
ARGYLL AND BUTE COUNCIL

DEVELOPMENT AND INFRASTRUCTURE

DATE: 13 March 2013

TITLE: Proposed Local Nature Reserve at the Holy Loch ,Broxwood, Sandbank by Dunoon, Argyll and Bute

1. SUMMARY

The case to declare a Local Nature Reserve at Broxwood, Sandbank by Dunoon was presented to the Bute and Cowal Area Committee on 26th October 2010 by a representative of the Argyll Bird Club and Cowal Natural History Society. The committee agreed that this proposal should be pursued.

Currently, Sandbank Community Development Trust (SCDT) has a lease agreement for the path and birdhide from Argyll and Bute Council who are the landowners. The Trust along with representatives of Argyll Bird Club, Cowal Natural History Society, Sandbank Community Council and Sandbank Primary School now wishes to improve the habitat out with the leased area by eradicating the existing Japanese Knotweed, planting native species as part of a habitat improvement initiative, installing bird and bat boxes, improve the educational experience and increase visitor numbers.

The proposal is supported by the current Argyll and Bute Local Plan and the Argyll and Bute Local Biodiversity Action Plan 2010-2015.

The Director of Development and Infrastructure Services, Sandy MacTaggart, requested that a paper be drawn up setting out the process for the declaration of a Local Nature Reserve at the Holy Loch, Broxwood, Sandbank, Dunoon, Argyll. This has been agreed and he has encouraged the dedicated officer to work with the relevant council departments and the community at Sandbank to achieve this aim. A small steering group (*facilitated by the Local Biodiversity Officer – Argyll and Bute Council with members representing the Sandbank Community Development Trust, Argyll Bird Club, Cowal Natural History Society, Sandbank Community Council, Scottish Natural Heritage and the Loch Lomond and the Trossachs National Park*) has been initiated to draw up one of the elements of the process – the Draft Holy Loch Local Nature Reserve Management Plan, the group wish to have a Local Councillor Representative on the steering group to support and ensure the due process is followed.

The procedure will follow Chapter 7 of Scottish Natural Heritages' LOCAL NATURE RESERVES IN SCOTLAND Guidance 'PROCEDURES FOR LOCAL NATURE RESERVE DECLARATION' see **Appendix 1**.

2. Recommendation:

In view of the current support and recommendations from the previous Area Committee and the Director of Development and Infrastructure, I ask that Area Committee support the declaration of the Holy Loch Local Nature Reserve by providing a Local Councillor to sit on the steering group to ensure that the due process is followed.

3. BACKGROUND

- 3.1 Sandbank Community Development Trust set up a steering group to fund and build an all ability access path, birdhide and interpretation at the Holy Loch, Broxwood, Sandbank in 2009 with agreement from Argyll and Bute Council. The path, birdhide and interpretation were opened in April 2010. The site is well serviced with a carpark and is adjacent to an area of population. The Holy Loch, Broxwood site consists of native woodland, foreshore, mudflats and an infestation of Japanese Knotweed. It also provides an excellent viewing point for a wide range of seasonal birds and other wildlife such as Otter and butterfly species. Visitors to the site range from seasoned

bird enthusiasts, tourists, schools and members of the public. The site is well placed at the entrance to Sandbank and can provide an additional resource for all to explore.

4. **IMPLICATIONS-**

4.1 Legal Yes.

1. Extend the current lease to reflect the agreed Holy Loch Local Nature Reserve area, see **Appendix 2**
2. Set up a Partnership Local Nature Reserve Management Group with clear aims and objectives- all partners to sign and agree to the development of a site Management Plan.

4.2 Policy:

1. *Local Plan (2009)*

*'To review landscape and local nature conservation designations and to protect and enhance additional sites where appropriate.
To reassess and if appropriate designate new Conservation Areas, Article 4 Directions, Tree Preservation Orders and local cultural sites'.*

2. Argyll and Bute Local Biodiversity Action Plan 2010-2015 project:

BE11: Identify, designate and manage new LNRs

Use the open space audit to identify and assess potential new community wildlife sites and possible LNRs. The Argyll Bird Club (ABC) is supporting a new proposal by Sandbank Community Development trust for an LNR at Broxwood, Sandbank, centred on the new bird hide to which it contributed funding but the ABC would also be interested in supporting similar proposals elsewhere in Argyll.

