
ARGYLL AND BUTE COUNCIL

**DEVELOPMENT AND
INFRASTRUCTURE SERVICES**

**HELENSBURGH AND LOMOND
AREA COMMITTEE**

20 DECEMBER 2018

Duchess Wood Management Agreement

1.0 EXECUTIVE SUMMARY

- 1.1 Duchess Wood is owned by Luss Estates Company, and is managed via a Management Agreement with Argyll and Bute Council. This Management Agreement will expire in August 2020. It is the purpose of this report therefore to outline potential options for the subsequent management of the site beyond August 2020 to Members, for their consideration.
- 1.2 Decisions on the management of the site are currently made via a Management Committee (DWLNRC), on which Argyll and Bute Council, Luss Estates Company, Lomond School, Friends of Duchess Wood, and Argyll TSI are represented.
- 1.3 Duchess Wood comprises two areas of woodland in Helensburgh, which were collectively declared as a Local Nature Reserve (LNR) in 1998, under Section 21 of the National Parks and Access to the Countryside Act 1949. This report therefore also seeks to provide options for the site within the context of its Local Nature Reserve status.

2.0 RECOMMENDATIONS

- 2.1 The committee is asked to consider the options set out in paragraph 6.2 and agree next steps.

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3.0 INTRODUCTION

- 3.1 Duchess Wood is owned by Luss Estates Company and is currently managed via a Management Agreement with Argyll and Bute Council. The Management Agreement is due to expire in August 2020. Members are therefore requested to consider the potential options for the subsequent management of the site beyond August 2020.
- 3.2 The options include the following:
- 3.3 a) Renewal of the Management Agreement as per current arrangements, i.e. decisions would be made by the Management Committee and the Council's Amenity Services would continue to lead on the responsible management of the area and incur the relevant costs. This would require a budget to be allocated for a minimum period of 10 years for on-going maintenance and potential liability costs as this could not be covered within existing budgets. A figure for this would require to be calculated by Amenity Services.
- 3.4 b) A third party enters into a Management Agreement with Luss Estates Company, i.e. a third party would take the lead on the responsible management of the area and incur the relevant costs but the Council would still be represented on the Management Committee.
- 3.5 c) The area reverts back to the responsible management of the owner, Luss Estates Company.
- 3.6 d) A third party purchases the land from Luss Estates, e.g. the community initiates a community buy out of the land.
- 3.7 Decisions on the management of the site are currently made via a Management Committee (DWLNRC), on which Argyll and Bute Council, Luss Estates Company, Lomond School, Friends of Duchess Wood, and Argyll TSI are represented.
- 3.8 The costs associated with managing and insuring the site are currently met through Council budgets. There is also significant officer support from Amenity Services, Economic Development and Area Governance on a regular basis as

well as other skills and expertise drawn upon as required, for example, from Legal Services.

- 3.9 Duchess Wood comprises two areas of woodland, which were collectively declared as a Local Nature Reserve in 1998, under Section 21 of the National Parks and Access to the Countryside Act 1949. This report therefore also seeks to provide detail on the implications for the site's Local Nature Reserve status within the context of the potential options.

4.0 RECOMMENDATIONS

- 4.1 The committee is asked to consider the options set out in paragraph 6.2 and agree next steps.

5.0 DETAIL

- 5.1 In 1995, Dumbarton District Council entered into a fifteen year Management and Access Agreement with Luss Estates Company in respect of two areas of woodland collectively referred to as Duchess Wood.
- 5.2 The Management and Access Agreement was drawn up under Section 49A of the Countryside (Scotland) Act 1967 with the purpose of enabling public access for open air recreation. Following local government re-organisation the rights and responsibilities of Dumbarton District Council, in terms of the Management and Access Agreement transferred to Argyll and Bute Council as the relevant local planning authority.
- 5.3 In 1998, the site was established as a Local Nature Reserve (LNR) by the local authority, under Sections 19 and 21 of the National Parks and Access to the Countryside Act 1949, and as amended by the Local Government and Planning (Scotland) Act 1982. The LNR was established because of the high natural heritage interest of the site and its particular value for education and informal enjoyment of nature by the public.
- 5.4 At present there are two established LNR's within Argyll and Bute. The first being Duchess Wood and the second being Holy Loch LNR by Dunoon. The Holy Loch LNR takes an alternative approach to the management and maintenance of the site. Sandbank Development Trust are the leaseholder and therefore responsible for maintenance and management with the Council represented on the management committee.
- 5.5 As the Management and Access Agreement between Luss Estates Company and Argyll and Bute Council in regard to Duchess Wood will expire in August 2020, the following provides options for the site thereafter.

