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**REPORT TO: ECONOMIC DEVELOPMENT AND INFRASTRUCTURE  
COMMITTEE ON 10 SEPTEMBER 2019**

**SUBJECT: WILDFOWLING IN FINDHORN BAY**

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

**1. REASON FOR REPORT**

1.1 The Committee is asked to review the current progress towards seeking a voluntary agreement to control wildlife shooting on the Findhorn Bay Local Nature Reserve (FBLNR)

1.2 This report is submitted to Committee in terms of Section III F(8) 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 the Committee:**

**(i) note the outcome of the external mediation process as outlined in paragraph 4 of this report; and**

**(ii) reject the petition (in whole/part) stating reason as detailed paragraph 6; or**

**3. BACKGROUND**

3.1 The Council received a petition on the 21 December 2015 from Friends of Findhorn Bay (FoFB) titled "Ban the killing, injuring and maiming of geese and ducks in the FBLNR. 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 at this Committee where the Petitioner Lisa Mead made her case on behalf of the FoFB (paragraph 8 of the Minute refers).

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". It should be noted that while this petition was not validated, that due

consideration was given to this petition in order for members to understand the range of views that will influence what role the Council should take.

- 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, FBLNR Management Committee, Findhorn & Kinloss Community Council, Wildfowlers, Scottish Natural Heritage, the Head of Local Wildfowling Club, RSPB, FoFB, 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 (**APPENDIX A**) however it became apparent in early August 2016 that the agreement may not be supported by all interested parties including (BASC) and the Forres and Nairn Wildfowlers.
- 3.8 The Economic Development and Infrastructure Committee of the 20 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 Management Committee under the chair of Roy Dennis to try and get an agreement with the interested parties (para 6 of the minute refers).
- 3.10 A report was submitted to this Committee on the 5 September 2017 to consider a proposal from the chair of the FBLNR Management Committee (**APPENDIX A**) which outlined the progress made to date and a proposal for a voluntary permit scheme for the season 2017/18, starting 1 September 2017. The Committee agreed 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 and that signage be displayed on Council owned land stating that no shooting is permitted above the foreshore (para 5 of the minute refers).
- 3.11 A report was submitted to a Moray Council meeting on the 6 June 2018 that highlighted that the voluntary scheme for the 2017/18 season had not been adhered to, this was supported by evidence from a consultation exercise. At the meeting it was agreed to further mediation being undertaken by an external mediator (para 6 of the minute refers).
- 3.12 A summary of the timeline above is shown in **APPENDIX B**.

#### **4. MEDIATION PROCESS**

- 4.1 A summary of the negotiations by the consultant is shown in **APPENDIX C**.
- 4.2 From the September 2018 to February 2019 there were 6 meetings held by the consultant with a wide range of stakeholders. The contract ended in February 2019 due to the agreed contract price for the work being reached.
- 4.3 While an agreement on a voluntary scheme had not been reached by all parties, progress had been made with an agreement to carry out a community engagement exercise that sought feedback on 3 options (**APPENDIX D**) that related to days and times of the week where shooting was allowed. The outcome of this exercise would result in a preferred option that could be piloted for the 2019/20 season.
- 4.4 Given that the consultant was no longer employed by the Council, it was agreed that the community engagement exercise was to be facilitated by the Council's Community Support Unit (CSU).
- 4.5 It was envisaged that the work by the CSU would be in the order of 4 days, however it soon transpired that not all parties had agreed on the options and 4 days turned out to be 3 weeks without an agreement being reached on the options for community engagement.
- 4.6 At this stage the CSU could no longer continue with this exercise given other Council priorities. Given that there was no one available to continue with the process which would have required further negotiation to try and reach an agreement on the options, the Head of Direct Services called a meeting on the 4 June 2019 with various stakeholders to confirm that the Council could no longer support the group as the existing council mandate for action had been exhausted .

