

Agenda Item	10(b).
Report No	SCC/24/21

THE HIGHLAND COUNCIL

Committee: Sutherland County Committee

Date: 22 November 2021

Report Title: Dornoch Common Good Fund – Consultation on:
1. Proposal to dispose, by sale, of 49m² or thereby of land at 1 River Street, Dornoch
2. Proposal to dispose, by sale, of 164m² or thereby of land at Well Street, Dornoch

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 two public consultations under section 104 Community Empowerment (Scotland) Act 2015 which propose to dispose of two areas of Dornoch Common Good land namely:
- proposal to dispose, by sale, of 49m² or thereby of land at 1 River Street, Dornoch, IV25 3LZ
 - proposal to dispose, by sale, of 164m² or thereby of land at Well Street, Dornoch, IV25 3LU

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 both proposals set out in **Appendix 1** for publication.
 - iii. Agree the proposal to dispose, by sale, of 49m² or thereby of land at 1 River Street, Dornoch.
 - iv. Consider and assess the representations received in connection with the proposal to dispose of 164m² or thereby of land at Well Street, Dornoch and decide whether or not the proposal should go ahead.

3. Implications

- 3.1 Resource – The proposal for 1 River Street relates to the sale of a small piece of land to the existing owners of the property which will enable the correction of a conveyancing omission following the rerouting of River Street in the 1950's/60's. A valuation of £2000 has been agreed and the owners have agreed to meet the costs associated with the consultation. There is no income related to this piece of land.

The proposal for the land at Well Street referred to as 1 Well Street in the consultation relates to a request by the existing tenant to purchase the area of land which included a garage. The land at Well Street includes a domestic garage and is currently leased out providing a modest income to the Common Good Fund. Approval of the proposal to sell will remove this asset from Dornoch Common Good Fund and the annual income. A valuation of £8500 has been agreed. The tenant has confirmed agreement to meeting the costs involved in the consultation process should the proposal to dispose be approved.

In respect of both proposals, if approved, any sums received would be paid into Dornoch Common Good Fund.

- 3.2 Legal – the statutory requirement to consult has been complied with. In both cases, the use of the areas of land in question have been for private rather than public use. The Council does not consider that a question of alienability is raised in either case and, as a result, if approved, does not consider it will be necessary to seek Sheriff Court approval.
- 3.3 Community (Equality, Poverty, Rural and Island) – The title anomaly with regard to the land at River Street occurred as a result of the re-routing of River Street in or about 1950's/60's with the small area of land falling into the use of the property owners from then on. The property is now part of an executory and a request for transfer of the property has shown that this small area of land is not included within the current title. Other properties on River Street have undertaken corrective conveyancing and it would be equitable for it to take place in this case too.

The land at Well Street includes a domestic garage and is currently leased out providing a modest annual income to the Common Good Fund. Whether or not this is considered to be in the best interests of the residents of the former Burgh will form part of the decision making within this process.

- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.

4. Consultations in respect of the areas of land at River Street and Well Street, Dornoch

- 4.1 As both proposals related to disposals by sale of small areas of land, it was considered sensible to conduct the consultations within a single process. Notwithstanding this, the

outcome of both consultations will be given separate consideration and separate decisions made.

- 4.2 Members were briefed and were supportive of commencing the public consultations in the manner outlined at 4.1 above. The public consultation commenced on 16 August 2021 and concluded on 11 October 2021. An analysis of the outcome of the consultation for both proposals has been prepared and can be found at **Appendix 1**.
- 4.3 A total of 7 responses were received. Some addressed both consultations however, most only addressed the proposal in respect of the Well Street land. The responses were broken down as follows:
- 2 addressed both proposals as follows:
 - Both were fully supportive of the River Street proposal
 - Both were supportive of the Well Street proposals but subject to issues which have been detailed in the table at section 3b of **Appendix 1**.
 - 5 addressed Well Street proposal only as follows:
 - 2 were fully supportive
 - 2 opposed the proposal
 - 1 was supportive but subject to issues which have been detailed in the table at section 3b of **Appendix 1**.

5. Proposal to dispose, by sale, of 49m² or thereby of land at 1 River Street, Dornoch

- 5.1 When the property at 1 River Street was sold to the original purchasers, it was sold in 2 parcels of land either side of River Street. At some point in or about 1950's/60's, River Street was relocated to the north of the properties and the use of the original location as a road was discontinued. The area of the discontinued road fell into use as part of the properties concerned but no conveyancing process was completed at the time to formalise the position. The current owner purchased the property in 1972 but the issue of the anomaly of the former location of River Street was not addressed within this transaction. The property now forms part of an executory and it was during the process of investigating the title for transfer that the anomaly came to light and an approach was made to the Council to consider sale of the land to allow the title to be corrected to include the full area that had been used since 1950's/60's. The area of land concerned has been valued at £2000.
- 5.2 When the land was originally sold in 1931, it was described as forming "part of the Burgh Lands of Dornoch". As a result it has been assessed as now forming part of the Common Good of the former Royal Burgh of Dornoch. This piece of land has been identified as Common Good as part of the title investigation and therefore, the proposal to sell is considered to be a disposal of Common Good property and triggers the requirement to conduct a public consultation under section 104 Community Empowerment (Scotland) Act 2015 regardless of the fact it was not previously included on the Common Good a Asset Register for the former Burgh of Dornoch.
- 5.3 There were only 2 responses received that addressed this proposal and both were in support. The reasons given for the support are summarised in Section 2a of **Appendix 1**. No issues were raised requiring responses from the Council in respect of River Street.

