

The Highland Council
Council Buildings
Glenurquhart Road
Inverness

Our ref. MD/D.02800.00001
Your ref.
Date: 5 February 2024

Dear Sirs

Dornoch Caravan and Camping Park Ltd (“DCC”)

We act for DCC which is the tenant under a lease between The Highland Council (as statutory successor to Sutherland District Council) and William Macrae dated 27 April 1992 and subsequent dates and recorded GRS Sutherland on 15 December 2011 as varied (“**Lease**”).

They have provided us with a copy of a report prepared by The River Restoration Centre, Options for reducing flood risk and improving habitats in the lower Dornoch Burn, on behalf of NatureScot dated July 2023 (the “**Report**”) and informed us of the meeting organised by Highland Council on 16 January concerning the proposal to proceed with Option C in the Report concerning works to the Dornoch Burn and land in its vicinity.

We have been asked to write to you concerning three matters.

1. Lease

- 1.1. The first relates to obligations imposed on DCC and the Highland Council under the Lease and the legal difficulties that those cause.
- 1.2. The Lease imposes obligations on our clients directly relevant to the Report and to the meeting discussions. Our clients has a positive obligation to use the whole of the Site only as a camping and caravan site and they have no right to change or permit the change of use of the Site (paragraph 7 of part III of the Lease). Moreover, if our clients were to agree to any change of use of the Site or any part of it, clause 6 gives the landlord the right to irritate (terminate) the Lease:

“on the Landlord being satisfied that the site [which will include any part of the site] is not being operated to an acceptable standard as a tourist caravan site... it shall be lawful for

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the Landlord by notice to the Tenant to bring the Lease to an end forthwith and to repossess the Site”

1.3. Equally of importance is clause 11 of the Lease which requires DCC:

“to ensure that the rights of free passage for pedestrians over the Site as part of the Common Good Lands of Dornoch as presently enjoyed by the citizens of Dornoch are preserved”

1.3.1. Given the above, you will appreciate that there is a clear, commercial risk to our clients in agreeing to any of those proposals.

1.3.2. Moreover, since certain of the proposals in the Report being considered by the Highland Council would directly prejudice such free passage:

1.3.2.1. DCC is unable to agree to any of those works, without being in breach of the terms of the Lease and

1.3.2.2. on our advice and given that The Highland Council has entered into the Lease in its capacity as owner of the subjects of the Lease, DCC gives formal notice to Highland Council as landlord of the threat of loss of those rights of free passage as a result of The Highland Council’s actions.

1.4. Furthermore, the Lease imposes obligations on The Highland Council in its capacity as landlord. Clause 5(4) states that:

“The Landlord undertakes responsibility for cleaning and keeping clean the Dornoch Burn so far as it passes through the site and over the foreshore and in particular for ensuring that sand and sea-borne debris impeding or blocking the Burn is removed but always providing that any cleaning required as a result of the use of the site by the Tenant or by caravaners or campers shall be the responsibility of the Tenant.”

1.5. DCC’s position is that the Landlord should comply with its obligation under clause 5(4) of the Lease by carrying out the dredging works to the Burn. This should occur prior to any further consideration of options C and D contained in the Report.

2. Response to the Report

2.1. Our clients have taken their own professional advice on the Report and asked us to set out their observations below.

2.2. Their view is that the Report does not provide a thorough review of the available options. It fails to provide the level of detail in both methodology and subsequent assessment as one would expect from a competent expert in order to support decision making on behalf of NatureScot, the public body responsible for advising Scottish Ministers on all matters relating to the natural heritage.

2.3. We note the below reasoning for reaching this view, which is not exhaustive.

2.4. As a starting point for reports of this nature, one would expect that it defines its objective and provides success criteria, and any restrictions placed on it. None of those is documented within the Report. As such, it is unclear whether or not the options provide the desired outcomes.

2.5. To allow the identification and assessment of options for flood risk management it would be appropriate to provide information on the hydrology, including basic information including the Burn’s catchment areas, typical flow rates, frequency of flood events etc. This information has not been provided. From our general understanding of the information provided on water surface elevations this is not particularly relevant,

and by the Report's own concession, potentially inaccurate due to wind effects during the survey.

