

REPORT TO GARIOCH AREA COMMITTEE – 22 JUNE 2021

STATUTORY CONSULTATION ON PROPOSED LEASE OF BURGH FISHINGS AT INVERURIE AND KINTORE

1 Reason for Report / Summary

- 1.1 This report informs the Committee of the commencement of the statutory consultation exercise required to enable two separate applications for Common Good Orders. One relating to the proposed 25-year lease of the Burgh Fishings at Inverurie, and the second for the proposed year-to-year lease of the Burgh Fishings at Kintore.

2 Recommendations

The Committee is recommended to:

- 2.1 approve terms of the proposed 25-year lease to Inverurie Angling Association (IAA); and**
- 2.2 approve terms of the proposed year-to-year lease to Kintore Angling Club (KAC); and**
- 2.3 note the commencement of the two statutory consultations on the proposed leases of Common Good in accordance with the requirements of Section 104 of the Community Empowerment (Scotland) Act 2015; and**
- 2.4. acknowledge that Committee will receive a further report with the results of the statutory consultations before determining the lease of the Inverurie Burgh Common Good fishings and the Kintore Burgh Common Good fishings.**

3 Purpose and Decision Making Route

- 3.1 The purpose of this report is for Committee to note the commencement of the required statutory consultations relating to land at Inverurie, comprising roughly two miles on the River Don and four miles of the River Ury, and land at Kintore, comprising part of the River Don. This affected Common Good is shown marked in blue on the plans in proposed Consultation Documents attached as Appendix 1 and Appendix 2 to this report. The report also informs the Committee about the information that will be the basis of the consultations and the consultation process.
- 3.2 Landscape Services currently have the management responsibility for the fishings and are supportive of the recommendations. They have worked closely with both IAA and KAC to help them deliver accessible facilities for anglers, with an increasing focus on younger and disabled people. KAC and

IAA are both very proactive and competent organisations and have undertaken a variety of maintenance activities including improving footpaths, riverbanks, and clearing storm washed debris from the river, ranging from fallen trees to general rubbish. IAA have also worked closely with Aberdeenshire Council and Uryside SCIO on a joint project to control the spread of Giant Hogweed along the riverside. This is a significant task which will continue to involve co-ordinated working for several years to come. Approval of the recommendations should deliver a small financial saving of around £6,000 annually, which is primarily incurred by administration duties and officer time. It should also deliver a reduction in machinery and resources required to clear the river of debris, litter collection, and maintaining the paths and riverbanks in good order, with these resources being deployed elsewhere.

- 3.3 The statutory consultations are required before an application to the Court for the Common Good Order is lodged.
- 3.4 The consultations involved the preparation of the documents attached as Appendix 1 and Appendix 2 to this Report. It is planned to commence consultation for both sites separately on 25 June 2021 and will run until 20 August 2021.
- 3.5 The Committee will receive a further report for Inverurie and Kintore Burgh Fishings following the eight-week statutory consultation period. The report will ask Committee to consider if they wish to proceed with the proposed leases following their consideration of such representations as are received. In the event of Committee deciding to proceed with the proposed sale the Head of Legal and Governance will petition the Court for the Common Good Order.

4 Discussion

Common Good Overview

- 4.1 Common Good property is property owned by Aberdeenshire Council, but which originally formed part of the properties inherited via the former 17 Burgh Councils, situated within Aberdeenshire Council. Properties falling into this category are subject to specific legal rules in respect of how they can be dealt with by the Council. Not all former Burgh property is Common Good, and establishing what property is Common Good is often complex and requires a great deal of research. Since the late 1800s, most property was acquired by the Burgh Councils under statutory powers for a relevant statutory purpose and so would not be Common Good. However, many titles do not refer to the relevant statute. Whether a property constitutes common good can only be determined by researching the fact and circumstances of its acquisition and its subsequent use. Reference would have to be made to Common Good reports, Acts of Parliament, Charters, titles, Improvement Schemes, Council minutes, files, other historical records, and case law for each property.
- 4.2 The Burgh Fishings at Inverurie forms part of the Common Good Land and Fishing Rights granted by Charter on the 22 June 1588 by Mary Queen of

Scots which established the Burgh of Inverurie as a Royal Burgh (contained within page 288 of the Registrum Magni Sigilli, number 1287 and refers to the term 'piscariis' which means fishing, right to fish). It is therefore necessary for an application for a Common Good Order to be made to the Court in relation to the proposed lease of the Burgh Fishings at Inverurie.