#### **5 PETITIONS PROCESS**

- 5.1 In terms of the process for considering petitions this Committee held a preliminary hearing on the 8 March 2016. That petition process is still live and will continue to be live until the Committee makes a decision on whether to reject the petition, goes to full petition hearing or both parties agree to withdraw their petition. The list of options for Committee to consider as part of the petition process are shown below:
  - (a) direct that the petition (in whole or part) proceed to a full hearing, at the next available date; or
  - (b) reject the petition (in whole/part) stating reason; or
  - (c) for simple issues instruct immediate action by the council without any further hearing or report; or
  - (d) pass the petition to the relevant director and chairperson to look into, with or without any specific direction as to action.

5.2 A flow chart of the process is shown in **APPENDIX E**.

5.3 **OPTION 1 - FULL HEARING:** 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
- 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
- Wildfowlers (local and visiting)
- Forres Community Council

5.4 Going to a full petition hearing would hear views from the original petitioners FoFB and Martin Gauld. While this potentially would give members a greater understanding of the issues from the perspective of these parties, There are numerous factional interests in this case as shown by the list at para 5.3 above and there is a risk that those interests not recognised as petitioners will claim that they are being marginalised or otherwise disadvantaged in the petitions process. Whilst it would be wrong to prejudge the outcome of a petition hearing, prior experience suggests that due to the formal and prescriptive nature of the process it is highly unlikely that a petitions hearing would help to identify a compromise solution acceptable to all factions. This would make any preference for bye-lawbye-laws allowing some shooting but under conditions very hard to progress because a bye-law which was not broadly supported would lead to protracted and costly proceedings. Instead a decision either maintaining the status quo or instructing bye-laws to ban shooting outright would appear to be the more likely outcome if a petitions hearing is the next stage of this dispute.

## **6 OPTION 2 - REJECT THE PETITION - recommended option**

6.1 See recommendation 2.1 (ii). The Committee could reject the petition and decide that given the extensive time and resources applied over the past

three years to attempt to resolve this issue without success, that further resources cannot be allocated to this issue in the current financial climate as doing so would divert these from corporate priorities. In doing so, while having declared its position, such a decision would do little to resolve this local issue and could therefore be seen as supporting the status quo. A further petition could be submitted after 6 months from the decision. This option would continue to place a burden on staff resources to respond to complaints, enquiries and further requests from the Council to intervene and facilitate a bye-law but the scale of this cannot accurately be predicted.

- 6.2 If the petition was to be rejected, there are some existing controls which would remain applicable. 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 therefore 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. OPTION 3 - OTHER ACTION - BYE-LAWS**

- 7.1 Currently there are no bye-laws enacted which regulate activities on FBLNR. In Scotland, the public have a right to use the foreshore for recreational purposes. This includes wildfowling. Bye-laws are the only means by which the Council can ban or regulate wildfowling on the foreshore in Findhorn Bay.
- 7.2 Bye-laws must be agreed as necessary and reasonable by the Council. Creating bye-laws is a lengthy and costly process, involving consultation, drafting, Council consideration, and advertising. The process culminates in the bye-laws being considered by the Scottish Ministers who will either approve or reject them. If approved, bye-laws require to be reviewed every 10 years.
- 7.3 The Council would need to decide the details of a bye-law that it would want to promote, unless it decided to ban wildfowling altogether in the bay which would be much more straight forward in detail but would almost certainly be objected to. Currently there are two draft schemes which the Council could decide to either promote or amend. These are contained in **APPENDIX A**. It should be noted that neither of these schemes had full support during the previous mediation and it is likely that these would also be objected to by the wildfowling community. It is therefore not recommended that the Council go straight to promoting a bye-law without seeking further mediation at this stage, however further mediation would be subject to the same difficulties as the previous mediation..
- 7.4 If there is a substantial body of objection to any proposed bye-laws the Scottish Ministers may cause a public inquiry to be held. This would be likely if any of the proposals promoted by the Council fails to deliver a workable solution supported by all parties. Any public inquiry would place considerable demands on Council resources. See paragraph 8(c) for the financial implications of pursuing a bye-law.

