



REPORT TO: ECONOMIC DEVELOPMENT & INFRASTRUCTURE SERVICES COMMITTEE ON 5 SEPTEMBER 2017

SUBJECT: WILDFOWLING IN FINDHORN BAY

BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT, PLANNING AND INFRASTRUCTURE)

1. REASON FOR REPORT

- 1.1 The Committee is asked to consider the proposal by the Findhorn Bay Local Nature Reserve (FBLNR) Committee for a voluntary agreement to control wildlife shooting on the nature reserve.
- 1.2 This report is submitted to Committee in terms of Section III E (9) of the Council's Scheme of Administration relating to exercising the functions of the Council in relation to countryside amenities.

2. RECOMMENDATION

- 2.1 **It is recommended that Committee consider the report by the chair of the Findhorn Bay Local Nature Reserve (FBLNR) Committee APPENDIX A and agree to defer further consideration of the petitions until after the 2017/18 season in order to assess the success or otherwise of the voluntary scheme.**

3. BACKGROUND

- 3.1 The Council received a petition on the 21 December 2015 from Friends of Findhorn Bay titled "Ban the killing, injuring and maiming of geese and ducks in the Findhorn Bay Local Nature Reserve (**APPENDIX A**). A further conflicting online petition was received from Martin Gauld titled "A fair Fight for Findhorn Fowlers Now"
- 3.2 A preliminary hearing was heard on the 8 March 2016 by the the Economic Development and Infrastructure Services Committee where the Petitioner Lisa Mead made her case on behalf of the Friends of Findhorn Bay (paragraph 8 of the Minute refers). The Committee then considered the options available through the petitions process:
- 3.3 During consideration the Committee noted that an on-line counter petition had been submitted by Martin Gauld titled "A fair Fight for Findhorn Fowlers Now" and was in the process of being validated.

- 3.4 The decision of the Committee was to pass the petition to the Corporate Director (Economic Development, Planning & Infrastructure), the Chair and Local Members to facilitate discussions between all interested parties which included the counter petitioner to reach a compromise, including consideration of an option to extend the voluntary no shooting zone southwards.
- 3.5 An initial meeting was held on Monday 11 April 2016 where 21 representatives were invited to attend representing the Council, Petitioners, Findhorn Bay Local Nature Reserve, Findhorn & Kinloss Community Council, Wildfowlers, Scottish Natural Heritage, Head of Local Wildfowling Club, RSPB, Friends of Findhorn Bay, British Association for Shooting & Conservation (BASC), and Scottish Association for Country Sports (SACS).
- 3.6 While no voluntary agreement was reached at this meeting there was a willingness from the various stakeholders to seek further dialogue.
- 3.7 A mediation event was held on the 8 June 2016 which delivered a proposal for a voluntary agreement however it became apparent in early August 2016 that the agreement may not be supported by all interested parties including The British Association of Shooting and Conservation (BASC) and the Forres and Nairn Wildfowlers.
- 3.8 The Economic Development and Infrastructure Committee of the 9 September 2016 considered a report which outlined the process to date and that despite the best endeavours of the Council a voluntary agreement was not able to be achieved at that time.
- 3.9 The Committee did agree however to defer the report to allow a newly formed sub-committee of the FBLNR under the chair of Roy Dennis to try and get an agreement with the interested parties. (Para 6 of the minute refers).

“ the Committee agreed to defer the report to a future meeting of this Committee to allow the newly formed sub-committee to come to an agreed solution on any subsequent request for a bye-law in relation to wildfowling in Findhorn Bay. “

4. PROGRESS

- 4.1 A report from the chair of the FBLNR **APPENDIX A** outlines the progress made to date and a proposal for a voluntary permit scheme for the season 2017/18, starting 1 September 2017.
- 4.2 While a unanimous agreement was sought with the various stakeholders, it is clear that Scottish Association for Country Sports (SACS) were not supportive of the process or the outcome. A copy of their statement is available on their website <https://www.sacs.org.uk/news/sacs-response-to-basc-findhorn-statement>. The British Association for Shooting & Conservation (BASC) have also issued statements on their website and are supportive of the voluntary approach for the coming season. <https://basc.org.uk/blog/press-releases/latest-news/basc-statement-on-findhorn-bay-2/> however they appreciate that some wildfowling interests are now critical of the proposed

system <https://basc.org.uk/blog/press-releases/latest-news/updated-basc-statement-on-wildfowling-at-findhorn-bay/>. It is therefore not clear at this stage how well the voluntary agreement will be adhered to.