- a **Renewal and refresh of the Agreement as per current arrangements.**

- 5.6 The responsible management of the site currently falls to the Council's Amenity Services. This would require a budget to be allocated for a minimum period of 10 years as costs could not be covered within existing budgets. A figure for this would require to be calculated by Amenity Services. Regular officer resource is also required from Economic Development and Area Governance. Under the current management agreement with Luss Estates Company, entered into in 2010 for a ten year period, the Council is responsible for the safety of anyone entering the Managed Land and there is therefore a liability on the Council to secure the proper management of the area.
- 5.7 Should the current arrangement be renewed ongoing funds would be required. At present the average annual cost is £6302.40 for routine litter picking and weed treatment. Additional costs may be incurred in relation to storm damage clean up, overhanging trees, pathway maintenance and other unscheduled works. If similar arrangements to those currently in place were replicated significant officer time would also be required. There is however a risk that depleting Council budgets and further limited resources would mean that there would be reduced funds to manage the area, and that funds to manage Duchess Wood would impact on what could be delivered elsewhere in Helensburgh and Lomond. Resources are already stretched in terms of officer time, which has been exacerbated by the loss of support through Lower Clyde Greenspace and which is likely to further be impacted through future budget cuts.
- 5.8 There may be opportunity to access funding from the Forestry Commission to support the cost of managing the land, but a dedicated budget would also be required should fund raising efforts prove unsuccessful.
- 5.9 The site benefits enormously from a Friends of Duchess Wood group that supports Amenity Services in the management of the area. Should Council resource be reduced this may in turn lead to an increased demand on the limited resource of the voluntary group.
- 5.10 Should members support the continuation of this option, work would commence between the Council's Legal Services and Luss Estates Company to draw up a draft Management and Access Agreement, and which would be taken to Full Council for approval.
- b **A third party enters into a Management Agreement with Luss Estates Company.**
- 5.11 A Management Agreement could be made between the land owner and a third party. In this case, the site's status as a LNR would be unaffected as long as the local authority continued to be represented on the Management Committee.
- 5.12 A third party may have access to wider funding opportunity than that of the council, and in areas of funding where only a local authority can apply, there is likely to be potential to support in these instances.

- 5.13 This option would require work with the Management Committee to understand whether there is an organisation currently represented that may be interested in taking the lead on the responsible management of the land. If not, work would be required to consult with the wider Helensburgh voluntary organisations to understand levels of interest.
- 5.14 Should a third party express an interest in taking the lead on the responsible management of the land and the land owner is comfortable with making a new agreement with the organisation, work would commence between the Council's Legal Services and the land owner in relation to the consequences of termination of the existing agreement.
- 5.15 If arrangements were to continue clarity would need to be provided around where responsibility lies for the repair of built structures on the land. It is critical that this is clarified within a new Management and Access Agreement for whichever organisation enters into this agreement.
- 5.16 Should members support this option, work would be undertaken to explore the level of interest within the community.

c The area reverts back to the responsible management of the land owner, Luss Estates Company.

- 5.17 Luss Estates Company is represented on the Management Committee and is therefore part of the decision making body, but does not currently contribute to the cost of management.
- 5.18 Although not expressly stated in the Management Agreement, at the stated expiry of the agreement it is assumed that the Managed Land would require to be returned to the landowner in full compliance with the Council's obligations (Appendix 2) which may result in an additional cost to the Council.
- 5.19 Should neither the Council nor a third party wish to agree a new Management Agreement with the land owner, and the site reverts to the land owner with no established Management Committee for the responsible management of the site, the site could no longer be referred to as a Local Nature Reserve (LNR).
- 5.20 Under the Act, for the site to continue to have LNR status a local authority is required to have a legal interest in the land in question through either ownership, lease, or an agreement with the owners and occupiers involved. For LNR status to remain therefore a Management Committee, with Council representation, would be required.
- 5.21 The current Duchess Wood Local Nature Reserve Committee was established in 2002 and has been proactive in addressing the management issues affecting the woodland. The current Committee could continue in its present form, with an alternative lead organisation. The risk in this case

relates to the intention of the land owner and whether or not they would be supportive of the continuation of LNR status.

