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## ADDITIONAL CIRCULATION



To: Councillor Radley, Convener; Councillor McRae, Vice Convener; and Councillors Bonsell, Brooks, Copland, Cross, Delaney, the Depute Provost, Graham, Greig, McLellan, Nicoll, Mrs Stewart and Thomson.

Town House,  
ABERDEEN 11 May 2023

## **COMMUNITIES, HOUSING AND PUBLIC PROTECTION COMMITTEE**

The undernoted items are circulated in connection with the meeting of the **COMMUNITIES, HOUSING AND PUBLIC PROTECTION COMMITTEE** to be held here in the Town House on **TUESDAY, 16 MAY 2023 at 10.00 am.**

JENNI LAWSON  
INTERIM CHIEF OFFICER – GOVERNANCE (LEGAL)

### **BUSINESS**

#### GENERAL BUSINESS

#### COMMUNITIES AND HOUSING

- 11.4 Parks & Open Areas Management Rules 2024 - RES/23/143 (Pages 3 - 20)

Should you require any further information about this agenda, please contact Lynsey McBain, [lymcbain@aberdeencity.gov.uk](mailto:lymcbain@aberdeencity.gov.uk) or 01224 522123

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## ABERDEEN CITY COUNCIL

<b>COMMITTEE</b>	Communities, Housing and Public Protection
<b>DATE</b>	16 May 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Parks & Open Areas Management Rules 2024
<b>REPORT NUMBER</b>	RES/23/143
<b>DIRECTOR</b>	Steven Whyte
<b>CHIEF OFFICER</b>	Mark Reilly
<b>REPORT AUTHOR</b>	Steven Shaw
<b>TERMS OF REFERENCE</b>	1.4.2

### 1. PURPOSE OF REPORT

- 1.1 The report seeks approval to make new Management Rules for Parks and Outdoor Areas within the remit of Aberdeen City Council as the existing Management Rules are due to expire in March 2024.

### 2. RECOMMENDATION(S)

That the Committee: -

- 2.1 Approve the draft Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2024 as set out in Appendix 2 subject to the appropriate consultation being undertaken;
- 2.2 Instruct the Chief Officer - Operations and Protective Services to conduct a public consultation on the proposed Management Rules;
- 2.3 Instruct the Chief Officer - Operations and Protective Services to report back to committee if significant objections or comments, which have not been withdrawn, addressed or resolved, are received during the public consultation with: (a) the results of the public consultation; and (b) a recommendation as to the form the Management Rules should take following the public consultation; and
- 2.4 Instruct the Chief Officer - Governance to execute the Management Rules on behalf of Aberdeen City Council if no significant objections or comments are received during the public consultation or any such objections or comments as are received during the public consultation are withdrawn, addressed or resolved; and authorise that Chief Officer, before executing the Management Rules, to make any minor amendments to the Management Rules which they consider to be necessary.

### 3. CURRENT SITUATION

- 3.1 Aberdeen City Council have in place Management Rules regulating the use of and conduct of persons within Parks and Outdoor Areas within the remit of Aberdeen City Council (Appendix 1). The Management Rules are reviewed and updated to ensure they continue to meet the needs, requirements, and expectations of users.
- 3.2 The current Management Rules have been reviewed and the proposed changes/additions include the following:
- 3.2.1 Additional rule added at 3.(e) that will state that no person shall: “*Operate a drone in such a way that it annoys or frightens other users, animals or wildlife (and they must follow the UK Civil Aviation Authority Drone and Model Aircraft Code at all times)*” The reason for this addition is to advise drone users of their responsibilities including the requirement to follow the UK Civil Aviation Authority drone code.
- 3.2.2 Additional rule added at 3.(f) that will state that no person shall: “*Attach or leave permanent memorials such as plaques, vases, ornaments, plastic flowers or other forms of memorabilia.*” The reason for this addition is to address the increase in permanent memorabilia being left within Parks and Open Areas. The laying of fresh flowers is acceptable.
- 3.2.3 Additional rule added at 4.(k) that will state that no person shall, except with the prior written consent of the Council: “*Use drones for commercial activities such as filming and surveying purposes*”. The reason for this addition is to raise awareness that written approval from Aberdeen City Council is required.
- 3.2.4 Additional rule added at 4.(l) that will state that no person shall, except with the prior written consent of the Council: “*Undertake any archaeological study, or wildlife or wildflower survey or recording*”. The reason for this addition is to raise awareness that written approval from Aberdeen City Council is required and to ensure the appropriate Service is aware of and approve the activity.
- 3.3 Management Rules are not a mandatory requirement. Section 112 of the Civic Government (Scotland) Act 1982 details the process by which local authorities can make Management Rules which includes a period of public consultation.
- 3.4 Formulating Rules

