

Agenda Item	13
Report No	RC/036/19

HIGHLAND COUNCIL

Committee: Ross and Cromarty

Date: 14 August 2019

Report Title: Fortrose Caravan Park

Report By: Acting Head of Policy

1. Purpose/Executive Summary

1.1 The purpose of this report is to present the proposals for a disposal by way of a new lease of Fortrose Caravan Park to the existing tenants and to detail the steps that will be necessary to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015. It also notes any consequent Court proceedings that may be required before such a lease can be granted.

2. Implications

3.1 Resource: Managing and administering the consultation process falls within the responsibilities of the role of the Common Good Fund Officer. However, there is a requirement to seek Court approval where land is considered to be inalienable. This will require additional attendances at Court and, in some cases, conducting contested hearings. Any additional fees, expenses and outlays for these processes will form part of the legal costs expected to be met by the tenant.

3.2 Legal: The Community Empowerment consultation and need to seek Court approval when land is inalienable are requirements imposed by statute and must be complied with.

3.3 Community (Equality, Poverty and Rural): The consultation process is a duty imposed by the Community Empowerment (Scotland) Act 2015 which seeks to increase transparency about Common Good assets and improve community involvement in the decision-making process.

3.4 Climate Change / Carbon Clever: None.

3.5 Risk: None.

3.6 Gaelic: None.

3. Recommendations

3.1 Members are asked to:

- i. Note the background to the proposal for the disposal by way of new lease of Fortrose Caravan Park to the existing tenants.
- ii. Note the steps that will be necessary for the public consultation under section 104 Community Empowerment (Scotland) Act 2015.
- iii. Note the requirement to seek Sheriff Court approval in the event of a question arising as to the inalienability of the land upon which the caravan park is located.
- iv. Agree to open the public consultation on the proposal disposal.

4. Background

4.1 In 2004 Fortrose Caravan Park was leased to previous tenants with a lease term until 2025. In 2015 the lease was assigned for the remainder of the term to the current tenants. The existing tenants have submitted a request for the term of the lease to be extended for a period of 30 years from the current expiry date of June 2025.

4.2 Fortrose Caravan Park is located on land that is considered to be part of Fortrose Common Good by virtue of the foundation Charter creating the Royal Burgh.

4.3 In June 2018 the part of the Community Empowerment (Scotland) Act 2015 relating to Common Good property came into force. Section 104 requires local authorities to conduct a public consultation when considering whether to dispose of or change the use of a Common Good asset. In this context “disposal” is not just a sale but also a long lease exceeding 10 years or anything that gives a third party ascertainable rights of beneficial occupation. As the additional period of time requested is 30 years, this would qualify as a disposal triggering the requirement to consult.

5. Community Empowerment consultation

5.1 When a local authority is proposing to dispose of or change the use of a Common Good asset, section 104 requires a public consultation to be undertaken before any decision is made. Any representations received in the course of this process must be given regard to in informing the decision as to whether or not to go ahead with the proposal.

5.2 The public consultation period lasts for 8 weeks with notification being given to the Community Council for the area and any community bodies having an interest in the asset. However, the Council will accept representations from anyone wishing to make them. Such representations must be in writing. The Council has up to 8 weeks to respond to any representations and to make a decision whether or not to proceed with the proposal. Any significant changes to the proposal will result in a fresh consultation.

5.3 With regard to the request submitted by the existing tenants, this is for a period of an additional 30 years, there is no provision in the current lease granting the tenants any right to request an extension or a new lease and discussions have been ongoing in relation to changing some of the lease terms. As a result, the Council will be required to conduct the consultation before any final decision can be made.

6. Title and requirement to seek approval of the Sheriff Court

- 6.1 Land that is assessed as Common Good by virtue of the Charter founding the Royal Burgh is usually 'inalienable'. Since coming into force in 1975, section 75 Local Government (Scotland) Act 1973 requires Councils to get court consent for disposals (and now changes of use) of inalienable Common Good land. Inalienability can arise from specific purposes stated in the deed, dedication for public use or public use for time immemorial. It is sufficient for the Council to consider that a question as to inalienability exists for the requirement to apply to Court to arise.
- 6.2 In the case of Fortrose, no foundation Charter has yet been seen although investigations are ongoing. However the prevailing understanding is that the land on which the caravan park is located is Common Good land by virtue of the Charter and, as such, this would raise a sufficient question about inalienability to require an application to Court to be made. It could take up to 6 months for the Court process depending on how busy the Court lists are.

Designation: Acting Head of Policy

Date: 7 August 2019

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