- 4.3 The Burgh Fishings at Kintore forms the subjects purchased by The Provost Magistrates and Councillors of the Burgh of Kintore by virtue of disposition by William John Brown and Andrew Mutch dated 7 October 1957, and 15 October 1957 and recorded in the General Register of Sasines on 30 October 1957 and have been used by the community since then. It is therefore necessary for an application for a Common Good Order to be made to the Court in relation to the proposed lease of the Burgh Fishings at Kintore.

Duty to Consult

- 4.4 There is a requirement to consult the community in terms of Section 104 of the Community Empowerment (Scotland) Act 2015 which imposes a duty upon the Council to consult with the local community when it is planning to dispose of or change the use of any common good property.

Procedure for Common Good Consultation

- 4.5 The Council must publish details of the proposed disposal or change of use of the common good property and notify and invite representations from community councils and community bodies.
- 4.6 "Community bodies" is widely defined but difficult to identify in practice as the Act refers to these as "Bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority."

Procedure

- 4.7 The Scottish Government Guidance sets out the requirements for such consultation:-

1. Publication of Proposals

The proposals to change the use of or dispose of common good property should be published (a) on the Council's website, (b) in places where members of the public can view the proposals in person i.e. on the affected premises, (c) at local council offices, council hubs and local libraries or (d) anywhere else they will be widely seen. The current coronavirus crisis, however, will restrict the number of places, such as libraries, at which the proposals can be made available for public inspection. There is no obligation to advertise in the press albeit it may be advantageous if the proposals are to affect large numbers of the community.

2. Representations

The Council is obliged to allow eight weeks from the date of publication for community bodies and others to make representations on the proposals.

3. Final Response

The Council should aim to consider and respond to any representations within eight weeks of receiving them.

Amendment of Proposals

- 4.8 In some cases, the Council may decide to amend a proposal in respect to changing circumstances or the representations received. If an amended proposal is materially different from the original, then a new eight week consultation is required.

Response to the Consultation/Common Good Order

- 4.9 Committee will receive a report with the consultation response and will determine whether to approve the change of use and authorise the Head of Legal and Governance to proceed to petition the Court for the Common Good Order under Section 75(2) of the Local Government (Scotland) Act 1973. It would be necessary to demonstrate to the Court that the disposal or change of use would be for the benefit of the citizens of the former burgh.
- 4.10 The decision to grant a petition for a disposal or change of use rests with the Court and there can be no guarantee of a successful outcome. However, a robust consultation exercise demonstrating the support of a range of community bodies of the two former Burghs would strengthen the Council's case.

Lease heads of terms

- 4.11 The proposed lease terms are as follows:

Inverurie

- i) 25-year lease to Inverurie Angling Association
- ii) Lease fee of £10 per annum
- iii) Lease fee subject to RPI linked 5 yearly reviews
- iv) Association to pay Don District Salmon Fisheries Board levies

Kintore

- i) Annual renewable lease to Kintore Angling Club
- ii) Lease fee of £10 per annum
- iii) Club to pay Don District Salmon Fisheries Board levies

5 Council Priorities, Implications and Risk

5.1 Specify which of the Council's Priorities are relevant to the report.

Pillar	Priority
<i>Our People</i>	<i>Education Health & Wellbeing</i>
<i>Our Environment</i>	<i>Infrastructure Resilient Communities</i>
<i>Our Economy</i>	<i>Economy & Enterprise Estate Modernisation</i>

This report helps deliver the Strategic Priority “Economy and Enterprise” within the Pillar “Our Economy”, having the right people, in the right place, doing the right thing, at the right time. It also supports a strong, sustainable and diverse economy, and helps to deliver responsible, long term financial planning.