- 4.3 Given that there is mixed support for the voluntary scheme the Council should consider waiting until the season has finished before assessing what lessons can be learned from this season and if necessary progressing to a full petition hearing or taking such actions as it deems appropriate.

5. FINDHORN BAY LOCAL NATURE RESERVE - STATUS

- 5.1 Findhorn Bay was designated as a Local Nature Reserve by the Council in 1998. This designation, under the National Parks and Access to the Countryside Act 1949, places the reserve under the Council's management and gives the Council the option to promote byelaws to regulate activities on the reserve.
- 5.2 The reserve land is owned by various owners who have all agreed that their land forms part of the reserve.
- 5.3 Wildfowling has taken place in Scotland in its present form (i.e. shooting birds in flight) since the mid 18 century and we would assume that this is when it started in the Findhorn Bay. The wildfowling season for foreshore wildfowling in Scotland is 1 September to 20 February.
- 5.4 Management has been passed to the Findhorn Bay Local Nature Reserve (FBLNR) Management Committee whose members represent both formal bodies such as the Council, HIE and Scottish Natural Heritage (SNH), as well as groups who have an interest in the bay such as the local community councils, Findhorn Foundation, conservationists, wildfowlers and watersports groups.
- 5.5 The FBLNR Management Committee Constitution allows the Committee and those with a legitimate interest in FBLNR to recommend byelaws to the Council. Since designation there have been requests from the Management Committee to introduce bye-laws to regulate wildfowling by introducing a monitored permit system. Reports on this subject have been considered and rejected by the Council's former Environmental Services Committee on two previous occasions in 2004 and 2006. The Council refused both requests in the light of financial and health and safety implications essential for the enactment, supervision and enforcement of byelaws.

6. CURRENT POSITION

- 6.1 Currently there are no byelaws enacted which regulate activities on FBLNR. In Scotland, the public have a right to use the foreshore for recreational purposes. This includes wildfowling. Byelaws are the only means by which the Council could ban or regulate wildfowling on the foreshore in Findhorn Bay.

- 6.2 Byelaws must be agreed as necessary and reasonable by the Council. Creating byelaws is a lengthy and costly process, involving consultation, drafting, Council consideration, and advertising. The process culminates in the byelaws being considered by the Scottish Ministers who will either approve or reject them. If approved, byelaws require to be reviewed every 10 years.
- 6.3 If there is a substantial body of objection to any proposed byelaws the Scottish Ministers may cause a public inquiry to be held. This would be likely if the current proposals as outlined in **APPENDIX A** fail to deliver a workable solution supported by all parties. Any public inquiry would place considerable demands on Council resources.
- 6.4 Members of the public have a duty to exercise their rights to use the bay reasonably, with due care and attention to others and with respect for the land. Most outdoor pursuit organisations have codes of conduct and there are the overarching principles contained in the Scottish Outdoor Access Code. Behaviour and activities are currently controlled by a variety of codes and laws. Inappropriate behaviour may constitute a breach of the peace or break anti-social behaviour laws. Equally other criminal acts – such a firearms offences or assault can be dealt with under existing law by Police Scotland.

7. CONTROL ON COUNCIL LAND – A FURTHER CONSIDERATION

- 7.1 Although wildfowling takes place at various areas in Findhorn Bay, the area where there is the greatest competition with other recreational users appears to be in the South-East of the bay, between the end of the Kinloss runway and the Kinloss burn. Most land between the foreshore and the public road at this part of the bay (which provides access for wildfowling) is owned by the Moray Council. (See map **APPENDIX C**). Although there is no general right to shoot on land above the foreshore, there is anecdotal evidence that some shooting activity takes place on this land. The Council could exercise its rights as a landowner to control activity on this land. Whilst the Council could not prevent access across its land with a licensed firearm, it could legitimately prohibit shooting as this area is not part of the foreshore. Signage could be used to help maintain the prohibition with any breach being referred to the police.

8 PETITIONS PROCESS

- 8.1 In terms of the process for considering petitions this committee held a preliminary hearing on the 8 March 2016 and that the petition process is still live and will continue to be live until the Committee makes a decision on the petition at a full petition hearing or both parties agree to withdraw their petition.
- 8.2 When considering a petition the committee can consider the following options:
- (i) direct that the petition (in whole or part) proceed to a full hearing, at the next available date, following consultation of this service committee, at which a further report will be presented by officers as outlined in

paragraph 7 detailing the full background to the petition and addressing any issues of particular interest to members: or

- (ii) reject the petition (in whole/part) stating reason; or
- (iii) for simple issues instruct immediate action by the council without any further hearing or report; or
- (iv) pass the petition to the relevant director and chairperson to look into, with or without any specific direction as to action.