- 2.6. Of immediate importance, no methodology is provided in the Report. It is, therefore, unclear as to how it could reach conclusions as to the four options and whether it is their view that this list is exhaustive. The assessment criteria is not defined and no justification is provided for the rating given. It is not possible to understand what has or has not been considered when assigning a rating.
- 2.7. It is difficult to follow the reasoning in Option C. The proposal to move the camping slots and allow part of the site to become a wet area scores highest on the criteria, 'Reduction of the flooding risk, particularly around the caravan site'. It would appear that the proposed solution not to flood the caravan site is simply to remove the caravans and let the site flood.
- 2.8. Furthermore, consideration of implementation of the options in terms of landownership, consenting, practicalities and timelines fails to have been addressed. Instead, the Report focuses on cost of planning and delivery. It does not provide any indication of timescales for implementation of what are termed the short- and long-term solutions (Option C and D).
- 2.9. When reaching conclusions as to the 'Suggested Options', the Report does not go so far as to assess the combined options. Such would have been helpful in order to understand if that would actually perform better than an individual option alone.
- 2.10. Importantly, this Report prepared on behalf of NatureScot fails to mention or consider the designated sites in the area. Most notably, those are the Dornoch Firth and Morrich More Special Area of Conservation (SAC), designated for multiple coastal features and marine species; which the Black Burn and the Dornoch Burn are likely to influence. The Moray Firth SAC is not mentioned in any way. One would have also expected that it notes that the Dornoch Burn flows into a designated bathing water.
- 2.11. A much more robust process should be followed which *inter alia* should:
 - 2.11.1. set out objective and success criteria;
 - 2.11.2. detail restraints;
 - 2.11.3. provide sufficient context including hydrological details, designated sites, bathing waters and other matters;
 - 2.11.4. clearly identify all options available (including combined options);
 - 2.11.5. assess options against defined quantifiable relevant criteria, and
 - 2.11.6. provide full justification for ratings against criteria.
- 2.12. On the above basis, our clients consider that the Report does not provide a credible or competent basis for decision-making. As such, our client does not accept its conclusions and requests that further assessments are undertaken in order fully to assess the available options, following a process completed by persons with the requisite expertise in a number of appropriate fields, such as engineering, consenting, hydrology, environment/biodiversity, and local socioeconomics.

3. Common Good land

- 3.1. The status of the Site as Common Good land is significant.
- 3.2. As noted above, DCC has a positive obligation under clause 11 of the Lease “to ensure that the rights of free passage for pedestrians over the Site as part of the Common Good Lands of Dornoch as presently enjoyed by the citizens of Dornoch are preserved”.
- 3.3. In order to comply with this clause, DCC has asked us to draw attention to the following points:
- 3.3.1. the fact that the property is the property is described in the Council Register as:
- “the Links [being] Common Good by virtue of the Royal Charter of 14 July 1628. The 1835 General Report of the Commissioners into the State of Municipal Corporations in Scotland refers to it being land of the Burgh”
- 3.3.2. that the alternative uses of part of the Site as wetlands under proposals C and D of the Report would appear to be in breach of the purpose of the common good land as links intended as an area for members of the public to walk across for recreational purposes
- 3.3.3. that if the Council decides to implement either options C or D, the effect will be a reduction in the size of the Site leased under the Lease, with consequent reduction through reduced rent in the income to the common good land received by the Council.
- 3.4. Accordingly:
- 3.4.1. Whilst the Council has consulted with certain individuals who it perceives as most affected by the works contemplated by the Report, the Council will, prior to making any decision, additionally require to carry out the consultations in terms of section 104 of the Community Empowerment (Scotland) Act 2015. This would include:
- 3.4.1.1. publication of details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property
- 3.4.1.2. the authority must have regard to... any representations made by other persons in respect of its proposals published under subsection (2)
- 3.5. As said above, DCC has requested us to write and draw the above formally to your attention, in order to discharge their obligations under the Lease and in order to ensure that the Council is aware of their obligations under both the Lease and the 2015 Act.

We look forward to receiving confirmation of receipt of this letter.

Yours faithfully



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