To summarise the procedure, the draft Management Rules will need to be made available for inspection for at least a month to comply with the requirements set out in the Civic Government (Scotland) Act 1982. Members of the public will require to be notified by way of a newspaper advertisement where the draft Management Rules may be inspected and the address to which objections may be sent. Once the notified period for inspection and objection (which cannot be less than a month) is up the Operations and Protective Services will consider (following consultation with officers from Legal Services) whether any changes to the draft Management Rules are required and these changes will be presented to Committee if significant. The Management Rules will only become effective when they are executed by a Proper Officer of Aberdeen City Council.

- 3.5 The Management Rules will, unless revoked, continue in force for a period of ten years from the date of their execution and will be available for public inspection.

#### **4. FINANCIAL IMPLICATIONS**

##### **4.1 Enforcement Costs**

There is little point in making Management Rules unless resources will be committed to their enforcement. The level of costs stemming from enforcement will be determined by how actively the Council wish to pursue enforcement. It should be borne in mind that where Management Rules have been introduced, the breach of any rules is not, of itself, a criminal offence but only entitles an authorised officer of the Council to require the person concerned to leave the ground/premises or to exclude them; should the person fail to comply, prosecution for that criminal offence might follow. However, the decision to pursue a criminal prosecution rests with the Procurator Fiscal Service and not with the Council. It should be noted that the only punishment that may be imposed is a fine. This fine may not exceed Level 1 on the Standard Scale. Where any person repeatedly fails to comply with any such rules, the Council is entitled to make an exclusion order with failure to comply with any such order incurring liability to possible criminal prosecution (again there is no guarantee the procurator fiscal service would wish to pursue a prosecution against a breach of an exclusion order and the only punishment available is a fine not exceeding Level 1 on the Standard Scale).

##### **4.2 Advertisement Costs / New Signage**

Under Section 114 of the Civic Government (Scotland) Act 1982 signs are required to be displayed at the entrance to the land or premises to which Management Rules apply so that the Management Rules may be seen by members of the public intending to have access to the land or premises. The cost of installing appropriate signage will be met from current Operational Services budgets. Additionally, before Management Rules can be made, a notice informing the public of the Council's intention to make new Management Rules will need to be published in a local newspaper. The cost of publishing this notice will be met from current Operational Services budgets.

#### **5. LEGAL IMPLICATIONS**

- 5.1 The Civic Government (Scotland) Act 1982 lays down the process which must be followed when making management rules.

## 6. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no direct environmental implications arising from the recommendations of this report.

## 7. RISK

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H)  *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
<b>Strategic Risk</b>	No significant risks identified	N/A	L	<b>Yes</b>
<b>Compliance</b>	No significant risks identified	The making of Management Rules is not a mandatory requirement. Section 112 of the Civic Government (Scotland) Act 1982 details the process by which local authorities can make Management Rules.	L	<b>Yes</b>
<b>Operational</b>	No significant risks identified	N/A	L	<b>Yes</b>
<b>Financial</b>	No significant risks identified	N/A	L	<b>Yes</b>
<b>Reputational</b>	No significant risks identified	N/A	L	<b>Yes</b>
<b>Environment / Climate</b>	No significant risks identified	N/A	L	<b>Yes</b>

