

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Council
<b>DATE</b>	2 March 2020
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Temporary Lease at Torry Battery
<b>REPORT NUMBER</b>	RES/20/058
<b>DIRECTOR</b>	Steven Whyte - Resources
<b>CHIEF OFFICER</b>	Stephen Booth Chief Officer – Corporate Landlord
<b>REPORT AUTHOR</b>	Cate Armstrong
<b>TERMS OF REFERENCE</b>	Intro. 6

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### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise members of an approach by Greyhope Bay Ltd to lease ground within and adjacent to the Torry Battery.

### 2. RECOMMENDATIONS

That Council: -

- 2.1 acting in their capacity as trustee of the Lands of Torry (charity number SC021299)
- (i) approve the recommendation to grant a 5 year lease of ground in and adjacent to The Torry Battery to Greyhope Bay Ltd at a proposed peppercorn rent of £1.00 per annum;
  - (ii) instruct the Chief Officer – Governance to conclude the appropriate legal agreements incorporating various qualifications as necessary to protect the Council's and Trust's interests.

### 3. BACKGROUND

- 3.1 Legal title to the Torry Battery and the adjacent car parks is held in the name of Aberdeen City Council, however they form part of the assets which are held by the "Lands of Torry" a charitable trust of which Aberdeen City Council is trustee.

- 3.2 The Torry Battery is a Scheduled Monument which is set within an area of ground which is zoned as Green Belt within the Aberdeen Local Development Plan 2017 The Torry Battery was built in 1860 and formed part of the defence for the Aberdeen City and Harbour. Last occupied in 1953, it was designated as an Ancient Monument by Scottish Ministers in 2000.
- 3.3 The Torry Battery is a popular destination for people wishing to watch the birds which nest in and around the monument and also the dolphins which are resident in the mouth of Aberdeen Harbour from April until August.
- 3.4 Greyhope Bay Ltd (company number SC519938) is a non-profit organisation, which has been granted a temporary planning consent to site a temporary modular unit to provide a viewing platform and coffee shop facility. It has also been granted all the relevant permissions required from Historic Scotland, in regards to the Ancient Monument Status of the Battery. An application for planning consent can be submitted by someone who does not have a legal interest over the ground.
- 3.5 Greyhope Bay Ltd has approached the Council to request a five-year lease of the site. The area of the site extends to circa 840sq. m, however the tenant will not be permitted to enclose the site, to ensure access to the site is maintained for general public. The main terms are shown below.

Tenant	Greyhope Bay Ltd
Lease Term	5 years
Lease Expiry	5 years from Date of Entry
Rent	£1.00 per annum
Rent Review	None
Tenant Works	Erection of a temporary enclosed viewing platform with ancillary coffee point, decked access walkway, outside seating area and wc facilities.
Tenants Obligation	Greyhope Bay Ltd and its contractors shall take access and carry out the works with the least inconvenience, disturbance or disruption reasonably practicable to the Council.  They shall make good at Greyhope Bay's Ltd own expense, to the satisfaction of the Council, all damage arising out of, or incidental to, the taking of access and carrying out the works, including any damage to any adjoining property. If any resultant damage is not made good to the Council's satisfaction, the Council will undertake the appropriate works and recharge the cost of the works to the tenant.

- 3.6 The proposed development would be sited on the top of the Torry Battery Monument site, outside the northern part of the perimeter wall, on the top of a grassy mound and above the hillside overlooking the sea to the north (Appendix I).

- 3.7 The proposed site is to be used as a leisure / recreational facility which will cater for visitors to the viewpoint. The main modular unit will be set up as shelter from which visitors can look out to sea; and will provide catering facilities for visitors.
- 3.8 The plans include constructing a timber decked area stretching from the gate of the Battery across to the far side with a timber path leading up to the viewing shelter. Seating will be provided both internally and externally for visitors to the site. There will also be a modular unit for toilet facilities located in the west most carpark of the site. The proposed layout is shown in Appendix II.
- 3.9 The proposed development does not enclose the Torry Battery site or surrounding ground. Therefore, the Torry Battery will remain open and accessible to any member of the public wishing to visit the site. Further there will be welfare facilities available for those in the vicinity of the site.
- 3.10 The site has not been advertised for lease on the open market as it is a Scheduled Ancient Monument, further it is set within an area zoned as Green Belt land, and therefore would not be considered an appropriate location for commercial premises.
- 3.11 Greyhope Bay Ltd does not propose to secure the site to provide its visitor's exclusive use of the occupied ground and as a non-profit making enterprise will use any profits accumulated from the venture for the benefit of the charity.

