

Agenda Item	9
Report No	BIDS/007/20

THE HIGHLAND COUNCIL

Committee: Black Isle, Dingwall and Seaforth

Date: 25 February 2020

Report Title: Fortrose and Rosemarkie Common Good Fund:
Proposed lease of Fortrose Camp Site to existing tenants

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

Purpose/Executive Summary

1.
 - 1.1 This report provides information on the outcome of the public consultation under the Community Empowerment (Scotland) Act 2015 in respect of the proposal to grant a 30 year lease for Fortrose Camp Site, which is located on Common Good land, to the existing tenants.

Recommendations

2.
 - 2.1 Members are invited to:
 - i. Note the outcome of the consultation process undertaken.
 - ii. Agree the proposal to grant a 30 year lease of Fortrose Camp Site (which is located on Common Good land) to the existing tenants subject to the consent of the Sheriff Court being obtained.

3. Implications

- 3.1 Resource – the existing tenants have agreed to meet the costs associated with the consultation, Court proceedings and property transaction.
- 3.2 Legal – the statutory requirement to consult has been complied with. Where land is also considered inalienable, there is a statutory requirement to seek Court approval for a disposal. This must also be complied with.
- 3.3 Community (Equality, Poverty, Rural and Island) – The existing tenants have already invested in the Camp Site and wish to undertake further investments. This produces community benefit by providing local employment, promoting the local area and bringing visitors into a rural village who contribute to the local economy.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.

4. Proposal to dispose, by lease, of Fortrose Camp Site (located on Common Good land) to the existing tenants

- 4.1 The Camp Site was leased to the former tenants in 2004 for a period of 21 years. In 2015 the lease was assigned to the existing tenants. Since taking over the lease, the existing tenants have undertaken extensive improvements, provided local employment and increased occupancy including with returning visitors. They now wish to commit to further investment and have asked the Council to consider granting them a 30 year lease which would give them the security for the level of investment, allow them to grow the business and to see a return on their investment.
- 4.2 A lease over 10 years is considered to be a disposal therefore, a public consultation pursuant to section 104 Community Empowerment (Scotland) Act 2015 is required. A report on the proposal was placed before Committee on 14 August 2019 and Members agreed to commence the public consultation.
- 4.3 The public consultation commenced on 3 October 2019 and concluded on 29 November 2019. An analysis has been prepared containing the outcome of the consultation – **Appendix 1.**
- 4.4 47 representations were received from both local residents and from visitors using the site.
- 42 representations were fully supportive. Examples of the comments in support are contained in the analysis at section 2b of Appendix 1.
 - 5 representations raised objections/issues that require a response. 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 analysis at section 2c of Appendix 1.
- 4.5 This area of Common Good land is considered to derive title from the Burgh Charter of King James VI dated 6 August 1590 as subsequently ratified by King Charles II on 1 January 1661. 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 dispose of the land by lease under section 75 Local Government (Scotland) Act 1973. Given the nature of the land and its use as public access camp site, 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.
- 4.6 Members are now asked to note the outcome of the consultation. The available options for the next steps are:-
- Agree that the proposal to dispose of the land by lease to the existing tenants should go ahead subject to the Court permission being granted
 - 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** namely level of support and responses given to issues raised, it is recommended that Members agree that the proposal to dispose of Fortrose Camp Site (located on Common Good land) by lease to the existing tenants should go ahead.

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

Date: 13 February 2020

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Background Papers: Appendix 1 – Analysis of Community Consultation

FORTROSE AND ROSEMARKIE COMMON GOOD
PROPOSAL TO DISPOSE, BY LEASE, OF FORTROSE CAMPSITE TO THE EXISTING
TENANTS
ANALYSIS OF COMMUNITY CONSULTATION

1. Number of responses received

The public consultation period ended on 29 November 2019 with a total 47 responses having been received. These are broken down as follows:-

- 42 – supportive/positive
- 5 – objecting or raising issues
- 31 – local residents
- 9 – visitors
- 1 – originally visitor but moved to live locally
- 6 – location not specified

2. Representations, questions and issues distilled from the responses received

a. The consultation document asked 4 questions as guidance:-

- What are your views on the proposed disposal by new lease of Fortrose Caravan Park to the current tenants?
- 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?

b. Supportive comments received

42 responses were received that were positive/supportive. The types of comments received can be summarised in the following examples:-

- Long term lease allows money to be raised for investment, allows for return on investment, provides long term security and is for the good of the community
- Improvement to condition of site and reputation
- Site promotes return business which is of benefit to the whole community
- Existing tenants have shown commitment to the community by promoting the area, local businesses, tourism initiatives and employing local people
- Existing tenants are considerate to community and neighbours and discuss any proposed work/improvements
- Quote from a site users and return visitors – one of the “friendliest and best run sites”; “The tenants go to endless lengths to ensure their visitors are looked after, the facilities are kept in excellent condition”
- Quote from a local resident – “Fortrose is the better for their having the site, and by extending the lease they will have more security to continue their good work”
- Securing such committed tenants is an opportunity that should not be missed by the Common Good Fund
- Tenants are noted to be approachable, passionate, hardworking, environmentally aware, fair/good employers and sensitive to the local community

c. Objections or issues raised for response

5 representations were received that raised objections or issues that require a responses from the Council. These are contained in the table below.