3. The Local Nature Reserve process is documented in the attached report and has been agreed by Scottish Natural Heritage. They will provide support to Argyll and Bute Council in designating the Holy Loch Local Nature Reserve. This guidance and process will be followed to ensure all parties agree the Draft Holy Loch Local Nature Reserve Management Plan

4.3 Personnel:

- i. Legal support through the initial stages of declaring the site, lease agreement and partnership agreement.
- ii. Support by the Local Biodiversity Officer who will assist with drawing up the LNR declaration and provide advice on the management plan to ensure that they meet the agreed aims and objectives of the site, see **Appendix 3 Draft attached seperately**
- iv. A Local Councillor to sit on the Steering Group.

4.4 Financial:

- i. None in terms of funding from Argyll and Bute Council.
- ii. The contribution from Argyll and Bute Council will be expertise in terms of Legal, Estate, Biodiversity and a steer for funding.
- iii. **Funding requirements to deliver the site Management Plan:** Sandbank Community Development Trust are best placed to acquire funds to carry out the work required as set out in the Draft Holy Loch Local Nature Reserve Management Plan.

4.5 Equal Opportunities: Yes- currently exists for the access and birdhide.

For further information contact:
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Appendix 1.

7. PROCEDURES FOR LOCAL NATURE RESERVE DECLARATION

7.1 Steps to establish an LNR

This section describes some of the actions typically required by a local authority in establishing an LNR, including acquiring a legal interest in the land, involving the local community, declaration, alteration of boundaries, and establishing byelaws. Within the constraints of legislative requirements, many variations are possible, particularly over the involvement of the local community and the preparation of a management plan. A common-sense approach should be adopted, taking account of the needs of each particular LNR.

7.2 Securing Local Authority Legal Interest in the Land

Under the 1949 Act, prior to declaration of an LNR a local authority is required to have a legal interest in the land in question through ownership, lease, or an agreement with the owners and occupiers involved.

The declaring local authority must also have jurisdiction over the area in which the proposed LNR lies. For sites which extend across a local authority boundary, a joint declaration could be made by the two local authorities acting jointly.

A local authority cannot declare a reserve on land which is already declared as a National Nature Reserve by SNH, but it can declare an LNR on land notified as a Site of Special Scientific Interest.

7.2.1 Agreements and Leases

Section 16 of the 1949 Act sets out the basis for securing agreements to ensure the management of land as a nature reserve. Agreements may have restrictive and positive elements, and may also allow for payments to be made. Local authorities can make such agreements in respect of Crown Land, statutory bodies and with nongovernmental

organisations wishing to see their reserves officially recognised as

LNRs. If the land is subject to an owner-tenant arrangement then, depending on the nature and extent of the tenant's occupancy, it may be essential that both owner and tenant enter into an agreement.

An agreement may take a variety of forms but must as a minimum give the local authority a legal interest in the land, set out who is responsible for doing what, and be clear about what is being agreed to the satisfaction of the legal advisors on all sides.

A local authority may also wish to consider securing public access to or through a reserve under Countryside (Scotland) Act 1967 (as amended) powers. These can enable a wider range of byelaws to be used in support of management of the LNR.

7.2.2 Compulsory Purchase

Section 17(1) as applied through Section 21(4) of the 1949 Act gives powers of compulsory purchase to local authorities to enable the establishment of LNRs.

However, compulsory purchase is exercisable only where the authority is satisfied that they cannot conclude an adequate agreement on reasonable terms, and has exhausted all reasonable other measures to secure a reserve. Compulsory purchase is also one remedy available to the local authority if, having entered into an agreement in respect of an LNR, a breach of the agreement occurs which prevents or impairs the satisfactory management of the LNR. This power is subject to normal limitations and dispute procedures that apply to any local authority compulsory purchase.

