

Agenda Item	<b>7(a).</b>
Report No	<b>SCC/18/22</b>

## THE HIGHLAND COUNCIL

**Committee:** Sutherland County Committee

**Date:** 7 November 2022

**Report Title:** Dornoch Common Good Fund – Consultation on proposal to dispose, by sale, of 56m<sup>2</sup> or thereby of land at Tigh Ruaraidh, 8 Well Street, Dornoch

**Report By:** Acting Depute Chief Executive and Executive Chief Officer – Performance and Governance  
Executive Chief Officer – Communities and Place

### 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 on the proposal to dispose, by sale, of an area of Dornoch Common Good land namely, Tigh Ruaraidh, 8 Well Street, Dornoch

### 2. Recommendations

- 2.1 Members are asked to:
- i. Note the outcome of the consultation process undertaken as detailed in paragraph 4 below and contained in the analysis at **Appendix 1**.
  - ii. Approve the responses to the representations raised in connection with the proposal as contained in the table in **Appendix 1** for publication on the Council's website.
  - iii. Agree the proposal to dispose, by sale, of 56m<sup>2</sup> or thereby of land at Tigh Ruaraidh, 8 Well Street, Dornoch.

### **3. Implications**

- 3.1 Resource – The proposal relates to the sale of a small piece of land to the existing owner of the property at Tigh Ruaraidh, 8 Well Street, Dornoch. Whilst the area of land in question has never formed part of the title, it does provide access to the front of the house in a similar manner to how a road/pavement would provide access. In addition, past owners have fenced off the land and used it as garden ground and for parking. A valuation of £8000 has been agreed and the owners have also agreed to meet the costs associated with the consultation. There is no income related to this piece of land.

If approved, the sums received would be paid into Dornoch Common Good Fund.

- 3.2 Legal – the statutory requirement to consult has been complied with. The area of land in question has been used for private rather than public use. Therefore, the Council does not consider that a question of alienability is raised 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 sale of the area of land subject to the proposal will allow the owner to acquire full title to the land that has historically been used and enjoyed by the past owners of the property at Tigh Ruaraidh, 8 Well Street, Dornoch.
- 3.4 Climate Change / Carbon Clever – none.
- 3.5 Risk – none.
- 3.6 Gaelic – none.

### **4. Consultation in respect of 56m<sup>2</sup> of land at Tigh Ruaraidh, 8 Well Street, Dornoch**

- 4.1 The area of land subject to this consultation has never formed part of the title to the property at 8 Well Street, Dornoch. It has provided access to the front of the house in a similar manner to how a road or pavement would provide access. Notwithstanding this, past owners have fenced off the land and used it as garden ground and for parking. In or about 1950/60's Well Street was re-routed from the front to around the rear of the property however, a track had pre-existed this action and, regardless, the front access to the property remained unaffected with no new rights being inferred in favour of the property.
- 4.2 In 2009, extensive negotiations took place regarding a possible sale with the then property owner and a subsequent purchaser however, in 2015, the owner at the time decided not to proceed further with the transaction. In 2016 the Council completed voluntary registration of its ownership of the land in question. Following a new request from the current owner, negotiations have taken place with a proposed purchase price of £8,000 being agreed. This was subject to public consultation being undertaken.
- 4.3 The property is located in the Littletown area of Dornoch with the title to the whole area being assessed as originally deriving title from the Royal Charter of 14 July 1628. Initially, this was not noted as being Common Good land however, investigations following the request to consider sale have confirmed that the area of land in question is a remnant of Charter land which as former Burgh land is now considered to be Common Good.

- 4.4 As the land has now been assessed as Common Good, any proposal to dispose by sale must first be subject to a public consultation under section 104 Community Empowerment (Scotland) Act 2015. The consultation commenced on 31 May 2022 and concluded on 28 July 2022. An analysis of the outcome of the consultation has been prepared and can be found at **Appendix 1**.
- 4.5 A total of 5 responses were received including responses from the Community Council and local residents. The responses were broken down as follows:
- The Community Council confirmed support by majority.
  - 2 representations supported fully and raised no issues.
  - 1 representation was in support but raised a query for response by the Council.
  - 1 representation objected to the proposal and raised comments for response.
- 4.6 **Appendix 1** provides examples of supportive comments received at section 2a. A table detailing the representations received in connection with the proposal and the proposed responses from the Council for publication on the Council website is contained at section 2b.
- 4.7 Overall, the majority of comments received were in support of the proposal to dispose of the land by sale, noting that the piece of ground does not have wider community benefit. A query was raised regarding the valuation, and another objected on the basis that all Common Good land should be retained on principle.

## **5 Court application**

- 5.1 The Council must consider whether or not the area 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.
- 5.2 In respect of the area of land subject to this proposal, notwithstanding the fact it is considered to derive title from being Burgh Land, its use has been private and not public. Therefore, it is considered there is no requirement to seek Sheriff Court approval for disposal if approved by Members.

## **6 Outcome and decision**

- 6.1 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. With regard to this proposal the value of the 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 Tigh Ruaraidh, 8 Well Street. The available options for the next steps are:-
- Agree that the proposal to dispose, by sale, of 56m<sup>2</sup> or thereby of land at Tigh Ruaraidh, 8 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.

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 Tigh Ruaraidh, 8 Well Street should go ahead.