5.2 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial	X		
Staffing			X
Equalities		X	
Fairer Scotland Duty			X
Town Centre First		X	
Sustainability			X
Children and Young People's Rights and Wellbeing			X

5.3 An equality impact assessment is not required at this stage as the statutory consultation should not have a differential impact on any of the protected characteristics. The consultation documents will be provided in alternative formats for any person with a protected characteristic that requests a particular format. Any equality issues arising from the consultation responses will be highlighted to Committee as part of the further report to be brought.

5.4 The staffing and financial implications of implementing and managing the statutory consultation will be managed within the relevant Services' existing resources and approved budgets.

5.5 No Risks have been identified as relevant to this matter on a Corporate Level.

The following Risks have been identified as relevant to this matter on a Strategic level:

BSSROO4 Community Empowerment – the Community Empowerment Act provides mechanisms to empower community bodies through the ownership of land and buildings and by strengthening their voices in decisions that matter to them. Through improved community engagement and participation the Council and partner organisations can deliver quality, more responsive services and better outcomes for communities.

6 Scheme of Governance

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.
- 6.2 The Committee is able to consider and take a decision on this item in terms of Section B.2.2 of the List of Committee Powers in Part 2A of the Scheme of Governance as the matter relates to change of use of Common Good Asset within its Area.

Ritchie Johnson
Director of Business Services

Report prepared by Chris DeVilliers, Principal Solicitor (Conveyancing), Sheereen Razaq, Trainee Solicitor and Kirsty Street, Trainee Solicitor
Date 04 June 2021

List of Appendices

Appendix 1 – Statutory Consultation Document for Inverurie
Appendix 2 – Statutory Consultation Document for Kintore

Appendix 1



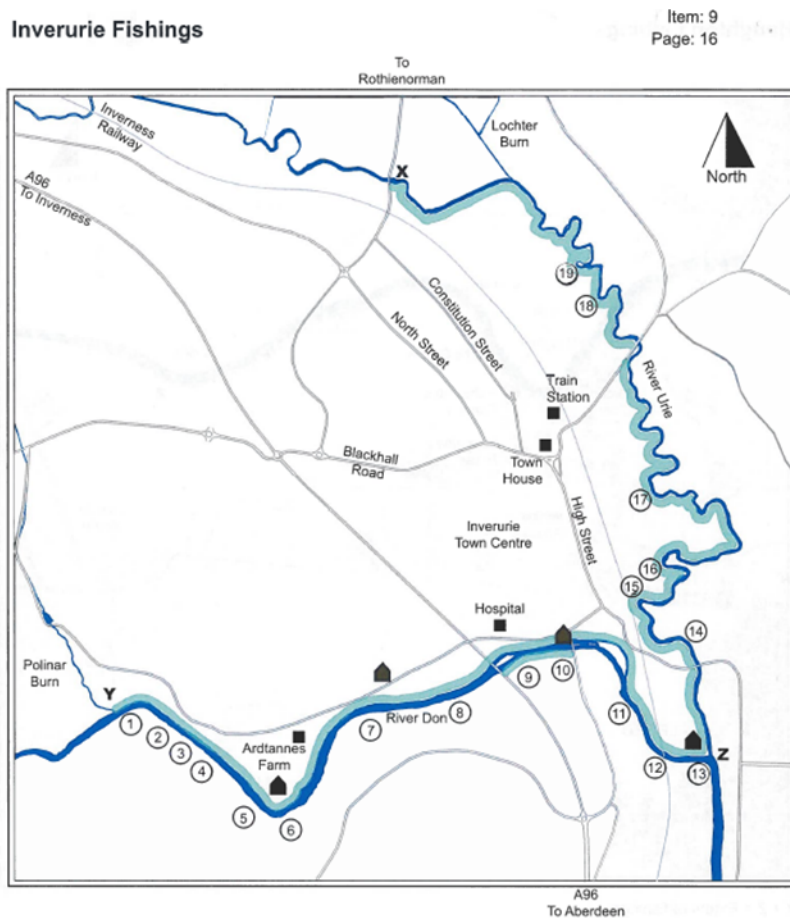
Statutory Consultation with the Local Community under Part 8 of the Community Empowerment (Scotland) Act 2015 for Disposal of Common Good Land – For the lease of the Inverurie Burgh Fishings.