7.3 Forming a Local Management Group

The parties involved in identifying, evaluating, declaring and managing the LNR may

form a group to help steer the process, which is often termed the Local Management Group (LMG). An LMG could typically be composed of representatives of the local authority, the local community, and potential users of the LNR which may include environmental or other local interest groups. Ideally an LMG should be established early on in the process. However, it is recognised that there may be instances where local authority commitment to LNR establishment is required before an LMG can be formed. Indeed it may not be appropriate to involve a wider group of interests in the sometimes lengthy process of fulfilling basic legal requirements. Therefore, the timing of the establishment of an LMG will vary. However, as a matter of good practice, preliminary steps to establish such a group should have been taken by the time of the formal consultation with SNH.

LMGs tend to be established and serviced by the local authority. Experience has shown that LMGs can become involved in a wide range of activities. Key among these should be establishing the purpose and management objectives for the LNR at least in outline prior to declaration; and the preparation and monitoring of the LNR management plan. An LMG can also have an important role in the active management or day to day running of a LNR. For example, local representatives may be able to provide a formal or informal method of policing for litter, vandalism and other anti-social activities.

Where an LNR has close links with schools, it may be worth considering setting up a Junior Management Sub-group made up of young people elected by their schools. This has the potential to ensure that their needs and ideas are fed into the management structures of the reserve.

7.4 Declaration

Section 19 of the 1949 Act sets out the procedures for declaration (and de-declaration) of nature reserves. Declaration provides the public with formal notification of the existence of an LNR. The local authority makes a declaration that:

1. the land is subject to an agreement entered into with them or has been acquired and is held by the authority; and
2. the land is being managed as a nature reserve.

The declaration document may be executed by the local authority in the same manner in which it executes legal documents. It is strongly recommended that a map with precise boundary details is appended to the declaration, in order to avoid confusion, though this is not a legal requirement. The declaration can also take the form of a minuted formal Council resolution, eg: at Montrose Basin LNR.

Notice of the declaration should be published in a way that best informs relevant and local people. For example, certified copies of any declaration may be kept for public inspection in appropriate local authority offices and public libraries. This fact is usually advertised by a public notice in local and (where appropriate) national newspapers and the Edinburgh Gazette. Other publicity could include involving local councillors, sponsors, residents and users. Local publicity such as events or declaration ceremonies could be supplemented by producing information sheets and brochures that can be made available through tourist information offices and other visitor facilities.

Once declared, it does not matter who is the LNR managing body, as long as the site is managed as a nature reserve. Therefore, the local authority could hand over LNR management to others on whatever terms may be agreed. Some voluntary organisations may be able to contribute to the costs of a reserve.

Local authority staff time is likely to be concentrated during the earlier stages of negotiation and consultation with interested parties and in the preparation of a management plan, costings and search for funds. These critical stages often rely on the motivation of individual officers in various departments.

7.5 Alteration of Boundaries

7.5.1 Extensions

Where a local authority proposes to extend an LNR it should also follow the above guidance, from site selection through to declaration, making suitable management arrangements and consulting with SNH. Only the extension to the LNR need be formally declared (rather than the whole thing). However, it may be useful for the local authority to remind the public of the full extent of the reserve in any public announcements. If byelaws apply to the existing LNR and it is intended to extend them to cover the whole new site, they should be revoked in entirety and reapplied to the whole site (even if the actual byelaws remain the same).

7.5.2 De-declaration

There may be circumstances where a LNR declaration is no longer appropriate for all or part of the site. Reasons could include:

