

REPORT TO KINCARDINE AND MEARNS AREA COMMITTEE – 16 NOVEMBER 2021

STATUTORY CONSULTATION WITH THE LOCAL COMMUNITY UNDER PART 8 OF THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 FOR DISPOSAL OF COMMON GOOD LAND – FOR LEASE AT MEMORIAL PARK, LAURENCEKIRK

1 Reason for Report / Summary

- 1.1 As required under Section B.2.2 of the List of Committee Powers in the Scheme of Governance, the Area Committee are required to determine the sale or lease of more than 12 months duration or change of use of Common Good assets within its Area before a Common Good Order is sought from the Court.

2 Recommendations

The Committee is recommended to:

- 2.1 Acknowledge the representation to the consultation for the lease of an area of ground within Memorial Park as carried out in terms of Section 104 of the Community Empowerment (Scotland) Act 2015 as set out in Appendix 2 to this report and having had regard to the representation, reconfirm its decision of 11 December 2018 to lease the area of ground to the Memorial Park Group.**

3 Purpose and Decision-Making Route

- 3.1 A report was presented to the Kincardine and Mearns Area Committee on 11 December 2018 (EXEMPT) seeking approval to lease an area of ground within Memorial Park in Laurencekirk to the Memorial Park Group for a period of 19 years and 50 weeks.
- 3.2 The Committee gave authority for a consultation exercise to be carried out in accordance with the requirements of Section 104 of the Community Empowerment (Scotland) Act 2015 which require the Local Authority to consult with the local community when it is planning to dispose or change the use of any common good property. This consultation has now taken place with only one representation having been received from Mearns Community Council who unanimously support the lease to the Memorial Park Group.

4 Discussion

- 4.1 The Memorial Park Group was set up to encourage interest, use and development of Memorial Park. Following extensive community engagement in 2017 including creation of a dedicated Facebook page, a press article in the Observer and engagement with the various stakeholder groups who use the park as well as the Bowling Club, the Memorial Park Group, supported by the Council, undertook fund raising which has resulted in the creation of a new

perimeter path, the installation of a new storage shed with toilet facilities, addition of a zip wire and climbing frame. The group also jointly maintain the grass pitches along with Landscape Services. The group had secured various funds to support these additions and had applied for £13,783.87 from the Tullo windfarm. However, the Tullo windfarm required a lease to be in place with the Council before the funding could be released.

- 4.2 Whilst preparing the lease it was established that Memorial Park formed part of the Common Good of the former Burgh of Laurencekirk. Once a property is established as Common Good there are certain legal processes to be followed. Under Part 5 of the Community Empowerment (Scotland) Act 2015 a local authority is required to consult with the local community when considering any disposal, whether that is by sale or lease, or change of use of common good property. The consultation requires that the Council 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.
- 4.3 The statutory consultation process has a potential 16-week timescale which would have been beyond the deadline for the Tullo windfarm funding and would have resulted in the funding being lost. As a result, the report to the Kincardine and Mearns Area Committee on 11 December 2018 sought approval to grant a lease for the ground in advance of undertaking the public consultation, subject to a successful consultation being carried out in terms of S104 of the Community Empowerment Act and the consent of the court or failing which the Council would be entitled to terminate the lease and recover the property. The Committee approved the granting of a lease and authorised the consultation exercise to commence.
- 4.4 The public consultation has now taken place and ran from 17 May 2021 to 12 July 2021 (**Appendix 2**). Electronic copies were made available on the Council website and a copy was emailed to Mearns Community Council. Public Notices about the consultation were posted on the two entrances to Memorial Park, in the local Post Office, within the 2 supermarkets and within the Mearns Community Campus. Due to the Covid restrictions it was not possible to leave paper copies in the Community Campus which includes the library, but the public notice gave details of how paper copies could be obtained.
- 4.5 The consultation asked respondents whether they agreed “that Aberdeenshire Council should continue to lease the property to the Memorial Park Group for a period of 19 years and 50 Weeks”. As previously stated, there was only one response received from Mearns Community Council which was in support of the proposal (**Appendix 3**). Therefore, the next step in the process is to petition the Court, under 75(2) of the Local Government (Scotland) Act 1973 for authority to lease the area of ground within Memorial Park.

5 Council Priorities, Implications and Risk

- 5.1 This report helps deliver the Strategic Priorities:
- Health & Wellbeing within the Pillar Our People; and
 - Resilient Communities within the Pillar Our Environment.

5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

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

5.3 There are no staffing or financial implications arising from this report.

5.4 An integrated impact assessment has been carried out as part of the development of the proposals set out above. It is included as **Appendix 1** and no impact has been identified.

5.5 The following Risk has been identified as relevant to this matter on a Corporate Level:

ACORP006 – Reputation management if the application to the Court is refused. [Corporate Risk Register 2021 \(aberdeenshire.gov.uk\)](https://www.aberdeenshire.gov.uk/corporate-risk-register-2021).

The following Risk has been identified as relevant to this matter on a Strategic Level.