## 8. OUTCOMES

<b><u>COUNCIL DELIVERY PLAN</u></b>		
<b>Impact of Report</b>		
<b>Aberdeen City Council Policy Statement</b>		<p>Supports the delivery of Aberdeen City Council Policy through the Council's commissioning intentions, aligned to the LOIP key drivers, and stretch outcomes.</p> <p>The proposals within this report support the delivery of the following aspects of the policy statement:-</p> <ul style="list-style-type: none"> <li>□ We Strive to achieve Net Zero to ensure a Just Transition is fair, both economically and socially for the citizens of Aberdeen.</li> <li>□ Improving active travel infrastructure.</li> <li>□ Seek to make Aberdeen a UNICEF child friendly City by creating outdoor spaces that they can enjoy and help with their health and wellbeing.</li> </ul>
<b>Aberdeen City Local Outcome Improvement Plan</b>		
Prosperous Economy Stretch Outcomes		<p>The Parks &amp; Open Areas management rules in relation to parks and green spaces will contribute to the city as a visitor destination linked to heritage tourism, specifically supporting the following areas of the Local Outcome Improvement Plan 2016-26,</p> <p>“We will seek to develop a City of Learning approach that empowers people and communities to put lifelong learning at the heart of their civic and cultural identities.”</p> <p>Key Driver 1.1 “Diversification of the economy into other growth sectors including wider energy related sectors; tourism; food and drink; life sciences; health and social care and construction.”</p>
Prosperous People Stretch Outcomes		<p>The Parks &amp; Open Areas management rules will support the delivery of LOIP Stretch Outcome 4 95% of children (0-5 years) will reach their expected developmental milestones by the time of their child health reviews by 2026.</p> <p>Through Key Driver 4.3 Improving health and reducing inequalities. Stretch outcome 5 90% of children and young people will report that their experiences of mental health and wellbeing have been listened to by 2026. This is reflected in interactions, activities, supports and services.</p> <p>Through Key Driver 5.2 Increasing children's knowledge and understanding of their own physical and mental wellbeing and take an early intervention and prevention approach.</p>
Prosperous Place Stretch Outcomes		<p>The Parks &amp; Open Areas management rules support the delivery of stretch outcome -</p>

	<p>13. Addressing climate change by reducing Aberdeen's carbon emissions by at least 61% by 2026 and adapting to the impacts of our changing climate.</p> <p>14. Increase sustainable travel: 38% of people walking and 5% of people cycling as main mode of travel by 2026</p> <p>15. Addressing the nature crisis by protecting/managing 26% of Aberdeen's area for nature by 2026.</p>
<b>Regional and City Strategies</b>	Contributes to the targets and objectives in a range of regional and city strategies including: Regional and Local Transport Strategies, Strategic and Local Development Plans, Local Outcome Improvement Plan, Aberdeen Adapts, Local Housing Strategy and Net Zero Routemap for the City.

## 9. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Integrated Impact Assessment</b>	Full impact assessment not required.
<b>Data Protection Impact Assessment</b>	Not required
<b>Other</b>	Not required

## 10. BACKGROUND PAPERS

10.1 Land Reform (Scotland) Act 2003 <http://www.legislation.gov.uk>

10.2 Scottish Outdoor Access Code (SOAC). <http://www.outdooraccess-scotland.com>

10.3 Civic Government (Scotland) Act 1982 <http://www.legislation.gov.uk>

10.4 Wildlife & Countryside Act 1981 <http://www.legislation.gov.uk>

10.5 The Conservation (Natural Habitats, &c.) Regulations 1994 <http://www.legislation.gov.uk>



## 11. APPENDICES

11.1 Appendix 1 - Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2014 (current Management Rules)

11.2 Appendix 2 - Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2024 (Proposed draft Management Rules)

## 12. REPORT AUTHOR CONTACT DETAILS

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**APPENDIX 1 - Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2014 (current Management Rules)**

**ABERDEEN CITY COUNCIL (PARKS AND OUTDOOR AREAS) MANAGEMENT RULES 2014**

Aberdeen City Council ('the Council') by virtue of the powers conferred on them by Section 112 of the Civic Government (Scotland) Act 1982 ('the Act') have made the following Management Rules ('the Rules') to regulate the conduct of persons within Parks, Recreational and Open Areas, Outdoor Sports Areas, Play Areas and Local Nature Reserves owned, occupied or managed by the Council:-

1. For the purposes of these Management Rules:
  - (a) 'Parks' means those areas of land maintained by the Council and designated as parkland for the use and enjoyment of the general public and shall include without prejudice to this generality any area designated as a park or as a garden by the Council from time to time.
  - (b) 'Recreational and Open Areas' means areas landscaped or otherwise provided by the Council for the amenity of the general public.
  - (c) 'Outdoor Sports Areas' means those open areas specifically provided by the Council for the playing of organised sports such as football, golf, rugby and hockey and so designated by the Council from time to time, either generally or in respect of particular sports.
  - (d) 'Play Areas' means any area specifically provided by the Council for children to play in.
  - (e) 'Local Nature Reserves' are reserves established under Section 21 of the National Parks and Access to the Countryside Act 1949.
  - (f) The Rules do not include land maintained by the Council or provided by the Council for the amenity of the general public below the high-water mark of ordinary spring tides.
2. No person shall play or practice organised sports of any kind within any of the areas described at 1 above, except in areas specifically designated by the Council from time to time as Outdoor Sports Areas and subject to such rules as may be determined by the Council.

