

ABERDEEN CITY COUNCIL

COMMITTEE	Housing and Environment
DATE	27 August 2013
DIRECTOR	Pete Leonard
TITLE OF REPORT	Park Management Rules
REPORT NUMBER:	H&E/2013/054

1. PURPOSE OF REPORT

To present to the Council the outcome of a public consultation, approved by the Housing and Environment committee on 27 August 2013 on the draft Park and Outdoor Areas Management Rules 2013 and the modifications made as a result of this public consultation.

To seek approval for the next step of formal public notification of these modified Park and Outdoor Areas Management Rules 2013.

2. RECOMMENDATION(S)

That the Committee:

- i) Notes the consultation results on the Draft Management Rules 2013 and the inclusion of agreed changes as a result of consultation.
- ii) Approves the form of the Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2013 as set out in Appendix 2 to allow officers to proceed with the formal process of public notification as required by S112 of the Civic Government (Scotland) Act 1982.
- iii) Note that the report detailing the outcome of this public notification will be presented to Committee later in 2013.

3. FINANCIAL IMPLICATIONS

3.1 **Advertisement Costs/ New Signage**

Under S114 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 Housing and Environment 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 with the public being given at least one month to inspect the new Management Rules for no cost and raise any objections. The cost of publishing this notice will be met from current Housing and Environment budgets. . The outcome of this public notification will be presented to Committee later in 2013.

4. OTHER IMPLICATIONS

The content of this report is not relevant to the Equality Act 2010 public sector general equality duty. It is considered that the Management Rules support and promote responsible use and enjoyment of the city's parks and outdoor areas for all users.

5 BACKGROUND/MAIN ISSUES

5.1 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. The procedures for making Management Rules and the background and impact of recent legislation changes were detailed in the previous report.

5.2 The Consultation Process

The Draft Management Rules were posted on the Aberdeen City Council website under the Current Consultations section on 18th June. A press release was also issued to highlight this both in the local papers and on the Council website news page on 2 July. SHMU FM and Original FM carried out features on the consultation process highlighting the online documents on 3 July.

The Draft Management Rules were also circulated to the Donmouth, Den of Maiden Craig, Kincorth Hill and Scotstown Moor, Local Nature Reserve Management Committees on 24 June and the Aberdeen Outdoor Access Forum on 26 June.

Concurrent with the circulation process to the Local Nature Reserve Management Committees and Access Forum, consultation was also sought from Scottish Natural Heritage, SEPA, Forestry Commission Scotland, Aberdeen Greenspace Trust, Paths for All, Aberdeen and District Angling Association, Police Scotland (Nigg Police Office) and the Scottish Fire and Rescue Service.

The consultation was also circulated internally to the EP&I Planning and Sustainable Development Team; Lead Curator, Local History and Archaeology; and to relevant internal officers within Housing and Environment, Education, Culture and Sport and Social Care and Wellbeing.

The responses to the consultation are summarised in the table at Appendix 1.

5.3 Management Rules - Updated Proposals

The updated Management Rules are included in Appendix 2. These have been restructured taking account of the feedback from the consultation process.

6. IMPACT

The proposed Management Rules will contribute to the delivery of the five year plan “Aberdeen – the Smarter City” through the protection and enhancement of Greenspace areas.

It will also assist the Council in delivering the Single Outcome Agreement’s National Outcomes

No. 12 – ‘We value and enjoy our built and natural environment and enhance it for future generations’ and contributes to other outcomes such as

No. 6 – ‘We live longer, healthier lives’,

No. 10 – ‘We live in well-designed, sustainable places where we are able to access the amenities and services we need’.

7. BACKGROUND PAPERS

Land Reform (Scotland) Act 2003

<http://www.legislation.gov.uk>

Scottish Outdoor Access Code (SOAC).

<http://www.outdooraccess-scotland.com>

Civic Government (Scotland) Act 1982

<http://www.legislation.gov.uk>

Wildlife & Countryside Act 1981

<http://www.legislation.gov.uk>

The Conservation (Natural Habitats, &c.) Regulations 1994

<http://www.legislation.gov.uk>

Trespass (Scotland) Act 1865

<http://www.legislation.gov.uk>

Roads (Scotland) Act 1984

<http://www.legislation.gov.uk>

Aberdeen City Council (Parks And Outdoor Areas) Management Rules 2013 - 2023 (Appendix 2)

14th May Housing and Environment Committee Report (H&E/13/026) – Park Management Rules.