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

- 4.1 The income from the Trust is to be split between the Common Good Fund (51%) and the University of Aberdeen Bursary Fund (49%). The financial implications of leasing the site for 5 years at a rent of £1.00 per annum would be the potential shortfall in revenue that could be attained if a market rent were to be charged, this can be mitigated by the benefit to the local community by the provision of the welfare and hospitality services in an isolated site outwith the built-up area. It should also be noted that the market potential is likely to be limited due to the open nature of the site, which would not permit the tenant to secure the site as access to the site must be preserved for the public.

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

- 5.1 Torry Battery is a trust asset and land can be an essential and valuable asset to a Trust as such trustees must be assured that the disposal of land is in the best interests of the Trust. There is a general power in the Trusts (Scotland) Act 1921 that allows trustees to grant leases of any duration (including mineral leases) of the heritable estate or any part thereof and to remove tenants.

The purpose of the Trust is to promote and advance education. It is considered that the provision of hospitality and welfare facilities and a viewing platform in terms of the proposed Lease in this popular, but isolated site would provide benefit to both the local community and those who come from further afield to view the resident wildlife, an environmental resource.

5.2 Torry Battery is a trust asset that is managed by the Council. The Council is required to dispose of any property owned or managed by it, at market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. A lease agreement at less than market rent can be permitted in terms of these Regulations provided that the Council is satisfied that the disposal for the price offered is reasonable, and the lease of this site is likely to contribute to the promotion of (a) economic development or regeneration; (b) health; (c) social well-being; or (d) environmental well-being. The recommendations in this report would be consistent with the 2010 regulations.

## 6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
<b>Financial</b>	By granting a lease at less than market rent the council could be criticised under best value guidance	L	The proposed lease is to a charity for a period of five years, which will provide facilities for the use of both the local community and visitors to the area.
<b>Legal</b>	Legal implications are set out as above.	L	N/A
<b>Employee</b>	Consideration has been given to any risks and no risk or impact was identified.	N/A	N/A
<b>Customer</b>	Consideration has been given to any risks and no risk or impact was identified.	N/A	N/A
<b>Environment</b>	The Ancient Monument may be damaged during the developments works or occupation.	M	Protective measures can be included within the legal agreement, to ensure the lessee takes the appropriate measures to minimise the risk.
<b>Technology</b>	Consideration has been given to any risks and no risk or impact was identified.	N/A	N/A

<b>Reputational</b>	If this proposal is not accepted there may be a perception from the public that the Council and Trust is not prepared to assist a local charity in delivering its objectives in Aberdeen	L	Approval of the recommendations would mitigate this risk.
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## 7. OUTCOMES

<b>Local Outcome Improvement Plan Themes</b>	
	<b>Impact of Report</b>
<b>Prosperous Economy</b>	Stretch Outcome 1 Approval of the recommendation will help ensure that a new facility, providing welfare and hospitality services, is available for both the local community and visitors to the area, encouraging visitors to stay within the area longer, and contributing to the economy of the Torry locality.
<b>Prosperous People</b>	Stretch Outcome 11. A facility such as the one proposed is likely to encourage people from across the city to come to the site to see the Dolphins and birdlife; encouraging healthy, and family friendly activities for all ages
<b>Prosperous Place</b>	No direct link to LOIP outcomes

<b>Design Principles of Target Operating Model</b>	
	<b>Impact of Report</b>
<b>Partnerships and Alliances</b>	If the recommendation is approved the proposed facility will improve community engagement and build a stronger involvement in place making for the people involved in the project and living within the community. The project will also contribute the commitment to joint learning.

## 8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	To be assessed. Any impact at all will be positive through the provision of, currently unavailable, welfare facilities.
Data Protection Impact Assessment	Not required.
Duty of Due Regard / Fairer Scotland Duty	n/a

## 9. BACKGROUND PAPERS

## 10. APPENDICES (if applicable)

Appendix I – Location Plan  
Appendix II - Layout Plan of proposed development

## 11. REPORT AUTHOR CONTACT DETAILS

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