Consultation dates: commences 25 June 2021 closes 20 August 2021

What land is being consulted on?

The Inverurie Burgh Fishings shown edged light blue on the below plan (referred to in this Consultation document as “the Property”).

Inverurie Fishings



- | | |
|-------------------|-------------------|
| 1. Kypie | 11. Barley Pot |
| 2. Maret | 12. Red Brig |
| 3. Boat | 13. Meetings |
| 4. Rowe Head | 14. Bass Pot |
| 5. Yards | 15. Caben Pot |
| 6. Black Pot | 16. Diving Board |
| 7. Mill Stream | 17. Police Pot |
| 8. Rays | 18. Telephone Pot |
| 9. Port Cooker | 19. Horseshoe |
| 10. Bridge Stream | |

X, Y + Z = Extent of fishings
River Don = 4.7km / 2.9 miles
River Urie = 6.7km / 4.2 miles

River Don - Fishing on Left Bank Only
except between bridges

River Urie - Fishing on Right Bank Only

▲ = Fishing Hut

What is being proposed?

The Aberdeenshire Council (the “Council”) proposes to lease the Property to Inverurie Angling Association (the “IAA”) for a period of 25 years. The lease terms shall reflect

that this is a lease for the benefit of the Community to encourage local participation and to ensure the long term future of this Common Good Asset. For the avoidance of doubt the Property shall always remain owned by the Council and be a Common Good Asset.

Why are we consulting?

The Council requires to consult under Section 104 of the Community Empowerment (Scotland) Act 2015 as the Property forms part of the Common Good Land and Fishing Rights granted by Charter on the 22nd June 1588 by Mary Queen of Scots which established the Burgh of Inverurie as a Royal Burgh (contained within page 288 of the *Registrum Magni Sigilli*, number 1287). When considering a disposal of certain types of common good land and/ or common good rights, certain legal requirements must be followed. These are:

- Carry out a statutory consultation with the local community under Part 8 of the Community Empowerment (Scotland) Act 2015 ; and
- If required, seek approval from the Court under s.75 of the Local Government (Scotland) Act 1973.

This consultation is being carried out to satisfy the first legal requirement and further guidance on the process can be found here.

<https://www.gov.scot/publications/community-empowerment-common-good-property-guidance-local-authorities/>

Court approval will be sought if the Council decides to proceed with the disposal following the Consultation.

What are the benefits of the proposal?

The following have been noted as the benefits of this proposal:

- a) Providing accessible fishings to the residents of Inverurie and Aberdeenshire.
- b) Offering cost savings to Aberdeenshire Council by removing the costs of administration, fishery assessment levies by the District Salmon Fishery Board and maintenance.
- c) Offering free fishing to under 16's to encourage participation in angling and teaching best practice.
- d) Carry out a programme of river bank maintenance and improving the existing bankside path at Uryside Park.
- e) Actively engaged in management of Invasive Species by control on the Don Fishing Beat and the River Ury from Overburn to the Meetings.
- f) The IAA are a local organisation who have the local knowledge and skill base to administer the fishings for the local community which prioritises local access and participation.
- g) The IAA has indicated that they have plans in place to improve access to the riverside by creating additional paths, removing fallen trees etc.

- h) IAA have a long experience in the administration of the Burgh Fishing having been involved initially with Inverurie Town Council, then Gordon District and now with The Aberdeenshire Council and are the ideal organisation to continue to administer the fishings for the benefit of the local community and the Common Good.

