

PUBLIC NOTICE THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 NOTICE OF CONSULTATION ON SERVITUDE ON COMMON GOOD PROPERTY

Fife Council has received a request for a Deed of Servitude over common good property. In accordance with Section 104 of the Community Empowerment (Scotland) Act 2015, the Council is required to consult with the community. The following representations have been received.

Lochgelly Public Park, Hall Street, Lochgelly

Representation	RI (received by e-mail 19 April 2026)
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Formal Objection to Proposed Servitude on Common Good Land – Lochgelly Public Park

Re: Community Empowerment (Scotland) Act 2015 – Proposed Deed of Servitude, Lochgelly Public Park, Hall Street.

I write as a resident of Lochgelly to lodge a formal and substantive objection to the proposed Deed of Servitude over Common Good land within Lochgelly Public Park, as notified on 8 April 2026.

The proposal seeks to impose an encumbrance on Common Good land in order to accommodate drainage infrastructure arising entirely from a private housing development. In my view, the proposal is incapable of being properly justified on the information presented, and the process followed to date is procedurally and substantively unsound.

1. Statutory and Fiduciary Duties in Relation to Common Good Land
Common Good land is held in trust by the local authority for the benefit of the community. When considering any disposal, appropriation, or servitude affecting such land, Fife Council is under a duty to act prudently, transparently, and in the best interests of the community as a whole. A servitude affecting Common Good land is not a neutral act. It constitutes a real and permanent detriment and must therefore satisfy a high legal threshold of:

- necessity,
- proportionality, and
- demonstrable public benefit.

On the basis of the consultation material provided, that threshold has not been met.

2. Absence of Necessity: Failure to Evidence Why Developer-Land Options Are Not Viable
The consultation documentation fails to provide any investigation, evidence, or technical assessment demonstrating that the drainage infrastructure:
 - requires permanent use cannot reasonably be accommodated within land owned or controlled by the developer;
 - cannot be resolved through alternative on-site engineering solutions; or

3. genuinely of Common Good land.

The absence of such evidence is decisive.

In public law terms, a decision-maker cannot lawfully proceed on assertion or assumption, particularly where the consequence is the permanent loss or impairment of a protected community asset. Convenience, reduced cost, or programme efficiency for a private developer do not amount to necessity. Without a documented and transparent process demonstrating that developer-controlled solutions have been exhaustively explored and ruled out, the proposal is premature and incapable of rational justification.

4. Improper Transfer of Private Risk to the Public

The drainage requirement arises solely because of the scale and nature of the proposed private development.

Any physical, financial, or technical constraints associated with the site are matters that should have been identified and addressed through proper due diligence prior to site acquisition and development design. It is neither legally nor ethically acceptable for the consequences of inadequate assessment or commercial risk-taking to be transferred to the community through the loss of Common Good land. To permit this would be to allow public assets to function as a contingency for private development risk, which is inconsistent with the Council's fiduciary obligations.

5. Proportionality and Least-Harm Principle Not Demonstrated

Where Common Good land is concerned, the authority is required to adopt a least-harm approach. The consultation provides no evidence that this principle has been applied.

In particular, there is no evidence that:

- lesser-impact solutions have been fully designed and discounted;
- alternative routes, layouts, or configurations avoiding the park have been examined; or
- the proposed servitude represents the minimum possible interference with public land.

Representation	Lochgelly Community Council (received by e-mail 25 th May 2026)
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1. Introduction

Lochgelly Community Council submits this formal objection to the proposed use of Lochgelly Public Park, which is Common Good land, for the installation of drainage pipework associated with the housing development at the former Fabtek site on Hall Street, Lochgelly.

Although the developers now state that the SuDS basin itself would not be located on Common Good land, they have confirmed in writing (Post-Meeting Update, 28 May 2026) that the park would still be used as a pipe corridor. This appears to constitute a change of use of Common Good land and therefore requires full statutory process and careful consideration under the Council's Common Good obligations.

The granting of planning permission does not override or replace the Council's separate legal duties in relation to Common Good land, nor does it predetermine the outcome of any Common Good decision-making process.

The Community Council does not argue that any temporary interference with Common Good land is automatically impermissible. However, this proposal involves the creation of permanent private rights and future maintenance obligations in circumstances where technically feasible alternatives appear to exist.

2. Common Good Status – Legal Protections

Lochgelly Public Park is confirmed as Common Good land.

Under Section 104 of the Community Empowerment (Scotland) Act 2015, any:

- disposal,
- appropriation, or
- change of use

requires statutory consultation and public notice and may, depending on the nature of the proposal and the status of the land, require court approval.

This applies even where land is reinstated following works.

The developers' letter repeatedly refers to a "Deed of Servitude plan" and a "servitude agreement". A servitude represents a permanent legal burden over land and creates ongoing rights benefiting a third party.

Case law, including *Guild v Angus Council*, demonstrates that temporary works, subsurface infrastructure and utility installations may still amount to a change of use requiring proper statutory consideration.

The issue is not solely whether the physical impact is temporary or limited in extent, but whether permanent private rights and infrastructure are being introduced into protected public land.