8.3 A flow chart of the process is shown in **APPENDIX B**.

8.4 Should the issues proceed to a full petition hearing then the intention would be to invite the 2 petitioners to speak at the hearing with supporting information (maximum 2 sides of A4) from the other consultees listed below:

- BASC (British Association of Shooting and Conservation)
- Scottish Association for Country Sports (SACS)
- FBLNR Management Committee
- Findhorn and Kinloss Community Council
- Findhorn Angling Club
- Findhorn Fairway Committee
- Findhorn Foundation
- Findhorn Heritage Centre
- Dyke Community Council
- Highlands and Island Enterprise
- Landowners of the reserve
- Local businesses (B&B, Hotels)
- MOD (as occupier of the former RAF Kinloss Base)
- Police Scotland
- Royal Findhorn Yacht Club
- RSPB
- SNH
- Wildfowling (local and visiting)
- Forres Community Council

9. SUMMARY OF IMPLICATIONS

(a) Moray 2026: A Plan for the Future and Moray Corporate Plan 2015 – 2017

The introduction of byelaws to either ban or regulate wildfowling on FBLNR would not directly relate to the priorities in Moray 2023: A Plan for the Future / Corporate Plan.

(b) Policy and Legal

Detailed in paragraphs 5 and 6 within this report.

(c) Financial implications

The process for the creation of byelaws is summarised at 6.2 and 6.3. The estimated cost for this if work can be carried out from current staff resources and if the byelaws are unchallenged is in the region of £10 - £15k. The costs of out-sourcing the work would be considerably higher, but no firm estimate is available. If challenged and the Ministers call for a public enquiry, it could cost a further estimated £20k. Given that there are conflicting views on this, an inquiry would be likely. In addition, if enacted, byelaws require to be reviewed at least every 10 years.

Dumfries and Galloway Council are currently undertaking a review of their wildfowling byelaws which they estimate will cost a minimum of £12k and up to £32k if a public enquiry is required. In addition to these initial costs, and the costs of review if bye-laws were approved, there would be ongoing management, administration and enforcement costs. There is currently no budget for this and the amount of work required is beyond the capacity of existing staff and so the work would either require to be outsourced or priority work deferred

There is no current provision in budgets for the financial implications identified in this report. The council is seeking to achieve significant savings and any additional recurring costs approved increase the pressure on the council's finances.

(d) Risk Implications

There is a significant risk to the Council in pursuing a bye-law because without having confidence that any byelaw would be unanimously supported by the stakeholders and community it would likely go to a public inquiry, thus incurring increased costs. Therefore every effort should be made to assess the success of a voluntary scheme before consideration should be given to implementing a byelaw.

There is a risk that there will be continued community discontent until this issue is fully resolved recognising that dedicated staff resources have not been assigned to try and facilitate an agreement.

(e) Staffing Implications

There have been significant staffing resources applied to this petition to date in particular supported by the Head of Direct Services, Head of Legal services, Democratic Services Manager, Employee Development Adviser and members support. This has been accommodated because the support although intense was provided over a short period and so the impact on existing priority work was limited. If the Council is to

pursue a byelaw and seek consultation then the demand on staff resources are likely to increase and continue over a significant period of time. Outsourcing would be likely to incur costs well in excess of those indicated at paragraph (c) above.

(f) Property

There are no property implications arising from this report.

(g) Equalities

There are no equalities issues arising from this report.

(h) Consultations

Corporate Director (Economic Development Planning and Infrastructure), Head of Financial Services, The Democratic Services Manager, Head of Legal and Democratic Services, The Equal Opportunities Officer, have been consulted and any comments have been incorporated in the report.

10. CONCLUSIONS

10.1 A voluntary scheme is proposed for the 2017/18 shooting season and the Council should consider the success of the scheme before it considers the petition(s) at a full petition hearing, assuming that the petitioners still wish their petition to be considered at that time.

10.2 It is clear that there are still some concerns that the voluntary scheme will not be successful however it is hoped by regulating the numbers and periods of shooting through a permit system that this will act as an incentive for wildfowlers to abide by the conditions of the scheme.

Author of Report: Stephen Cooper, Head of Direct Services

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