Designation: Kate Lackie, Acting Depute Chief Executive and Executive Chief Officer –  
Performance and Governance  
Allan Gunn, Executive Chief Officer – Communities and Place

Date: 28 September 2022

Author: Sara Murdoch, Common Good Fund Officer

Background Papers: Analysis of consultation

### DORNOCH COMMON GOOD

#### ANALYSIS OF COMMON GOOD CONSULTATION ON THE PROPOSAL TO DISPOSE, BY SALE, OF APPROXIMATELY 56m<sup>2</sup> OF LAND AT TIGH RUARAI DH, 8 WELL STREET, DORNOCH, IV25 3LU

##### **1. Number of responses received**

The public consultation period ended on 28 July 2022 with a total of 5 responses having been received. Responses were received from The Dornoch Area Community Council, a community group and local residents. These responses are broken down as follows:

- The Community Council confirmed support of the proposal by majority.
- 2 representations supported fully and raised no issues.
- 1 representation was in support but raised a query for response by the Council
- 1 representation objected to the proposal and raised comments for response.

##### **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:-

- It tidies up an area of land that has always looked like it belonged with the house.
- It has been maintained in a good and tidy condition as part of the front garden and provided access to the house since at least 1970s. Agreeing the proposal will not cause any problems with general access in the area as the road continues around the back of the property.
- Viable Common Good land should be retained where it can be demonstrated that such retention is of benefit to the community but that is not the case here.
- The land has been used as front garden for years and records of how this came to be are not clear, therefore a sale will simply regularise this situation.
- The fact it is Common Good is restrictive on the house owner – it precludes development and could cause difficulties in any future sale.
- There is no demonstrable benefit in retaining this land as Common Good. Well Street goes around the back of the property and is a quiet road so there is no case in using this area of land for additional road access. Given its size and location there are no options for useful repurposing.
- Dornoch Common Good will receive £8,000 from the sale which will benefit the fund.

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

Some representations received raised comments or issues for comment only with others objecting to the proposal and also raising comments or issues.

The issues raised are summarised in the table below.

<b>Questions/issues/concerns</b>	<b>Council's suggested response</b>
Is the valuation high enough bearing in mind the increase in value to the property and current property prices in Dornoch?	The figure negotiated represents best value given the size, market evidence, restricted use and location of the area of land in question. All valuations are undertaken on an individual basis, in order to achieve best value and consider all factors.
Dornoch Common Good land is a valuable asset which has been diminished over the years by piecemeal disposals such as the one proposed. A hard line should be taken to resist this unless there are exceptional circumstances. No such circumstances exist here.	This is only the third such request since the Community Empowerment (Scotland) Act 2015 came into force. Of the previous 2 requests one was agreed, and one was refused following Members consideration of the outcome of the consultation process.
There are other similar pieces of land in Littleton that have been taken over by householders – if this proposal is agreed other requests will follow.	Any request received will be investigated and considered on its own merits.
A previous owner of this property sought to purchase this land some years ago and the request was refused. Therefore, it should be refused now.	The request was not refused – the owner at the time decided not to proceed with the transaction for personal reasons. This request has been treated as a new request.
The area of land should be leased to the current owner for a commercial rent. This would be of benefit to the Common Good.	The land in question has minimal rental value due to its size, location, and restricted use. A very limited site with little market demand once all factors are considered. This would be reflected in a low rental value.  The cost of administering and upholding the lease could offset the rental income from the site due to the low value the site could achieve as a leased area.  Due to the reasons mentioned above leasing the site was not considered a practical or realistic resolution for this particular area. Whereas a sale would generate a reasonable capital return to the benefit of the Common Good on the area of ground that is non income generating.
The consultation document demonstrates the insignificance of this piece of land and	This is an inaccurate interpretation. Across the Highland Common Good funds

<p>its uselessness to the community. One sentence reads as follows: <i>'When the Common Good Asset Register was consulted upon and published in February 2020, this piece of land was overlooked and not raised in consultation enquiries.'</i> In other words, this parcel was so insignificant that it was omitted altogether from the register – and nobody noticed.</p>	<p>there will be remnants of Charter land that may have been overlooked and which may become apparent during property enquiries. It would not have been possible to have definitively identified all these small parcels of land prior to the Registers being published. However, the Registers are living documents and remain open to allow rectification when such areas of land are discovered.</p>
---	---

### 3. 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. If the value of the proposed disposal is up to 10% of the Fund value, the decision in respect of the proposal rests with Sutherland County Committee. If the value exceeds 10%, the decision falls to full Council. In respect of this matter the value of the asset is less than 10% of the total value of Dornoch Common Good fund.

### 4. Decision making options

Available options are as follows:-

- Decide proposal should go ahead in the terms of the consultation document.
- 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.

### 5. Additional information

The proposal constitutes a disposal. The Council is required to consider whether a question of alienability arises. The area of land is considered to be a remnant of land deriving title from the Royal Charter of Charles II dated 14 July 1628. To be considered to be inalienable, the land should fall into one of the 3 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 this particular case, the use has always been of a private nature and, as such, it would not attract the classification of inalienability. Therefore, it is the Council's opinion that an application to the Sheriff Court for approval is not required.

The Community Empowerment consultation and Court application are separate to any process and consultation under planning legislation.

Sara Murdoch  
Common Good Fund Officer  
28.09.2022