce the requirement to actively patrol the launch area by vehicle or air before a launch event to allow a safe launch area, free from the general public prior to it.

- 3.5 **Risk** – Objections if not withdrawn or otherwise resolved may lead to an inquiry.

- 3.6 **Gaelic** – There are no Gaelic language implications to this report.

4 Background to Space Hub Sutherland

- 4.1 Construction of a vertical launch space port with launch operations control centre, site integration facility, launch pad complex, antenna park, access road, fencing, services and associated infrastructure on land 2600M SW Of Dunbuie, Talmine, Tongue was given planning permission by the Council (20/00616/FUL) on 5 August 2020.
- 4.2 The planning application covers an area of 307 hectares, as seen on map in **Appendix 1** and contains the Launch Pad Complex.
- 4.3 The consented scheme is subject to 34 planning conditions. Condition 1 limits the number of launches to 12 per year and Condition 12 requires a Visitor Management Plan (VMP) to be submitted and approved no later than 6 months prior to the first launch. The VMP shall be approved in writing by the Planning Authority in consultation with NatureScot, Transport Scotland and the emergency services. A VMP has still to be submitted to the planning authority.
- 4.4 Recreational access rights provided by the 2003 Act shall not be exercisable within the fenced areas of the Launch Pad Complex at any time. This is land which is covered by Section 6 (1) (b) (i) and (ii) of the 2003 Act, namely, land over which access rights are not exercisable, by means of the land being taken up by a building, structure, plant or fixed machinery and the associated land, curtilage.

4.5 In order to safely undertake a launch, an area of land larger than the Launch Pad Complex is required to be clear of the general public. This Launch Exclusion Zone (LEZ) extends to approx. 5788 hectares and is the subject of the proposed byelaws.

5 Consideration of Public Access within the Proposed Launch Exclusion Zone

5.1 There is limited use of the A' Mhòine peninsula for public recreational access. Places of interest and access resources within the LEZ are:-

- Ben Hutig, a 408m hill 2.8km north of the launch pad;
- West Strathan and Achininver peat tracks, both start from the public road and enter into the LEZ;
- Coastal/cliff access along the north and northwest coast of the A' Mhòine; leading to, and including, Whiten Head and Maiden Sea Stacks; and
- Shepherds Bothy at Freisgill

5.2 The core path SU24.03 which leads from Midtown to West Strathan will not be affected by this draft byelaw.

5.3 The A838 and unclassified road to Dalvriad will not be affected by this draft byelaw.

5.4 This byelaw does not affect navigation on the sea.

5.5 HIE considers that for the safe and efficient operation of the spaceport the land within the LEZ is required to be free of members of the public. As access rights provided by the 2003 Act, are exercisable these rights will require to be restricted during launch events.

5.6 The restriction of public access rights during a launch event is reasonable given the current use of the area is limited and that each launch event is for a short period of time. Access rights will be exercisable within the LEZ for the vast majority of the year.

5.7 The time period during the launch events when the public will be required to be excluded from the LEZ is not yet known. Such time periods will be set out in notices for each launch event so are under the control of the Council.

5.8 The area of the LEZ has been chosen based on the launch pad location, flight line of any launch vehicle, the boundaries of some of the designated site and use of natural features to define the area. The LEZ is shown in Appendix 1

6 Land Reform (Scotland) Act 2003 Section 12 Byelaws to Restrict Public Access

6.1 Section 12(1)(c) of the 2003 Act allows for the Council to make byelaws providing for:-

- i) the preservation of public order and safety
- ii) the prevention of damage
- iii) the prevention of nuisance or danger
- iv) the conservation or enhancement of natural or cultural heritage

by prohibiting, restricting or regulating the exercise of access rights, Section 12(2)(a).