6 Proposal to dispose, by sale, of 164m² or thereby of land at 1 Well Street, Dornoch

- 6.1 The area of land that is the subject of this proposal is a remnant of the original Littleton Land which is considered to be Common Good with title deriving from the original Royal Charter of 1628. The land has been used as the location for a domestic garage and leased as such. The current tenant has leased the garage site since 2007 with the lease having 7 years left to run. The lease produces a modest rent of £60 per annum for the Common Good Fund. When the current tenant took the lease in 2007, the site was dilapidated and untidy and the tenant has invested money in it over the years to improve and maintain it and to keep it tidy. An approach was made to the Council to consider sale of the site to the current tenant. The site has been valued at £8500.
- 6.2 A proposal to dispose, by sale, of Common Good property triggers the requirement to consult under section 104.
- 6.3 All representations received addressed the proposal in respect of the Well Street land. The supportive comments are summarised in section 3a of **Appendix 1** with the issues or objections being raised for response being contained in the table at section 3b together with suggested responses. The issues or objections raised include other interest in purchasing the site, querying the potential future use of the site and access issues. The question of other interest in purchasing has been raised with the Council Estates Team who have confirmed that the tenant is considered to be a special purchaser and there is no requirement for the site to be offered on the open market. All other matters are fully addressed as mentioned in the table in **Appendix 1**.

7 Court application

- 7.1 The Council must consider whether or not either piece of land could be considered to be inalienable or to raise a question of alienability. If so, there is a statutory duty to seek the approval of the Sheriff Court before any disposal can proceed. Inalienable land is considered to fall into 3 categories – specific dedication in the title deed, dedication to a public purpose by the Council or public use for time immemorial.
- 7.2 In respect of both of these proposals, notwithstanding the fact both pieces of land derive title from being Burgh Lands, their use has been private and not public. Therefore, it is considered there is no requirement to seek Sheriff Court approval for either disposal if approved by Members.

8 Outcome and decision

- 8.1 The governance for the decision making is provided for in the Council's Scheme of Delegations. The decision making for the disposal of an asset where the value of the asset is 10% or less than the total value of the area fund rests with Members at Sutherland County Committee. Where an asset value exceeds 10%, the decision making falls to full Council. In both of these proposals the value of each asset is less than 10% of the total fund value and therefore, the decision making will fall to Sutherland County Committee.
- 8.1 Members are now asked to note the outcome of the consultation in respect of the land at 1 River Street. The available options for the next steps are:-
- Agree that the proposal to dispose, by sale, of 49m² or thereby of land at 1 River Street should go ahead

- 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 to dispose, by sale, of the land at 1 River Street should go ahead.

8.2 Members are now asked to note the outcome of the consultation in respect of the land at 1 Well Street. In making a decision, Members must have regard to any representations made within the consultation process. The supportive comments received from the immediate neighbour and a former resident of the same property are summarised at section 3a of **Appendix 1**. The issues that have been raised and suggested responses are detailed in the table at section 3b of **Appendix 1**. Members should consider all representations received for and against and make a decision in accordance with the following options:

- Agree that the proposal to dispose, by sale, of 164m² or thereby of land at 1 Well Street should go ahead
- Amend the proposal (any significant amendment would require a new consultation process)
- Decide that the proposal should not go ahead.

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

Date: 26 October 2021

Author: Sara Murdoch, Common Good Fund Officer

Background Papers:

DORNOCH COMMON GOOD

ANALYSIS OF COMMUNITY CONSULTATION ON:

1. PROPOSAL TO DISPOSE, BY SALE, OF APPROXIMATELY 49M² OF LAND AT 1 RIVER STREET, DORNOCH, IV25 3LZ
2. PROPOSAL TO DISPOSE, BY SALE, OF 164 M² OF LAND AT 1 WELL STREET, DORNOCH, IV25 3LU

1. Number of responses received

The public consultation period ended on 1 October 2021 with a total of 7 responses having been received. Some responses addressed both consultations however most addressed the proposal in connection with Well Street and made no comment on River Street. These responses are broken down as follows:

- 2 addressed both proposals
- 5 addressed Well Street only

Of the 2 addressing both proposals, both were fully supportive of the proposal regarding River Street and supportive of the proposal regarding Well Street subject to provisos which will be raised in the table below.

Of the 5 responses that addressed Well Street only, 2 were fully supportive, 2 opposed the proposal and 1 was in support with provisos otherwise against the proposal. All issues raised will be addressed in the table below.