Management of Unauthorised Gypsy/Traveller Encampments

<http://www.aberdeencity.gov.uk>

8. REPORT AUTHOR DETAILS

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APPENDIX 1

From	Comment/Question	Response	Change needed?	Proposed revised wording
EP&I Officer 12/7/13	<p>Rule 5(e): No person within any of the areas described at 1 above shall: 'Leave refuse, litter or other waste except in a bin provided for that purpose.'</p> <p><i>Can this include balloon and Chinese lantern releases?</i></p>	<p>This would seem reasonable as when balloons from mass releases burst and fall to the ground they become litter. Likewise Chinese lanterns fall to the ground becoming litter. Both of these items can be hazardous to livestock, terrestrial and marine wild mammals if left.</p>	Yes	<p>Included as new rule 4(j) 4. No person within any of the areas described at 1 above shall, except with the prior written consent of the Council: (j) Release balloons, sky lanterns and/or any other uncontrolled items in or onto land, air or water.</p>
EP&I Officer and H&E Officer	<p>Rule 5(q) states that: No person within any of the areas described at 1 above shall: 'Bathe, wade, sail any model boat or ice skate in or on any water.'</p> <p><i>Should we be enforcing this at Donmouth?</i></p>	<p>The management rules only cover ACC owned land to the mean high water mark so does not impact on areas below that point. At Donmouth there are strong currents which can be a hazard to swimmers so this rule would help to discourage such activities even if it is not enforceable.</p>	Yes	<p>Included as new rule 3(d) 3. No person within any of the areas described at 1 above shall: (d) Swim or wade in ornamental ponds or in water bodies specifically managed for horticulture or wildlife.</p>
EP&I Officer	<p>Rule 6(f): No person within any of the areas described at 1 above shall, except with the prior written consent of the Council: '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...'</p> <p>'and the Council may impose charges or other terms and conditions for any of the above activities at their discretion from time to time. '</p> <p><i>Why is it perfectly fine to undertake commercial sound recording, photography or filming when linked to cultural and natural heritage, but not for other reasons? Will someone be policing this? What about if a couple on their wedding day want pictures taken at a nice park? If this is not allowed, how can this be different from a group of people taking pictures at the same or similar site?</i></p>	<p>Rule 6(f) is in line with the outdoor access code. Where the subject can only be photographed in the natural environment it is not deemed appropriate for charging even where the photography is for commercial benefit. Where it is something like wedding photos which can be done anywhere, e.g. in a studio, building, church etc where there would be a charge, it is deemed reasonable to charge if the photos are being taken in the outdoors whether it is in a park or up a mountain.</p>	No change to wording	<p>Rule 6(f) now included as Rule 4(i)</p>
From	Comment/Question	Response	Change needed?	Proposed revised wording

EP&I Officer	<p>Rule 9: ‘Any person who fails to comply with expulsion, exclusion or an Exclusion Order as set out at 7 and 8 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.’</p> <p><i>How can this be enforced?</i></p>	Any authorised ACC officer can enforce the management rules. In practice it is more likely to be the likes of Rangers, park staff etc. In most cases people would be warned they are breaking the rules and if they continue they could be prosecuted. In the past the Police have been willing to assist with enforcement provided that the rules are posted on the site.	No change to wording	Rule 9 now included as Rule 7 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.
EP&I Officer and H&E Officer	<p>Rule 5 (l): ‘Intentionally or recklessly kill, injure, capture or disturb any wild animal* or disturb or interfere with their places of shelter or nests. This rule does not apply to fishing undertaken from Don Mouth Local Nature Reserve with the appropriate permits.’</p> <p><i>Refers expressly to Don Mouth Local Nature Reserve. Is this the only water location that these Management Rules govern where angling is allowed to take place from, by permit or not? Or, are there other areas governed by these Management Rules that need to be considered? I.e. River Dee?</i></p>	Angling on the River Dee is managed and bailiffed by Aberdeen and District Angling Society and other landowners as is most of the River Don in the City. Donmouth is not part of these arrangements which is why it is singled out. Other water courses in ACC management do not have significant angling potential.	Yes	Rule 5(l) now included as Rule 4(f) 4 No person within any of the areas described at 1 above shall, except with the prior written consent of the Council: (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.
EP&I Officer	<p>Rule 5(j) ‘Ride a bicycle in a manner likely to cause alarm or distress to any other person.’</p> <p><i>Paragraph 5 (j) is essentially a duplication of (k), except that it goes to the length of singling out cyclists. I do not believe there is a need or justification to do this.</i></p>	Agree	Yes	Rule 5(j) deleted
EP&I Officer	<p>Rule 5 (m) ‘Intentionally or recklessly uproot or damage any tree or plant**, or attach any structures or ropes to them.’</p> <p><i>Should be moved to sit under Rule 6. This would in effect mean people could do this, but only with prior written permission of the Council. In the past there have been tree rope access taster sessions in trees in an Aberdeen public park - with prior permission of the Council. Others may also wish to do this again in the future, either stand alone, or as part of a larger event.</i></p>	Agree	Yes	Rule 5(m) now moved to Rule 4(g) 4 No person within any of the areas described at 1 above shall, except with the prior written consent of the Council: (g) Intentionally or recklessly uproot or damage any tree or plant**, or attach any structures or ropes to them.
From	Comment/Question	Response	Change needed?	Proposed revised wording