## **8. SUMMARY OF IMPLICATIONS**

### **(a) Corporate Plan and 10 Year Plan Local Outcomes Improvement Plan (LOIP)**

The introduction of bye-laws to either ban or regulate wildfowling on FBLNR would not directly relate to the priorities in the Moray Council Corporate Plan 2018-2023.

### **(b) Policy and Legal**

Details are included in the report.

### **(c) Financial implications**

The cost of procuring external mediation including room hire was £8913.60. A contribution of £3900 was received from Scottish Natural Heritage.

The process for the creation of bye-laws is summarised in section 7 of this report. The estimated cost for this if work can be carried out from current staff resources and if the bye-laws 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, bye-laws require to be reviewed at least every 10 years.

It is estimated that a review of wildfowling bye-laws will likely cost between £10k - £35k as same issues are likely to resurface.

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 bye-law would be unanimously supported by the stakeholders and community it would likely go to a public inquiry, thus incurring increased costs. Therefore if this route were to be favoured every effort should be made to assess the success of a voluntary scheme before consideration should be given to implementing a bye-law.

If the petition is dismissed, there is a risk that there will be continued community discontent until this issue is fully resolved recognising that further dedicated staff resources have not been assigned to continue efforts to 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, Community Support Unit and members support. This has been accommodated because the support although intense was provided over short periods and so the impact on existing priority work was limited. If the Council is to pursue a bye-law and seek consultation then the demands 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.

If the Council is to reject the petition on the basis that every reasonable effort has been made over a period of three years to support a resolution and that to do otherwise would divert resources away from recognised corporate priorities at a time when significant savings require to be identified, it should be made clear that this is likely to be its stated position for the foreseeable future otherwise there will be continual expectation from interested groups that the Council will intervene at a future date resulting in continued pressure on the Council to deal with complaints, enquiries and demand for a bye-law placing continual pressure on staff resources. In addition petitions would potentially be lodged every 6 months.

**(f) Property**

There are no property implications arising from this report.

**(g) Equalities/ Socio Economic Impact**

There are no equalities issues arising from this report.

**(h) Consultations**

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

**9. CONCLUSIONS**

- 9.1 There have been 3 separate attempts by the Council to seek to try and resolve this issue and all have failed to get a unanimous agreement. Therefore there is no confidence that a further attempt is going to be any more successful than previous attempts and certainly not without considerable resources being applied either internal and/or external to**

support a further process. Even in the medium to long term any mediated solution would be highly likely to require the support of a bye-law which would incur further expense in promoting and regulating the bye-law.

- 9.2** If the Council choose to reject the petition, this is unlikely to do anything to resolve the local unrest that this issue has caused and there is the potential that a further petition is lodged in 6 months time with a view to reopening the debate. It would be envisaged that the council will continue to receive ongoing complaints and enquiries and to minimise the work load in dealing with these a standard response would be developed that reflects the Council decision should it decide to reject the petition. If this decision is based on council spending priorities and this is clearly articulated at the time the decision is made, this may help to manage expectations that the council will intervene at a future date.
- 9.3** Since December 2015 there have been 5 committee reports including a preliminary petition hearing, 3 separate mediation exercises, a consultation exercise, and numerous stakeholder meetings all without achieving an agreement. It is therefore concluded that there would be no new information that would inform a committee decision if it sought to seek a full petition hearing.

#### Background Papers

Shooting Agreement (Not implemented for 2016/17 Season)/	
The Wildfowling Agreement for FBLNR for 2017/2018	APPENDIX A
Timeline – Wildfowling in Findhorn Bay	APPENDIX B
Catalyst Mediation Report	APPENDIX C
Outline Permit Options	APPENDIX D
Petition/Bye-law Flowchart	APPENDIX E
Findhorn bay local nature reserve – Status	APPENDIX F

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