- 5.22 There is opportunity for the LNR boundary to be redefined to meet the requirements of stakeholders. If part of the site were to have its status removed, any applicable byelaws would need to be revoked and re-applied to the remaining area of land.ⁱ
- 5.23 Formal consultation on the removal of LNR status, in whole or in part, should take place with Scottish Natural Heritage. Notice should be published to inform local people and relevant interests, in the same way as the LNR was established originally. There is a risk that the removal of the LNR status would not be supported by the community with the risk of possible reputational damage to the Council as a result.
- 5.24 The sites' status as an LNR is not however recognised as a statutory designation. If Duchess Wood were to lose its LNR status, the site would continue to be covered by statutory planning policy designation through the Local Development Plan (LDP) to protect the site, which may go some way to mitigating concerns. The relevant designations protecting the site are as follows:
- Local Nature Conservation Site
 - Green Belt - presumption against development incompatible with the green belt
 - Open Space Protection - presumption against loss of open space
 - Development Impact on Trees/Woodland
- 5.25 Should members support this option, discussions would begin with the land owner to establish their intentions for the site.
- d **A third party purchases the land from Luss Estates Company, e.g. the community initiates a community buy out of the land.**
- 5.26 The potential for community ownership of Duchess Wood would be in-keeping with the Scottish Government position, which aims to increase the ability of community bodies to request or lease land, where it is felt the community could make better use of the land.
- 5.27 It would appear there is nothing within the provisions of the National Parks and Access to the Countryside Act that would prevent the transfer of ownership of a site with LNR status to a community organisation, such as a Friends Group or charitable trust, providing that a management agreement with the owner is put in place.
- 5.28 Community ownership could be supported and facilitated through the Scottish Land Fund, which offers grants of up to £1 million to help communities take ownership of the land and buildings, as well as practical support to develop their aspirations into viable projects.

- 5.29 The potential for community ownership of the site is not limited to those groups currently engaged with Duchess Wood. It may be that a new group could be established, or an existing group may take an interest in this opportunity. Should members prefer this option, work would begin to explore whether there is any interest within the community to try and purchase the land.
- 5.30 The options outlined above have been discussed at the DWLNRC. Through these discussions the Friends of Duchess Wood considers that, for them, neither options B nor D are viable at present due to concerns around their capacity to manage the woodland.
- 5.31 The Friends' estimate they provide around £71,610 of in-kind contributions annually to support the maintenance and management of the woodland (full breakdown submission in Appendix 2). However, they have stated that they are not prepared to enter into an agreement to take on these responsibilities formally.
- 5.32 The Friend's preference is therefore option A. It is the Friend's opinion that option A, with some amendments and clarifications to the agreement, could allow a wider range of external funders to be accessed.

6.0 CONCLUSION

- 6.1 Duchess Wood is owned by Luss Estates Company and is currently managed via a Management Agreement with Argyll & Bute Council. This agreement will expire in August 2020 and therefore this paper seeks to outline potential options for the period subsequent to this date within the context of the site's status as a Local Nature Reserve.
- 6.2 The options for Members consideration include the following:
- a) Endorse the renewal and refresh of the Management Agreement as per current arrangements.
 - b) Explore potential interest within the community to establish whether there is potential for a third party to enter into a Management Agreement with Luss Estates Company, with the Council retaining representation on the Management Committee.
 - c) Recommend that the area reverts back under the sole responsibility of the land owner.
 - d) Explore potential interest within the community to establish whether there is potential for a third party to seek to purchase the land from Luss Estates Company.

7.0 IMPLICATIONS

- 7.1 Policy Duchess Wood is designated as a Local Nature Reserve in the Local Development Plan.
- 7.2 Financial If the Local Authority continue to take an active role in the management of the site, a minimum of £6,302.40 annually (based on previous annual spend) is required with the potential for additional costs. Additional resource would also be required in terms of Officer support from Economic Development, Amenity Services and Governance.
- 7.3 Legal The Legal Services Manager – Commercial has reviewed the terms of this report and has confirmed that the legal background and implications have been accurately stated within the report.
- 7.4 HR None
- 7.5 Equalities/
Fairer Scotland Duty No equal opportunities implications.
- 7.6 Risk None at present.
- 7.7 Customer Service Working with local people.

**Pippa Milne Executive Director of Development and Infrastructure
Policy Lead, Sustainable Economic Growth, Councillor Aileen Morton**

Dec 2018

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Appendix 1 - Obligations

At the stated expiry of the Management Agreement, it would be assumed that the Managed Land would be returned to the landowner in full compliance with the Council's obligations and essentially the conditions that apply at early termination would also apply at the stated expiry date.