Fitness training services may use these areas described at 1 above, under the expectation that they will comply with the responsibilities set out in the Scottish Outdoor Access Code.

3. No person within any of the areas described at 1 above shall:
  - (a) Erect any hoarding or similar structure, placard, poster, bill, notice or other similar material.

- (b) Be in possession of a firearm or any other weapon.
  - (c) Release any animal\*, plant\*\* or seed on to the site.
  - (d) Swim or wade in ornamental ponds or in water bodies specifically managed for horticulture or wildlife.
4. No person within any of the areas described at 1 above shall, except with the prior written consent of the Council:
- (a) Ride, drive or wheel any motorised vehicle except in areas designated for that purpose. This rule does not apply to vehicles adapted for use by a person with a disability provided the adapted vehicle is being used by such a person.
  - (b) Erect, occupy or use any tent, shed, caravan or other structure except in areas designated for that purpose. This rule does not apply to unenclosed countryside sites where wild camping may be undertaken in compliance with the Scottish Outdoor Access Code and wild campers leave no trace behind. Wild campers may be asked to move to an alternative site if their presence is considered to be causing an unreasonable impact on the environment or is not respecting the interests of other people.
  - (c) Be in possession of or light any fireworks.
  - (d) Use of any form of metal or mineral detecting equipment.
  - (e) Dig or otherwise interfere with any ground surface.
  - (f) Intentionally or recklessly kill, injure, capture or disturb any animal\* or disturb or interfere with their places of shelter or nests. This rule does not apply to fishing undertaken with appropriate permits.
  - (g) Intentionally or recklessly uproot or damage any tree or plant\*\*, or attach any structures or ropes to them.
  - (h) Organise or participate in a public performance of any literary, dramatic, musical or other work.
  - (i) Undertake commercial sound recording, photography or filming. This rule does not apply to commercial sound recording, photography or filming of features of natural and cultural heritage, provided such actions are carried out in a responsible manner and without disruption to other people visiting such features or any wildlife within such features.
  - (j) Release balloons, sky lanterns and/or any other uncontrolled items in or onto land, air or water.

\* 'animal' includes mammals, amphibians, reptiles, bird, fish or invertebrates and includes any life stage of those animals including eggs.

\*\* 'plant' includes any flowering plant, fern, alga, fungus, lichen or moss

5. Any employee of the Council or any person authorised by the Council to enforce these rules may:
  - (a) If he or she has reasonable grounds for believing that a person has contravened, is contravening or is about to contravene any of these Management Rules, expel that person from the area.
  - (b) If he or she has reasonable grounds for believing that a person is about to contravene any of these Management Rules, exclude that person from the area.
6. A person who persistently contravenes or attempts to contravene these Management Rules and is, in the opinion of the Council, likely to contravene them again, shall be liable to be made the subject of an Exclusion Order by the Council under Section 117 of the Act for a period not exceeding one year.
7. **Any person who fails to comply with expulsion, exclusion or an Exclusion Order as set out at 5 and 6 above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding Level 1 on the Standard Scale.**
8. The Interpretation Act 1978 shall apply to the interpretation of these Management Rules as it applies to the interpretation of an Act of Parliament.
9.
  - (a) These Management Rules shall be cited as the Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2014.
  - (b) These Management Rules shall come into force on the date of their execution and shall remain in force for a period of ten years thereafter unless earlier revoked or amended.

DRAFT

## **APPENDIX 2 - Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2024 (Proposed draft Management Rules)**

### **ABERDEEN CITY COUNCIL (PARKS AND OUTDOOR AREAS) MANAGEMENT RULES 2024**

Aberdeen City Council ('the Council') by virtue of the powers conferred on them by Section 112 of the Civic Government (Scotland) Act 1982 ('the Act') have made the following Management Rules to regulate the conduct of persons within Parks, Recreational and Open Areas, Outdoor Sports Areas, Play Areas and Local Nature Reserves owned, occupied or managed by the Council:-

1. For the purposes of these Management Rules:
  - (a) 'Parks' means those areas of land maintained by the Council and designated as parkland for the use and enjoyment of the general public and shall include without prejudice to this generality any area designated as a park or as a garden by the Council from time to time;
  - (b) 'Recreational and Open Areas' means areas landscaped or otherwise provided by the Council for the amenity of the general public;
  - (c) 'Outdoor Sports Areas' means those open areas specifically provided by the Council for the playing of organised sports such as football, golf, rugby and hockey and so designated by the Council from time to time, either generally or in respect of particular sports;
  - (d) 'Play Areas' means any areas specifically provided by the Council for children to play in; and
  - (e) 'Local Nature Reserves' are reserves established under Section 21 of the National Parks and Access to the Countryside Act 1949.