Questions/issues/concerns	Council's suggested response
<p>30 year lease is too long; it should be no longer than 10 years – what is the business case for a lease of this length?</p> <p>The existing tenants took on the lease knowing it only had 10 years left to run and were prepared to invest therefore a shorter period for payback on investment should be sufficient.</p>	<p>The usual caravan park lease term is over 20 years. Commercial operators are unlikely to take a shorter lease, or if they do, they are less likely to invest.</p> <p>It is understood that the existing tenants took on the lease anticipating Highland Council would agree to renew although they now appreciate that this was not guaranteed.</p>
<p>No information has been provided regarding future investment plans to justify granting a long lease.</p>	<p>A new long lease will give the tenants some assurance to develop their future investment plan. For the landlord, the justification for the proposal is that it guarantees a long income stream for the Common Good Fund.</p>
<p>In the future the Community Council or a voluntary body might want to take on the campsite and run it for the good of the community – the length of lease proposed would make this virtually impossible.</p>	<p>Currently the caravan site is leased on a commercial basis with the rent being collected for the Common Good of the community. If the Community Council/voluntary group took over operation, there would be an expectation that they would continue to pay a commercial rent unless a business case was advanced and approved for a reduction.</p> <p>Whilst the caravan site is owned on behalf of the Common Good any improvements are owned by the tenant who is not bound to leave them if/when the lease expires/ends. Any new tenant/operating group would need to bear this in mind.</p>
<p>Consultation is limited by a failure to disclose the full terms of the lease.</p> <p>Rent must be market rent.</p>	<p>The full proposed terms of the lease are commercially sensitive at this time however they are broadly similar to the standard commercial lease.</p> <p>The proposal clearly states that the rent will be market rent and will continue on this basis.</p>

<p>Rent should be reviewed annually not 5 yearly with an adjustment on 5 yearly basis if market rent exceeds RPI.</p>	<p>The common practise for commercial leases is for rent reviews to be 5 yearly. In this case the rent is to be reviewed 5 yearly to market rent on an upward only basis.</p>
<p>Existing tenants should be granted a shorter lease but offered 5 year extensions if they agree</p>	<p>It would be unreasonable to expect the existing tenants to agree to a commercial lease on such terms.</p>
<p>The lease should be non-assignable otherwise Highland Council will have no say in any future operators. If the tenants wish to leave the lease should revert to the Common Good Fund.</p>	<p>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.</p>
<p>The Community Council must be consulted and must agree before any tenancy agreement is signed off.</p>	<p>The Community Council is a statutory consultee in respect of section 104 consultations and will be invited to make any representations. Highland Council must have regard to all representations made within the process when reaching a decision in respect of the proposal. However, the final decision rests with Highland Council after consideration of the information received and there is no requirement to seek the prior agreement of the Community Council.</p>
<p>The boundary of the campsite appears to be the high water mark unlike the privately owned neighbouring houses, is this correct?</p>	<p>The boundary of the caravan site is as stated on the lease plan and extends to the high water mark. The boundaries of the private properties would have been set when those plots were sold, and no further information is available.</p>
<p>The increased business has resulted in an increase in traffic along Wester Greengates – there have already been some minor accidents at the hazardous corner. Could some of the rent received be used to resolve this issue and make the corner safer for all users?</p>	<p>The caravan park is a Common Good asset and the rental income is received into the Common Good Fund. However, these concerns have passed to Highland Council's Roads Service for their attention.</p>

3. Next steps

- Consider and agree responses to above questions/issues. 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 must be made at Area Committee. If the value exceeds 10% the decision falls to full Council.

4. Decision making options

- Happy with proposal going ahead and agree with proceeding to apply to Court for authority.
- Consider if any amendments to the proposal may be necessary in light of the representations received – any significant amendments will trigger a fresh consultation period.
- Decide that the proposal should not go ahead.

5. Additional information

There are specific regulations governing the management of Common Good. This is to ensure protection for assets held. One such area is where property is considered 'inalienable'. This means that there is a restriction regarding the property namely; its purpose is clearly stated in the deed or gift to the Common Good Fund (often specifically dedicated for public use), it has been dedicated to public use after acquisition or it has to be used in a certain beneficial way for a lengthy period of time (time immemorial). Land that derives its Common Good title from the original Burgh Royal Charter is invariably considered to be inalienable.

The piece of land that is the subject of this proposal is believed to derive its title from the original Burgh Royal Charter dated 6 August 1590. This and a subsequent Charter have been located and are being translated from Latin however, the Records of the Parliament of Scotland to 1707 contain a Ratification for the Burgh of Fortrose by Charles II dated 1 January 1661 that confirms this Charter.

The dedication and public use of this Common Good land as a caravan park is considered to raise a question of inalienability. Therefore, it will be necessary to seek the consent of the Sheriff Court to any proposed disposal. Any application to the Court will include information about this consultation and the responses received. It will also have an impact on any likely timescales involved with completing to the new lease of the property should a decision be made to proceed with the proposal.