- a) all necessary works which may require to be carried out on the Managed Land to put the Managed Land into a reasonably safe and tidy condition, including the lopping and felling of any trees which appear prior to the said date of early termination to be unsafe,
- b) to remove any structures which have been erected or sited on the Managed Land by or with the authority of the Authority and which it is reasonable for the Grantors to require to be removed,
- c) to ensure that the Works which the Authority are required to carry out on the Managed Land up to the said early date of termination have been carried out in accordance with the Management Plan and to the reasonable satisfaction of the Grantors and
- d) to indemnify the Grantors in relation to any liability for any financial commitments which the Authority have entered into in relation to the Managed Land and, without prejudice to the foregoing generality, any grant funding which may become repayable on the early termination of this Agreement; In the event of early termination of this Agreement by the Authority, the Authority undertakes to indemnify the Grantors in relation to all duties and obligations to be undertaken by the Authority in terms of this Agreement up to the date on which the Authority have complied with their duties and obligations, unless with the express written agreement of the Grantors;

The Council would also remain liable to make full indemnification to the Grantors in relation to all duties and obligations which the Council are to undertake in terms of the Management Agreement, up to the date of expiry of the Management Agreement. That would include settling any claims made even after the date of expiry, provided that they arise in respect of something which has occurred up to the date of expiry.

Appendix 2

Volunteer resource in the management of Duchess Wood

Submission from Stewart Campbell, Chair, FODW, 8 October 2018

This note gives an estimate of the volunteer effort put into the management of the Duchess Wood (DW) Local Nature Reserve by the Friends of Duchess Wood (FODW). FODW is run by a nine-person committee, and draws upon numerous members for specific work and work parties, as well as partner organisations, such as Community Payback (CP) and the Third Sector Interface.

Activities

This work over the last five years has involved:

1. Administration of the Committee (minimum four meetings a year plus AGM)
2. Administration of FODW as a charity (reporting to OSCR)
3. Administration of the relationship with the A&BC DWLNR Committee (four meetings a year)
4. Preparation and issue of twice-yearly newsletter
5. Maintenance of website/Facebook presence
6. Organisation of monthly work parties, plus other task-specific work parties
7. Liaison with A&BC Amenity Services
8. Liaison with other environmental charities such as Plantlife and Buglife, and organisation of visits to Wood. Extension and updating of species checklists
9. Some specific activities:
 - a. Preparation of revised five year Management Plan
 - b. Preparation of application for WIAT grant
 - c. Weekend information day/visitor count
 - d. Development of designated way-marked paths around the Wood (with support from CP)
 - e. Development of spring flower walk route and publication of descriptive leaflet (with support from Alison Rutherford and Fiona du Boulay) and support for the John Muir Way
 - f. Development of Information Hub with eight information panels (with support from Babcock International)
 - g. Installation of map boards at each main entrance (with support from Sandy Abel)
 - h. Development of "Top ten things to see in DW" leaflet, with map
 - i. Preparation of greetings card (with support from Mary Jane Selwood)

- j. Planting of fruiting trees around "Pony Field" with protection, and planting of trees in other ,locations around the Wood
- k. Organisation of three "Walking Theatre" events
- l. Development of two ponds (with support from the Amphibians and Reptiles Conservation Trust) plus planting
- m. Extension and improvement of path network in pond areas and fencing
- n. Replacement of bridge to west of Pony Field with culvert
- o. Organisation of trial thinning exercise and log sale in lower wood (with support from Simon Lockwood)
- p. Clearance of Rhododendron Ponticum from much of the Wood
- q. New benches (with support from the James Street Garden)
- r. Fencing, bridge deck repairs, gully clearance, path clearing, leaflet replacement, storm damage and other regular maintenance activities.

Time and costs (capital costs are not included in this paper)

Four members of the committee (Chair, secretary, membership secretary/work party coordinator, and grants/work leader) estimate that they regularly devote at least a day a week to their volunteer roles. At certain times (for example preparing the Management Plan, developing the information hub, organising the trial thinning exercise and development of the ponds) this average level of work is significantly exceeded. As an estimate, and to give a better feel for the total resource, I have added in an extra day a week for ten weeks for the chair and secretary in relation to the Management Plan and the information hub development, and an extra day a week for the chair and grants/work leader for the thinning exercise, and for the ponds development. Over the space of the last five years therefore, this group has spent approximately:

$4 \times 50 \times 5 = 1000$ days + $2 \times 4 \times 10 = 80$ days = 1080 days on general and specific activities.

In addition, the Treasurer has a regular demand, peaking at the time of the AGM, in relation to fees, expenses and donations, preparation of the Annual Accounts, and preparation of our Gift Aid application. This amounts to around one day a fortnight and therefore an additional 125 days over five years.