ISSR008 – Placemaking – supporting communities to help themselves, enabling wealth building that supports local economic opportunities. [Infrastructure Services Directorate Risks \(aberdeenshire.gov.uk\)](https://www.aberdeenshire.gov.uk/infrastructure-services-directorate-risks).

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 had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

6.2 The Committee can consider and take a decision on this item in terms of Decisions on Common Good which is delegated to Area Committees in the Scheme of Governance, Part 2A, List of Committee Powers, under Section B.2.2 (Area Committees have the power to determine the sale or lease for more

than 12 months duration of Common Good assets within the relevant area before a Common Good Order is sought from the courts).

- 6.3 The Head of Legal and People has delegated power under the Scheme of Governance, Part 2B List of Officer Powers Para D.6.5 to raise all forms of proceedings on behalf of the Council.

Alan Wood
Director of Environment and Infrastructure Services

Report prepared by Diane Henderson, Area Project Officer
Date: 19 October 2021

List of Appendices:

- Appendix 1 - Integrated Impact Assessment
- Appendix 2 - Public Consultation
- Appendix 3 - Representation from Mearns Community Council

Aberdeenshire Council

Integrated Impact Assessment

Lease of Memorial Park, Laurencekirk

Assessment ID	IIA-000150
Lead Author	Diane Henderson
Additional Authors	Bruce Stewart
Service Reviewers	Bruce Stewart
Approved By	Bruce Stewart
Approved On	Wednesday October 06, 2021
Publication Date	Wednesday October 06, 2021

1. Overview

This document has been generated from information entered into the Integrated Impact Assessment system.

A report was presented to the Kincardine & Mearns Area Committee on 11 December 2018 seeking approval to lease an area of ground within Memorial Park, Laurencekirk to the Memorial Park Group for a period of 19 years and 50 weeks.

The community group had undertaken extensive community engagement in 2017 to seek the views of the community on what improvements they would like to see in the park. As a result the Memorial Park Group set about raising funds to undertake the improvements. One of the funders required that the group owned or leased the land in question. However, whilst preparing the lease and checking the title deeds it was established that Memorial Park formed part of the Common Good of the former Burgh of Laurencekirk. Once a property is established as Common Good there are certain legal processes to be followed. Under Part 5 of the Community Empowerment (Scotland) Act 2015 a local authority is required to consult with the local community when considering any disposal, whether that is by sale or lease, or change of use of common good property. The consultation requires that the Council 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.

The statutory consultation process has a potential 16-week timescale which would have been beyond the deadline for the Tullo windfarm funding and would have resulted in the funding being lost. As a result, the report to the Kincardine and Mearns Area Committee on 11 December 2018 sought approval to grant a lease for the ground in advance of undertaking the public consultation, subject to a successful consultation being carried out in terms of S104 of the Community Empowerment Act and the consent of the court or failing which the Council would be entitled to terminate the lease and recover the property. The Committee approved the granting of a lease and authorised the consultation exercise to commence.

Following the statutory public consultation the report now seeks Committee to reconfirm its earlier decision of 11 December 2018 to lease the area of ground to the Memorial Park Group in advance of petitioning the Court, under 75(2) of the Local Government (Scotland) Act 1973 for authority to lease the area of ground within Memorial Park.

During screening 0 of 10 questions indicated that detailed assessments were required, the screening questions and their answers are listed in the next section. This led to 0 out of 5 detailed impact assessments being completed. The assessments required are:

In total there are 0 positive impacts as part of this activity. There are 0 negative impacts, all impacts have been mitigated.

A detailed action plan with 0 points has been provided.

This assessment has been approved by bruce.stewart@aberdeenshire.gov.uk.

The remainder of this document sets out the details of all completed impact assessments.

2. Screening

Could your activity / proposal / policy cause an impact in one (or more) of the identified town centres?	No
Would this activity / proposal / policy have consequences for the health and wellbeing of the population in the affected communities?	No
Does the activity / proposal / policy have the potential to affect greenhouse gas emissions (CO2e) in the Council or community and / or the procurement, use or disposal of physical resources?	No
Does the activity / proposal / policy have the potential to affect the resilience to extreme weather events and/or a changing climate of Aberdeenshire Council or community?	No
Does the activity / proposal / policy have the potential to affect the environment, wildlife or biodiversity?	No
Does the activity / proposal / policy have an impact on people and / or groups with protected characteristics?	No
Is this activity / proposal / policy of strategic importance for the council?	No
Does this activity / proposal / policy reduce inequality of outcome?	No
Does this activity / proposal / policy have an impact on children / young people's rights?	No
Does this activity / proposal / policy have an impact on children / young people's wellbeing?	No

3. Impact Assessments

Children's Rights and Wellbeing	Not Required
Climate Change and Sustainability	Not Required
Equalities and Fairer Scotland Duty	Not Required
Health Inequalities	Not Required
Town Centre's First	Not Required

Statutory Consultation with the Local Community under Part 8 of the Community Empowerment (Scotland) Act 2015 for Disposal of Common Good Land – For lease of part of Memorial Park, Laurencekirk

Consultation dates: Commences 17 May 2021 closes 12 July 2021

What land is being consulted on?