Are there any drawbacks to this proposal?

None.

Please answer the following question:

Do you agree that The Aberdeenshire Council should lease the property to the Inverurie Angling Association for a period of 25 years to allow the Inverurie Angling Association to be the primary administrators of the Inverurie Burgh fishings for the benefit of the local community and the Common Good.

Please circle or underline your answer: **Yes / No**

Please provide any additional comments

Comments:

Contact details:

Name of Organisation or Individual	
Address	
Postcode	
Email	

What happens next?

Aberdeenshire Council will consider and respond to any representations within eight weeks of the consultation closing date. The Council's final response will be published on the Aberdeenshire Council website (www.aberdeenshire.gov.uk/council-and-democracy/community-empowerment/) along with **details of all representations to this consultation** (excluding address, postcode and email of respondent).

The Council will then take a decision having regard to the outcomes of this Consultation as to whether to proceed with the disposal.

Completed forms can be returned via email: (garioch@aberdeenshire.gov.uk) or via post: (Gordon House, Blackhall Road, Inverurie, AB51 3WA) **Please return forms by 20 August 2021 at 5pm.**

Appendix 2

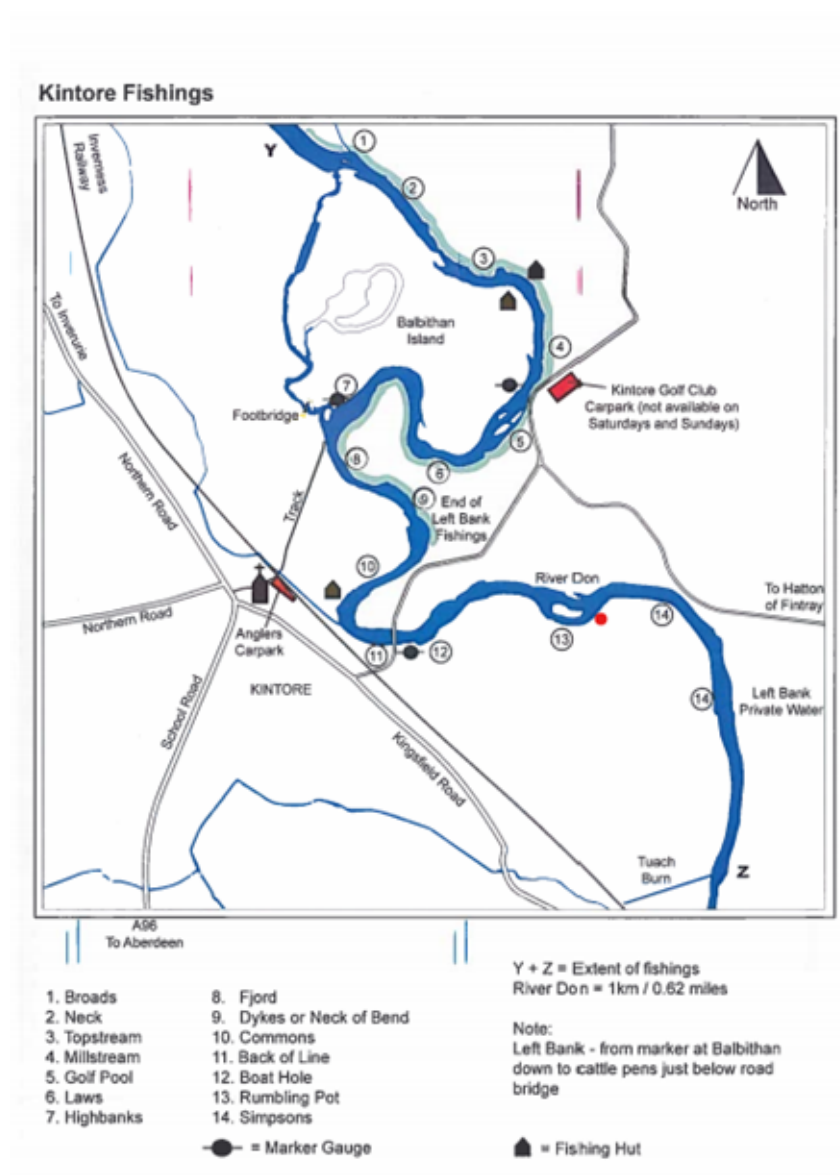


Statutory Consultation with the Local Community under Part 8 of the Community Empowerment (Scotland) Act 2015 for Disposal of Common Good Land – For lease the Kintore Burgh Fishings.