Other committee members take on their FODW trustee role and specific tasks, such as pond development, website management, firewood organisation, and planting policies and in total this amounts to at least 200 days over five years. Members of FODW also contribute to FODW work particularly through specific tasks (for example in relation to flower leaflet preparation and map board manufacture) and through work parties and maintenance and clearance tasks. We estimate that the regular tasks as $10 \times 6 \times 1 / 2 \times 5 = 150$ days over 5 years (though this figure feels very

low) plus perhaps a similar amount for specific tasks (150 days). (In addition FODW has organised significant levels of "voluntary" support from Community Payback, which is difficult to estimate, but must be at least equivalent to around $6 \times 5 = 30$ days a year (again this may be a very low estimate some years)).

So in total, a best estimate of the minimum level of volunteer effort over the last five years would be $1080+125+200+150+150=1705$ days. This equates to an average of around 341 days a year.

Guidance on the Heritage Lottery Fund website suggests a value of £50 a day for unskilled work, £150 for skilled work, and £350 for professional work. Much of the Work Party work and some of the other work could be classed as "unskilled" – perhaps 20% of the total, and the remaining work probably splits about 40%:40% between "skilled" and "professional".

Applying these percentages to the average yearly activity suggests a figure of:

Unskilled	$341 \times 0.2 \times 50$	= 3410
Skilled	$341 \times 0.4 \times 150$	= 20460
Professional	$341 \times 0.4 \times 350$	= 47740
ANNUAL AVERAGE TOTAL		£71,610

If we regarded the work as all unskilled, the total would be around £17,000, and if 50:50 unskilled:skilled the total would be around £34,000. This gives a feel for the sensitivity in the figures.

These figures may seem high (and do not take capital expenditure into account), but a glance at the list of some of the activities managed through voluntary effort in the Wood over the past five years should help convince those unfamiliar with the Wood of the tremendous contribution made by FODW, and the major community payback from the Council's relatively modest investment in woodland management.

Appendix 3

Friends of Duchess Wood (FODW) initial response to the A&BC options for the future management of Duchess Wood

1. FODW is a Scottish Charity registered with the Office of the Scottish Charities Regulator (OSCR), and its Annual Reports and accounts are submitted annually to OSCR. FODW's objectives are "to assist in the management of Duchess Wood and safeguard its benefits to the community in terms of biodiversity and quiet enjoyment by the public – including recreational and educational use".
2. FODW understands the need to begin to consider future arrangements early, but believes that aiming to take decisions on the future management arrangements in the early part of 2019 is premature. A number of initiatives are in hand concerning the economic support for future management arrangements (particularly WIAT and other grant applications, and commercially-based selective thinning), the outcome of which may not be clear until well into the New Year, but which could influence thinking.
3. We emphasise the continuing community benefits of the managed Wood, which has around 150,000 visits each year and is used by a variety of local groups. The Wood is highly valued by locals and visitors. The current management arrangements, with the Council's role being managed through the Duchess Wood Local Nature Reserve Committee (DWLNRC), works well. FODW is represented on the Committee and our many works of enhancement and maintenance are discussed and agreed through the Committee.
4. A&BC and its Amenity Services Department gives continuing support through managing the DWLNRC, litter collection and emergency works and the estimated annual cost of this is between £6,000 and £7,000. It's not clear the extent to which some of these costs (particularly litter collection) would be affected by a change in the Management Agreement. FODW has assessed the volunteer effort put into the Wood over the past 5 years and estimates that the annual human resource input is over £70,000. This figure does not take into account human resource effort from organisations which have assisted FODW, nor the capital expenditure which FODW has organised to fund improvements and maintenance.
5. **FODW's strong preference is option (a) (Renewal and refresh of the Management Agreement based on the current arrangements *wording revised following last subgroup meeting*).** We value the continuity given by the Council's involvement, and the Council's ability to monitor and manage events and activities in the Wood. The Council's relatively modest financial commitment helps create a substantial multiplier of resources put into the Wood through the partnership with FODW. We recognise that the current agreement may not be fit for purpose but a refresh should enable a workable way forward to be found. Recent discussions at our AGM demonstrated the strong community support for the principles of the current arrangements, concern about any substantive change, and the value placed on the Wood.
6. Options (b) and (d) (new alternative Management Agreement/alternative ownership) will both demand such a high level of continuing community involvement and resource that it will not be possible to organise a group or groups to take on these responsibilities. Certainly FODW could not do this.
7. Option (c) (The Management Agreement is not renewed) is a course of action that FODW would not welcome, but if it happened then FODW would hope to

continue to work with the landowners in a similar way to the current arrangements.

ⁱ <https://www.nature.scot/sites/default/files/2017-07/A314445%20-%20Local%20Nature%20Reserves%20in%20Scotland%20-%20A%20guide%20to%20their%20selection%20and%20declaration%20-%20SNH%202000%232.pdf>