



FLAG FLYING IN HENDERSON PARK, COLDSTREAM

Briefing paper by Service Director, Assets & Infrastructure

AUDIT AND SCRUTINY COMMITTEE

10 December 2020

1 PURPOSE AND SUMMARY

- 1.1 This report summarises the content and context of a petition received by the Council for the Audit & Scrutiny Committee.

2 BACKGROUND

- 2.1 A Petition entitled "Stop Scottish Borders Council removing Scottish Flags from Henderson Park in Coldstream" was received by the Clerk to the Council on 21 September 2020. Accompanying the petition, as a further petition on Change.org with over 3,000 signatures, c.375 being residents in the Scottish Borders. In the supporting statement submitted with the petition it states "it is entirely appropriate that Scottish flags should fly proudly in Henderson Park." A further document, called "Flag gate" was also submitted (see Appendix 1).
- 2.2 In September 2020 Scottish Borders Council received an enquiry about flags flying at Henderson Park, Coldstream. Following a review, officers from the Parks and Environment team found that the flags had been installed by Presenting Coldstream but were unable to establish that the correct permissions had been obtained from the Council to fly the flags. Subsequently officers contacted Presenting Coldstream and requested that the flags be removed, which was carried out in a timely manner.
- 2.3 The "Flag gate" document introduced additional background information on the flying of flags at Henderson Park, dating back to 2014 and the celebrations associated with the Commonwealth Games of that year. It set out that since that date the flags had been erected to coincide with Civic week (first full week of August) and they stayed in place until Flodden day 9th September.
- 2.4 "Flag gate" also sets out the following:-
We would like to understand why this year the people of Coldstream were not allowed to have the flags flying on the anniversary of the Battle of Flodden in 1513, why a complaint is suddenly not a complaint any more and whether the council would like to work with the community to formalise what it had

previously accepted as the norm (and in actual fact itself commissioned in 2014).

3 COUNCIL PROCESSES AND PERMISSIONS

- 3.1 **Flag Flying Protocol** - The flying of flags is covered by a Protocol set out in the document "The flying of flags from Council buildings And Arrangements for books of Condolence" (see Appendix 2). This sets out prescribed locations/procedures for flag flying, and the due process for discretionary decision making regarding flying of flags out-with these prescribed locations/procedures:-

"From time to time decisions in relation to a particular set of circumstances will require to be taken. In such instances the Convener (whom failing the Vice Convener) will make the decision after consulting the Chief Executive, his/her deputy or the Property Manager and if appropriate the Lord Lieutenants and the Lord Chamberlain's office."
- 3.2 Upon review, Officers did not find any prior permission had been sought under these discretionary powers and the Convenor / Chief Executive had not been consulted on the flying of flags at Henderson Park. Similarly, no approach had been made to the Estates Management Team as referred to at paragraph 3.5 below.
- 3.3 While the protocol "The flying of flags from Council buildings And Arrangements for books of Condolence" does contain the above discretionary decision making, it does not explicitly state the criteria for such exceptions or the procedure for communities and third parties to make such discretionary requests. It also does not make clear any procedure for the removal of unauthorised flags. It is recognised that a review of the Flag Flying Protocol is required to provide greater clarity and avoid misunderstandings arising in future.
- 3.4 **Park Bookings Process** - Third party use of public open spaces for community based activities is supported by the Council, but prior agreement should be sought using the Park Bookings Process. No such agreement had been negotiated regarding the erection of the flags at Henderson Park.
- 3.5 **Use of Council Property** - Any access to or use of Council owned property by communities and third parties such as private undertakers/utility companies, requires that they seek permission for a wayleave or access agreement which is typically facilitated through the Councils Estate Management team, supported as required by Parks and Environment, Legal services and any other appropriate service area. No such agreement had been negotiated regarding the erection of the flags at Henderson Park.
- 3.6 **CV-19 Recovery Board** - In response to CV-19 the Council has established a Recovery Board as an additional control measure to ensure that the services it provides communities are considered in the context of CV-19 and are safe. The erection and management of the flags flown at Henderson Park were not considered by the Recovery Board.
- 3.7 **Safety Advisory Group** - Due to the effects of CV-19, all Civic Festivals/Common Ridings this year were cancelled. The Council usually

facilitates these through the Safety Advisory Group (SAG) which did not take place this year due to the cancellations and other CV19 related pressures.