The area of ground (collectively referred to in this Consultation document as “the property”) at Memorial Park, Laurencekirk and which is shown on the following plan:



What is being proposed?

The Laurencekirk Memorial Park Group are a group of active community minded people keen to improve the offer of activities in the Memorial Park, Laurencekirk. The group worked closely with Aberdeenshire Council to raise funds to improve the park including a new perimeter path, funding for new play equipment and upgrade of the tennis courts. The group also have a Service Level Agreement with the Council to undertake the grass cutting. The group have also introduced a summer programme of activities encouraging sport and leisure outdoor pursuits.

The group sought funding to replace the former toilet block and build of a new storage shed. However, in order to secure the funding, the group were required

to have a Lease in place for the property from Aberdeenshire Council. Due to the short funding timescale a report was taken to the Kincardine & Mearns Area Committee requesting that a Lease be granted on the proviso that the community consultation was still required to be undertaken.

As a result, Aberdeenshire Council have granted a Lease of the property to the Memorial Park Group for a period of 19 years and 50 weeks with the principal condition of lease to be used and maintained as a public park with free and open public access to and over the property. Any improvements made to the property by the Tenant will be for a use ancillary to the park or for the benefit of the wider Laurencekirk community.

Why are we consulting?

On examination of the title for the Memorial Park it has been established that the park is common good.

When considering disposal of certain types of common good land (whether by sale or lease), 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 then be sought if the Council decides to proceed with the disposal following the Consultation.

What are the benefits of the proposal?

The group fully engaged the community on the park and what it could offer the community. Being active and reducing the need for families to travel for outdoor entertainment was the key ambition of the group. Online surveys, pictorial maps, media coverage etc, were used as a means of engaging the community and finally taking part in a local Place Making event which enabled the group to ensure that the project was delivering on local aspirations.

The group worked closely with Aberdeenshire Council, Mearns Community Council and the Laurencekirk Development Trust to ensure good communication throughout the process.

The project plans for the park are as follows:

- **Extend the Park Pavilion** – this is the long-term goal and is being worked on.
- **Improving the tennis court surface and encourage better usage** – funding was achieved in 2016 to improve the courts and a summer programme of tennis is now offered.
- **Additional Storage Space** – planning permission has been agreed. This venture has secured funding from the Kincardine and Mearns Area Committee, Tullo Community Benefit Fund and Scotmid Community Connect Award as well as some local fundraising.
- **Park Toilet** - planning permission has been agreed. This venture has secured funding from the Kincardine and Mearns Area Committee, Tullo Community Benefit Fund, Scotmid Community Connect Award as well as some local fundraising.
- **Putting Green** – still being progressed.
- **Perimeter Path** – funding was achieved through Aberdeenshire Council and work was completed in late 2018.
- **Additional play equipment (for older children)** – a new climbing frame was erected and a zipwire has also now been provided.
- **Additional sports pitches (football)** – an additional pitch has been prepared and pitches are being jointly maintained by a community group and Aberdeenshire Council.
- **Outdoor Fitness Equipment** – funding still to be arranged.
- **Improved parking facilities** - this is the long-term goal and is being worked on with the upgrade of the pavilion.
- **General maintenance** – War Memorial and around the tennis court.

The Memorial Park Group have worked in a collaborative and inclusive way which they have found to benefit everyone. Several funding opportunities have been achieved by proactively working with funders e.g. the Tullo Windfarm and Aberdeenshire Council are two examples.

Are there any drawbacks to this proposal?

The Lease contains a provision which allows the Council to terminate the Lease following the completion of the consultation and the representations received would accordingly play a significant part in determining whether or not to terminate the Lease.

Please answer the following question:

Do you agree that Aberdeenshire Council should continue to lease the property to the Memorial Park Group for a period of 19 years and 50 weeks?

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

Please provide any additional comments:

Comments:

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 preferably via email to: diane.henderson@aberdeenshire.gov.uk and copied to: james.mckay@aberdeenshire.gov.uk or via post to: 'The Memorial Park Consultation Response', Area Manager's Office, Viewmount, Arduthie Road, Stonehaven, AB39 2LS.

Please return forms by 12th July 2021.

Archived: 16 September 2021 16:33:33

From: [Susie Brown](#)

Sent: Tue, 29 Jun 2021 14:25:49 [REDACTED]

To: Diane Henderson; [REDACTED]

Subject: Memorial Park

Importance: Normal

Hello Diane,

At the meeting of Mearns Community Council on 28th June 2021 members unanimously supported the lease of part of the memorial park as detailed in the public notice.

Members noted the scope of work already carried out by the Memorial Park Group and wish them well.

Mearns CC will be pleased to hear directly from the group, if appropriate, re any future proposals.

Regards

Susie

For Mearns Community Council