These Management Rules do not apply to any land below the high water mark of ordinary spring tides.

2. No person shall play or practice organised sports of any kind within any of the areas described at 1(a) – (e) above, except in areas specifically designated by the Council from time to time as Outdoor Sports Areas and subject to such rules as may be determined by the Council.

Fitness training services may use the areas described at 1(a) – (e) above, under the expectation that they will comply with the responsibilities set out in the Scottish Outdoor Access Code.

3. No person within any of the areas described at 1(a) – (e) above shall:
  - (a) Erect or put up any hoarding or similar structure, placard, poster, bill, notice or other similar thing;
  - (b) Be in possession of a firearm or any other weapon;
  - (c) Release any animal\*, plant\*\* or seed on to the site;
  - (d) Swim or wade in ornamental ponds or in water bodies specifically managed for horticulture or wildlife;
  - (e) Operate a drone in such a way that it annoys or frightens other users, animals\* or wildlife (and they must follow the UK Civil Aviation Authority Drone and Model Aircraft Code at all times); or
  - (f) Attach or leave permanent memorials such as plaques, vases, ornaments, plastic flowers or other forms of memorabilia.



4. No person within any of the areas described at 1(a) – (e) above shall, except with the prior written consent of the Council:
- (a) Ride, drive or wheel any motorised vehicle except in areas designated for that purpose. This prohibition does not apply to vehicles adapted for use by a person with a disability provided the adapted vehicle is being used by such a person;
  - (b) Erect, occupy or use any tent, shed, caravan or other structure except in areas designated for that purpose. This prohibition does not apply to unenclosed countryside sites where wild camping may be undertaken in compliance with the Scottish Outdoor Access Code and wild campers leave no trace behind. Wild campers may be asked to move to an alternative site if their presence is considered to be causing an unreasonable impact on the environment or is not respecting the interests of other people;
  - (c) Be in possession of or light any fireworks;
  - (d) Use any form of metal or mineral detecting equipment;
  - (e) Dig or otherwise interfere with any ground surface;
  - (f) Intentionally or recklessly kill, injure, capture or disturb any animal\* or disturb or interfere with their places of shelter or nests. This prohibition does not apply to fishing undertaken with appropriate permits;
  - (g) Intentionally or recklessly uproot or damage any tree or plant\*\*, or attach any structures or ropes to them;
  - (h) Organise or participate in a public performance of any literary, dramatic, musical or other work;

- (i) Undertake commercial sound recording, photography or filming. This prohibition does not apply to commercial sound recording, photography or filming of features of natural and cultural heritage, provided such actions are carried out in a responsible manner and without disruption to other people visiting such features or any wildlife within such features;
- (j) Release balloons, sky lanterns or any other uncontrolled items in or onto land, air or water;
- (k) Use drones for commercial activities such as filming and surveying purposes; or
- (l) Undertake any archaeological study, or wildlife or wildflower survey or recording.

\* 'animal' includes mammals, amphibians, reptiles, birds, fish or invertebrates and includes any life stage of those animals including eggs.

\*\* 'plant' includes any flowering plant, fern, alga, fungus, lichen or moss.

5. An authorised officer of the Council may:

- (a) If they have reasonable grounds for believing that a person has contravened, is contravening or is about to contravene these Management Rules, expel that person from the relevant area;
- (b) If they have reasonable grounds for believing that a person is about to contravene these Management Rules, exclude that person from the relevant area.

6. A person who has persistently contravened or attempted to contravene these Management Rules and is, in the opinion of the Council, likely to contravene them again, may be made subject to an Exclusion Order by the Council under Section 117 of the Act for a period not exceeding one year.

7. **Any person who fails to comply with expulsion, exclusion or an Exclusion Order as set out at 5 and 6 above shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding Level 1 on the Standard Scale.**
8. The Interpretation Act 1978 shall apply to the interpretation of these Management Rules as it applies to the interpretation of an Act of Parliament.
9.
  - (a) These Management Rules shall be cited as the Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2024.
  - (b) These Management Rules shall come into force on the date of their execution and shall, unless revoked, continue in force for a period of 10 years from that date.

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