Consultation dates: commences 25 June 2021 closes 20 August 2021

What land is being consulted on?

The Kintore Burgh Fishings shown green on the below plan (referred to in this Consultation document as “the Property”).



What is being proposed?

The Aberdeenshire Council (the “Council”) proposes to lease the Property to Kintore Angling Club (the “KAC”) on a year-to-year basis. The lease terms shall reflect that

this is a lease for the benefit of the Community to encourage local participation and to ensure the long-term future of this Common Good Asset. For the avoidance of doubt the Property shall always remain (i) owned by the Council and (ii) be a Common Good Asset.

Why are we consulting?

The Council requires to consult under Section 104 of the Community Empowerment (Scotland) Act 2015 as the Property forms part of the Common Good Land purchased by The Provost Magistrates and Councillors of the Burgh of Kintore by virtue of disposition by William John Brown and Andrew Mutch dated Seventh and Fifteenth and recorded in the General Register of Sasines on Thirtieth all days of October Nineteen Hundred and Fifty-Seven. When considering a disposal of certain types of common good land and/ or common good rights, certain legal requirements must be followed. These are:

- Carry out a statutory consultation with the local community under Part 8 of the Community Empowerment (Scotland) Act 2015 ; and
- If required, seek approval from the Court under s.75 of the Local Government (Scotland) Act 1973.

This consultation is being carried out to satisfy the first legal requirement and further guidance on the process can be found here.

<https://www.gov.scot/publications/community-empowerment-common-good-property-guidance-local-authorities/>

Court approval will be sought if the Council decides to proceed with the disposal following the Consultation.

What are the benefits of the proposal?

The following have been noted as the benefits of this proposal:

- a) Providing accessible fishings to the residents of Kintore and Aberdeenshire.
- b) Offering cost savings to Aberdeenshire Council by removing the costs of administration, fishery assessment levies by the District Salmon Fishery Board and maintenance.
- c) Carry out a programme of river bank maintenance and improving the existing bankside paths along the river banks.
- d) Actively engaged in management of Invasive Species by control on the fishing beats.
- e) The KAC are a local organisation who have the local knowledge and skill base to administer the fishings for the local community which prioritises local access and participation.
- f) The KAC has indicated that they have plans in place to improve access to the riverside by creating additional paths, removing fallen trees etc.

Are there any drawbacks to this proposal?

None.

Please answer the following question:

Do you agree that The Aberdeenshire Council should lease the property to the Kintore Angling Club on a year to year basis to allow the Kintore Angling Club to be the primary administrators of the Kintore Burgh fishings for the benefit of the local community and the Common Good.

Please circle or underline your answer: **Yes / No**

Please provide any additional comments

Comments:

--

Contact details:

Name of Organisation or Individual	
Address	
Postcode	
Email	

What happens next?

Aberdeenshire Council will consider and respond to any representations within eight weeks of the consultation closing date. The Council's final response will be published on the Aberdeenshire Council website (www.aberdeenshire.gov.uk/council-and-democracy/community-empowerment/) along with **details of all representations to this consultation** (excluding address, postcode and email of respondent).

The Council will then take a decision having regard to the outcomes of this Consultation as to whether to proceed with the disposal.

Completed forms can be returned via email: (garioch@aberdeenshire.gov.uk) or via post: (Gordon House, Blackhall Road, Inverurie, AB51 3WA) **Please return forms by 20 August 2021 at 5pm.**