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

a. Supportive comments received

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

- The proposal in the case will result in the righting of an historical wrong.
- It is beneficial to the occupier and will bring funds into the Common Good fund which will benefit Dornoch residents.

b. Objections or issues raised for response

Only comment made was that it is assumed the occupier finds the purchase price to be fair and reasonable. It is confirmed that the price has been agreed with solicitors on behalf of the purchaser.

3. Representations, questions and issues distilled from the responses received – Well Street

a. **Supportive comments received**

Supportive comments were received from the immediate neighbouring property and a former resident of that property and are summarised as follows:-

- It is beneficial to the occupier and will bring funds into the Common Good fund which will benefit Dornoch residents.
- Since taking on the lease, the tenant has kept the land very tidy, grass mown, and all old litter and rubbish has been removed.
- It would be good for this area of land to be in private ownership in keeping with the other properties at 1-4 Well Street.

b. **Objections or issues raised for response**

The issues raised as provisos for support are also included in the table below.

Questions/issues/concerns	Council's suggested response
<ol style="list-style-type: none"> 1. Where does address of 1 Well Street come from? Over 60 years ago my parents bought no 1 & no 2 and combined them into one house with the address 2 Well Street. 2. My name is on the title of 2 Well Street, and I will live there after my mother's death. I would like the opportunity to purchase this area of land. 3. Householders should have been properly consulted about this sale. 	<ol style="list-style-type: none"> 1. It may be that this is a clerical error. The first house it listed as 1 Well Street on the map system used by the Council however, the lease plan identifies the same property as no 2. In any event the location as identified in the images within the consultation document (a copy of which was posted outside 2 Well Street) is clear. 2. Negotiations have taken place with the existing tenant who has a tangible interest in the property. As such this makes her a special purchaser and the Council is not obliged to offer the site on the open market. 3. This is the forum for the public consultation on the proposal to sell.
<ol style="list-style-type: none"> 1. Why does the current tenant want to buy when there is still time left to run on the lease? 2. Does she plan to turn the land and garage into a dwelling house or letting pod? 3. If the sale goes ahead, can the Council give written confirmation 	<ol style="list-style-type: none"> 1. The only information comes from the solicitor making the request to consider sale to his client which was that the site was historically dilapidated, and she had invested considerable sums in and now tidied up 2. There has been no indication given that to this effect.

<p>that no planning permission will be granted for dwelling of commercial premises on this land?</p>	<p>3. This would place a restriction on the use of the land which would impact on the value resulting in a reduction in price. Even if the Council agreed to impose such a burden, it could subsequently be challenged and would be likely to be overturned in Court.</p>
<p>This land also provides access to 2, 3 & 4 Well Street which would be lost if the land was sold.</p>	<p>Land would be sold with all existing access rights. Such existing rights would not be extinguished by the sale. A site visit has taken place to clarify the position as follows:</p> <ul style="list-style-type: none"> • Vehicular access for number 3 via ground subject to proposal <p>However, there are paths giving pedestrian access between the gable ends of numbers 2 & 3 and for number 4 on the other side.</p> <p>Access to the rear of the properties by pedestrians exists other than over the property in question but vehicular access for number 3 would need to be protected in any sale.</p>
<p>The Highland Council has always had a policy against the sale of Common Good land. This is a rental property which raises income for Dornoch Common Good and this can continue. There is no justification for a sale.</p>	<p>The Highland Common Good fund policy does not prohibit sales of Common Good property and each case is assessed on its individual merits. Whilst this is a rental property, the annual rental is low and unlikely to increase significantly. The public consultation is a way to seek information which will all be considered in making a decision in respect of this proposal.</p>
<p>The sale proceeds should be ring fenced to purchase another parcel of land or to allow for the purchase of additional land by a community group.</p>	<p>Any proceeds from the sale will be a capital receipt into Dornoch Common Good fund and will be available to be used in accordance with Common Good policy and governance.</p>
<p>If the disposal goes ahead and development consent is subsequently obtained and the plot sells for considerably more than £8000, a percentage of around 80% of the gain after appropriate inflation adjustment should be paid to the Common Good Fund.</p>	<p>It is unlikely any purchaser would agree to such a condition. The only way it could be achieved would be by placing an economic development burden on the land, but this would reduce the value of the land.</p>

	The current price negotiated will have included a “hope value” in respect of future development although no guarantees about any decision can be given.
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4. 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 in respect of each proposal and make a decision in respect of each proposal. As the value of each area of land is less than 10% of the total value of Dornoch Common Good Fund, the decision making rests with Sutherland County Committee.

5 Decision making options

- Happy with proposal going ahead and agree to proceeding to Sheriff Court for approval
- 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
- Decide that the proposal should not go ahead.

6 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

In both of these cases, the use of the areas of land in question have been for private rather than public use. The Council does not consider that a question of alienability is raised in either case. As a result, in the event that the outcome of the consultation is to support disposal, the Council does not consider it will be necessary to also seek Sheriff Court approval.

The Community Empowerment consultation is separate to any process and consultation under planning legislation.

Sara Murdoch
Common Good Fund Officer
26.10.2021