- 3.8 In accordance with standard practice for unauthorised installations or use of council assets, the Flags were requested to be removed by Officers without any involvement of the Convenor, the Leader or the Chief Executive. However, officers accept that this situation could have been handled differently and would offer an apology to Presenting Coldstream.

4 FLAG GATE – FOI REQUEST

- 4.1 In the correspondence on 7 September 2020 with Presenting Coldstream, officers mistakenly described the enquiry regarding the flags as a complaint. This was an error.
- 4.2 The Council's complaints policy is available online (https://www.scotborders.gov.uk/info/20016/have_your_say/155/make_a_complaint). Under the terms of this policy, if an issue is a first time request for action, it is classified as an enquiry, as was the case in this instance.
- 4.3 A Freedom of Information Request (FOI 14546) was received on 7 September requesting details of "the complaint [about] the Scotland flags in Coldstream". As there was no official complaint held on record, the response to this FOI request stated that there was no complaint. The erroneous referral in correspondence with Presenting Coldstream to "a complaint" on 7th September was later corrected. It is noted that this may have caused some confusion.

5 COMMENTARY ON ISSUES RAISED

- 5.1 The following table summarises the concerns raised within the petition and also the "Flag gate" document and gives comments.

Concerns raised	Commentary
<i>Petition - "Scottish Flags were put up by an individual in Coldstream to cheer us all up during the Covid outbreak when we should have been celebrating our civic week but could not. As Coldstream is the "first true border toon" it is entirely appropriate that Scottish Flag should fly proudly in Henderson Park and tourists and residents have been pleased to enjoy these flags..... We would like the Council to reconsider based on wider opinion"</i>	Any third party use of a Council Public Open space is facilitated as set out in section 3. Organisers can seek permission(s) to carry out their activities using these processes at any time and would be given support and guidance throughout. Any caveats the Council may wish to be observed would be advised and the third party use can then proceed as agreed. Civic celebrations are co-ordinated through the Safety Advisory Group (SAG); due to CV19 this year all civic events were cancelled and the SAG did not operate.
<i>Flag Gate - Flag gate identifies that the Council has a flag flying protocol and</i>	As no application for use had been received then no consideration was given to the flag flying protocol. Officers did not approach the

<i>seeks to clarify if the Council Convener was involved in the complaint/enquiry.</i>	Council Convener as set out under the protocol to seek his consideration of the matter.
<i>Flag Gate - We would like to understand why this year the people of Coldstream were not allowed to have the flags flying on the anniversary of the Battle of Flodden in 1513.</i>	<p>Any third party use of a Council Public Open space is facilitated as set out in section 3. Organisers can seek permission(s) to carry out their activities using these processes at any time and would be given support and guidance throughout. Any caveats the Council may wish to be observed would be advised and the third party use can then proceed as agreed.</p> <p>Civic celebrations are co-ordinated through the Safety Advisory Group (SAG) due to CV19 this year all civic events were cancelled and the SAG did not operate.</p>
<i>Flag Gate - why a complaint is suddenly not a complaint any more</i>	<p>The following is an excerpt from the Council's internet which clarifies what is a complaint, and when a complaint is in fact an enquiry. Details of this policy are below:-</p> <p><i>Is your issue a complaint?</i></p> <p><i>Is the issue you want to raise:</i></p> <ul style="list-style-type: none"> • <i>a routine first time request for a service like a missed bin?</i> • <i>a first time reporting of a fault like a pothole or a broken street light?</i> • <i>a request for compensation only like insurance or third party claim?</i> • <i>issues that are in court or have already been heard by a court or a tribunal?</i> • <i>a disagreement with a decision where a statutory right of appeal exists, for example in relation to council tax or planning?</i> <p><i>If the issue you want to raise is one of the above, please report it online as we would not treat these issues as complaints."</i></p>
<i>Flag Gate - whether the council would like to work with the community to formalise what it had previously accepted as the norm (and in actual fact itself commissioned in 2014).</i>	<p>Any third party use of a Council Public Open space is facilitated as set out in section 3. Organisers can seek permission(s) to carry out their activities using these processes at any time and would be given support and guidance throughout. Any caveats the Council may wish to be observed would be advised and the third party use can then proceed as agreed.</p>

	<p>Civic celebrations are co-ordinated through the Safety Advisory Group (SAG) due to CV19 this year all civic events were cancelled and the SAG did not operate.</p> <p>The Council will continue to work with communities to help them achieve their aspirations in regards to civic festivals and events.</p>
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Approved by

John Curry **Signature**
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Author(s)

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Background Papers: None

Previous Minute Reference: N/A

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