- 6.2 All of these provisions are valid for the management of the public during launch events at Space Hub Sutherland but in particular; to prevent the deliberate or accidental interference of the operation of the site and for the environmental protection of the European and Nationally designated sites within the LEZ.
- 6.3 It is proposed that the access restriction will come into force at specific times detailed on notices posted on site and on the Councils website and/or newspaper circulating in the area.
- 6.4 Any person who takes entry to land subject to the access restriction in contravention of the restriction of access shall, in terms of the 1973 Act, be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, and in the case of a continuing offence, to a further fine not exceeding the sum of £5.00 for each day during which the offence has been continued after the written notice of the offence from the Council.
- 6.5 Under Section 201 of the Local Government (Scotland) Act 1973 the Council shall not make byelaws under this section if provision for that purpose as respects the area is made, or may be made, under any other enactment.
- 6.6 There has only been a single Section 12 byelaw confirmed in Scotland. 55 acres of land in Dumfries and Galloway was excluded from Access Rights to allow an art and landscape installation to be developed and a fee charged for public entry.

7 Alternative to Byelaws

Section 11 Orders, Land Reform (Scotland) Act 2003

- 7.1 Section 11 of the Land Reform (Scotland) Act 2003 allows the Council, by order, to exempt land from access rights which would otherwise be exercisable by the same Act.
- 7.2 A Section 11 order can be made by the Council for a period of up to 6 days. For 6 days or more any order requires confirmation by Scottish Ministers and can last for a period of up to 2 years.
- 7.3 A Section 11 order would remove access rights from the area of land for the entire period as specified by the order. It is not considered appropriate to exempt land from access rights when launch events are not taking place, so a longer-term order (of up to 2 years) would be disproportionate. It would not be practical to process a Section 11 Order of up to 6 days, for each launch event as this would place an undue burden on the Council and likely constraints on timing of launches due to weather and technical matters.

Byelaws Under Section 24 of the Space Industry Act 2018

- 7.4 There is a provision in section 24 of the Space Industry Act 2018 for the licensee of the spaceport to make byelaws regulating the use and operation of the spaceport.

- 7.5 The spaceport is defined by the 2018 Act as a site from which spacecraft or carrier craft are launched/landed or are to be launched or landed. This spaceport area is that land which is within the fenced areas of the Launch Pad Complex, including the access track from the A836 and rail link between the assembly building and the launch pad. Byelaws cannot be made for the wider area that encompasses the LEZ.
- 7.6 The 2018 Act provides for the regulation of the wider launch area, the “range”. Regulations are made by the Secretary of State as space launches are a reserved matter. Range control services, with regards the regulations, may only be provided by the Secretary of State or a person authorised to provide them by a range control licence.
- 7.7 It is not known if such regulations could restrict public access rights as provided by the 2003 Act by virtue of Section 6(d) – land over which access rights are not exercisable due to public access being restricted by an enactment other than the 2003 Act.
- 7.8 No spaceport licence has been issued for the Space Hub Sutherland (SHS) spaceport and no operator has been granted a range control licence to manage the range associated with SHS spaceport.
- 7.9 There is considered to be no reasonable alternative to the use of byelaws for the safe and effective management of the Launch Exclusion Zone with regards public safety and environmental protection.

Designation: Executive Chief Officer Infrastructure & Environment

Date: 26 April 2023

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Background Papers: Appendix 1 – Launch Pad Complex Planning Application Area
Appendix 2 – Proposed Launch Exclusion Zone (LEZ)



LOCATION PLAN - 1:50000 AT A1

1:50000



DATE	REVISION	REV	DRW	CHK
06.01.2020	ISSUED FOR PLANNING	P01	LB	CH
15.01.2020	PROJECT TITLE UPDATED	P02	CH	CH
20.01.2020	TITLE BOX UPDATED	P03	LB	CH

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Keyplan

RED LINE DENOTES APPLICATION SITE BOUNDARY

North Arrow

Detail Symbol

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Scale 1:50000 @ A1

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Project
SPACE HUB SUTHERLAND

Drawing Title
SITE LOCATION PLAN
1:50000

Sheet Status
S2 - SUITABLE FOR INFORMATION

Project No. **IAGG19-0030**

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Appendix 2 - Proposed Launch Exclusion Zone (LEZ)

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