The Community Council considers that the relevant issue is not whether the proposal is convenient or cost-effective, but whether the use of protected Common Good land is genuinely necessary and justified in the public interest.

3. Planning Committee Position

The Fife Council Planning Committee has previously identified that Lochgelly Public Park is Common Good land and considered and approved a scheme on the basis that the previously proposed SuDS basin within the park had been removed and replaced with an alternative drainage approach.

The current proposal would nevertheless introduce drainage infrastructure and associated servitude rights within the park. The Community Council considers this inconsistent with the clear and reasonable expectation created during earlier planning discussions that the park itself would not be utilised for drainage infrastructure associated with the development.

The Community Council is further concerned that approval in these circumstances would risk establishing an undesirable precedent, whereby protected Common Good land may increasingly be relied upon to facilitate private development infrastructure where alternatives exist.

4. Developer Admissions in Correspondence Dated 28 May 2026

The developer's written response confirms several matters which are directly relevant to consideration of this proposal.

4.1 Position Regarding Use of Common Good Land

The developer states:

"No further commitment was made that the infrastructure would also avoid the Common Good land."

This differs from the understanding formed by the Community Council following earlier discussions, during which alternatives avoiding Common Good land were actively discussed.

4.2 Limited Assessment of the Road-Route Alternative

The developer's letter confirms that:

- no topographical surveys were undertaken,
- no CCTV surveys were undertaken,
- no detailed depth assessments were undertaken, and
- Scottish Water has not reviewed a road-route proposal. Despite this, the road-route option has been discounted.

It is difficult to understand how this option can be robustly ruled out in the absence of detailed feasibility work, technical investigation, or review by the relevant statutory bodies.

The absence of these assessments means that the conclusion that the road-route is unviable is not supported by robust evidence.

4.3 Financial Basis for Rejecting Alternatives

The developer identifies additional infrastructure costs associated with alternative drainage arrangements.

However, in the context of a multi-million-pound housing development, the additional costs referenced do not appear, on the information provided, sufficient in themselves to justify permanent rights over Common Good land.

Financial considerations, while relevant to a developer, do not in themselves justify the imposition of permanent legal burdens on protected Common Good land.

The Community Council is concerned that permanent burdens upon Common Good land are being relied upon to support development viability where alternative solutions remain available.

4.4 On-Site SuDS Alternative

The developer states that an on-site SuDS arrangement would result in:

- the loss of 6 housing units,
- reduction in grant funding,
- reduction in rental income, and
- a viability gap.

This indicates that the proposed use of the park is driven, at least in part, by financial and layout considerations rather than technical impossibility.

4.5 Requirement for a Servitude

The developer confirms that a servitude is required for the proposed infrastructure. This would create a permanent legal burden over Common Good land together with ongoing maintenance and access rights.

4.6 Construction and Access Impacts

The developer also confirms that works would take approximately 2–4 weeks and require excavation and reinstatement works within the park.

This would involve:

- temporary disruption,
- excavation within the park,
- use of park land as a construction corridor, and
- future access rights associated with maintenance obligations.

5. Viable Alternatives Exist

The developer's own correspondence confirms that alternative options exist, namely:

1. A SuDS system contained entirely within the development site; and
2. Routing drainage infrastructure through the existing road network.

The existence of technically feasible alternatives fundamentally weakens any argument that the proposed servitude over Common Good land is necessary. On the information currently available, the Community Council does not consider that the developer has demonstrated that use of Common Good land is necessary.

The Community Council notes that:

- the on-site option appears to have been rejected primarily due to development viability and layout considerations; and
- the road-route option appears to have been discounted without detailed feasibility assessment.

Where viable alternatives exist, the justification for imposing permanent burdens on Common Good land requires particularly careful scrutiny.

For Common Good land, the relevant test is necessity rather than preference.

6. Community Opposition

The Community Council has received significant correspondence from residents and park users expressing opposition to:

- use of the park for drainage infrastructure,
- creation of permanent private rights beneath the park, and
- any encroachment on Common Good land for the benefit of a private development.

Concerns have been raised by:

- sports users,
- families,
- dog walkers,
- informal recreation groups, and
- nearby residents.

The consistent concern expressed is that the park should remain protected as public recreational Common Good land.

7. Permanent Burdens and Long-Term Impacts

The proposed servitude would create:

- a permanent legal burden over Common Good land,
- ongoing access and maintenance rights,
- potential future excavation rights,
- constraints on future landscaping and tree planting,
- constraints on future park improvements, and

Restrictions affecting future stewardship of the park.

These constraints would continue long after construction works are complete and would materially affect the future management and flexibility of the park as a community asset. These impacts are not temporary in nature and would endure for the lifetime of the infrastructure.

Approval would also risk establishing a precedent whereby Common Good land may increasingly be relied upon to resolve infrastructure constraints associated with private development where alternatives exist.