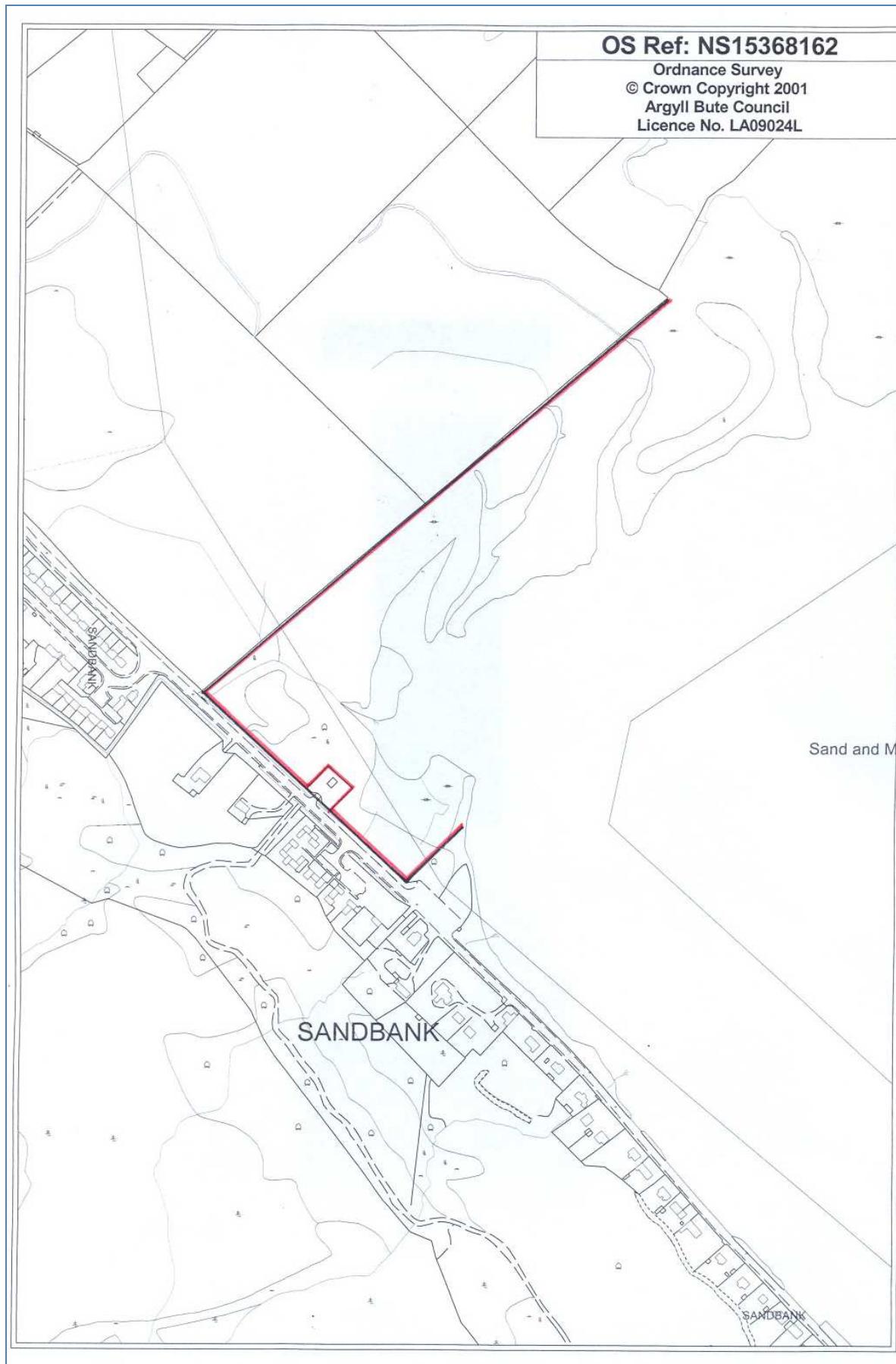
- irresolvable management problems and conflicts at the site;
- ownership changes;
- the land to which the declaration relates ceases to be held by the local authority;
- the non-renewal of a management agreement; or
- a change in the site arrangements so that the purpose for which the site was declared is no longer a priority purpose.

In such cases, the local authority can de-declare the LNR, thus removing the status of the site as an LNR. Formal consultation on de-declaration should take place with SNH. Notice of the de-declaration should be published in a way best suited to informing local people and relevant interests in the same way as the LNR was declared in the first place.

A de-declaration can vary in scale from minor alterations of a site boundary, to dedeclaration of a whole LNR. It should be borne in mind that such an action could be seen negatively by the public and local media. A de-declared LNR could still be managed for natural heritage conservation if the local authority seeks alternative management arrangements for the site.

If only part of a site is de-declared, any byelaws applying will need to be revoked and re-applied to the remaining area of land.

Appendix 2



Appendix 3.

See attached paper.