8. Community Interest and Public Asset Concerns

The Community Council is particularly concerned that permanent burdens may be imposed upon a protected community asset in circumstances where the alternatives appear to involve comparatively modest additional cost or redesign implications within the context of a multi-million-pound development project. In the Community Council's view, this raises important questions regarding proportionality, due diligence, and whether sufficient priority has been given to avoiding long-term impacts upon Common Good land before seeking to rely upon public recreational land to resolve private infrastructure constraints. Residents have consistently expressed concern that public assets should not absorb permanent burdens where technically feasible alternatives remain available.

The Community Council considers that particularly careful scrutiny is required where protected Common Good land is proposed to carry permanent private rights for the benefit of a commercial housing development.

9. Community Council Position

The Community Council has been contacted by residents and local park users requesting that the park be protected and that all statutory Common Good safeguards be properly applied.

This objection is therefore submitted on behalf of the Community Council in response to those concerns and in fulfilment of its role representing community interests.

10. Concerns Regarding Engagement and Process

The Community Council engaged constructively in discussions regarding alternative solutions which avoided use of Common Good land.

However:

- no meaningful follow-up engagement took place regarding those alternatives,
- alternatives do not appear to have been fully explored,
- the current proposal was advanced without further substantive discussion, and
- concerns remain regarding the adequacy and transparency of the engagement process.

Taken together, these matters have significantly undermined community confidence in the proposal and in the process by which it has been developed.

10.1 Community Benefit Discussions

During discussions with representatives of the developer team, references were made to the possibility of community funding or benefits in connection with the development.

The Community Council formed the clear impression that such benefits would not be progressed in the event that objections to the proposal were maintained. The Community Council considers this deeply unhelpful and inappropriate in the context of a statutory planning and Common Good process, and risks undermining the integrity of the decision-making process. Community benefit initiatives and legitimate planning or Common Good objections should remain entirely separate matters. The suggestion that community funding may depend upon the absence of objection risks undermining public confidence in the integrity and transparency of the process. This has further contributed to the Community Council's concerns regarding engagement and decision-making surrounding the proposal.

11. Conclusion

For the reasons set out above, Lochgelly Community Council concludes that the proposed servitude over Lochgelly Public Park is neither necessary nor justified in the public interest.

In particular:

- Lochgelly Public Park is protected Common Good land;
- the proposal would introduce a permanent legal burden and associated maintenance rights;
- technically feasible alternatives exist which avoid the use of Common Good land;
- those alternatives have not been subject to robust or evidenced assessment;
- the proposal is driven, at least in part, by cost and layout considerations rather than necessity; and
- the development would impose long-term constraints on the future use and management of an important public asset.

In these circumstances, the Community Council considers that the statutory threshold required to justify the use of Common Good land has not been met. The Community Council further considers that, given the permanent nature of the proposed servitude and the existence of viable alternatives, the proposal may require court approval and, in any event, demands the highest level of scrutiny under the Council's Common Good obligations.

Accordingly, Lochgelly Community Council formally objects and requests that the proposed servitude over Lochgelly Public Park be refused.

If, notwithstanding this objection, the Council is minded approving the proposal, the Community Council requests that it clearly sets out:

- the legal basis upon which it considers the proposal competent; and
- the public interest justification demonstrating why the use of Common Good land is considered necessary despite the availability of alternatives.

The Community Council reiterates that it does not object to development of the former Fabtek site in principle. The objection relates specifically to the proposed use of Common Good land, which the Community Council considers unnecessary and unjustified considering the available alternatives. ivate development proposal.

Representation	ME (received by e-mail 3 rd June 2026)
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Please find my objection to the proposed deed of servitude over Lochgelly Public Park.

The bodies involved must find an alternative to digging up parts of the public park which include common good land known as Lochgelly Public park; he bottom of the park utilised by football and gala. This common good land and more is an asset to the people of Lochgelly and all who visit.

While the bottom of the park has now been impacted by housing which is now infringing on Lochgelly's largest and historic event, the gala, attended by thousands. Now an even larger suds pond is being imposed at the bottom of a very well used park used by many individuals and groups. I feel this is planning which has not been well thought out. The overall impact to our ever growing town - plans already restrict the gala with less land they can use, interfering with plans that take 1 year every year are impacted, and the ploholders access to their plots is challenging with an increasing suds pond and more works ahead. Why can't the housing association put a suds on their own land at the fab tek site. Why impose drainage accross valued common good land used by the community when there are alternatives? It appears that Kingdom Housing Association are determined to tear up our common good land. Why? Because the common good land is the easy option? The least costly? The new suds and drainage belong on the fab tek site not the park.

The park is not anyone's to dig up as they please, and decide what they want..it is protected in our case for who? The land belongs to the people of Lochgelly not for Housing Associations or Fife Council to go against wishes of the community. To take what does not belong to them for a quick buck. While I appreciate houses need build, they should not interfere with the common good not a other area of the park utilised in a regular basis by the groups and park users. The park is synonymous and a landmark of Lochgelly.

It is inconceivable that any persons or organisations believe it is their right to change our common good land.

What are the consequences for such actions?

As Fife Council are promoting empowering communities, please empower Lochgelly to ensure their greenspace/common good asset remains untouched, that land used by groups such as the gala and football teams are left alone. That Kingdom consider their own land and/or potentially look at digging up the road instead