EP&I Officer	<p><i>Will these Management Rules apply to the beach area also? It is my understanding that, according to the legislation, Management Rules can only apply to land above the high water mark of ordinary spring tides, and not beach areas below this point. It may be pertinent to make something to this effect clear on the rules themselves, if they are being applied to the beach area.</i></p>	<p>These Management Rules can only apply down to the mean high water spring line under the legislation so do not apply to most of the bathing area of the beach. There is a separate byelaw that controls the use of that area.</p>	<p>Yes. State in Rule 1 that these Management Rules apply at the coast down to the Mean High Water Springs level.</p>	<p>Rule 1(f) now included 1 For the purposes of these Management Rules: (f) The Rules apply at the coast down to the high water mark of ordinary spring tides.</p>
EP&I Officer and H&E Officer	<p>Rule 5(q) ‘Bathe, wade, sail any model boat or ice skate in or on any water.’</p> <p><i>Is there not a designated boating pond at Duthie Park? If so, why is sailing model boats banned in or on any water? Perhaps moving this aspect to Rule 6 (6. No person within any of the areas described at 1 above, without the prior written consent of the Council, shall: ...), and putting a sign up at boating ponds would overcome that.</i></p>	<p>Agree</p>	<p>Yes, reword and move to Rule 3</p>	<p>Move Rule 4(q) to Rule 3(d) 3. No person within any of the areas described at 1 above shall: (d) Swim or wade in ornamental ponds or in water bodies specifically managed for horticulture or wildlife</p>
EP&I Officer and H&E Officer	<p>Rule 2. ‘No person shall play or practice organised sports of any kind (including fitness training services) 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.’</p> <p><i>The original purpose of this rule was to prevent unauthorised football matches or team sports with larger impacts conflicting with the enjoyment of the park by other park users. Fitness clubs should be considered as ‘commercial access’ rather than organised sports.</i></p>	<p>Agree</p>	<p>Yes</p>	<p>Amend Rule 2 to read: 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 under the expectation that they will comply with the responsibilities set out in the Scottish Outdoor Access Code).</p>
Scottish Natural Heritage	<p><i>How would these management rules be displayed and enforced? Would they be visible at each park, open space, play and sports area and local nature reserve?</i></p>	<p>Yes, although it is not anticipated to have them displayed at minor open space and housing amenity sites. Play spaces which are incorporated into larger open space and housing amenity sites will be covered by the signs displayed for those sites.</p>	<p>Not to Rules</p>	<p>Not applicable</p>
From	Comment/Question	Response	Change needed?	Proposed revised wording

Scottish Natural Heritage	<i>The list of rules is long which raises the question of whether it would in practice be read by the people it is aimed at? We would recommend that you consider making a shorter, clearer list that the public are more likely to read. It should also focus on the specific problems you encounter in open spaces in Aberdeen.</i>	The revised set of Rules following the consultation process has been made more concise. Designs for the signage are being considered to make them more logical and unambiguous. This would be particularly helpful for the larger and busier sites.	Yes	Reduction in the content and length of the management rules (See Appendix 1)
Scottish Natural Heritage	<i>Several of the points appear to cover matters that are addressed by general law and we recommend that these are deleted. A management rule should not duplicate general law. Taking a consistent approach to deleting all these overlaps would help make the list shorter and clearer. It could be explained what types of issues are general law and dealt with by the police, consequently not covered by the rules.</i>	The revised set of Rules following the consultation process has been made more concise through the removal of rules where actions are covered under other legislation.	Yes	Reduction in the content and length of the management rules (See Appendix 1)
Scottish Natural Heritage	<i>The Rules need to be consistent with the Land Reform (Scotland) Act 2003. Some, for example 5(q), do seem overly prohibitive. A management rule cannot forbid what statute expressly permits</i>	The revised set of Rules following the consultation process has been updated to take account of these types of issues and where actions are covered under other legislation.	Yes	Revision of the content and length of the management rules (See Appendix 1)
Scottish Natural Heritage	<i>Management rules do not need to repeat what is already covered in the Scottish Outdoors Access Code but could instead refer to that guide and the SOAC website: http://www.outdooraccess-scotland.com/. The exception may be where there is a specific issue that occurs regularly and that you wish to address.</i>	Agree: Designs for the signage are being considered to make them more logical and unambiguous and will incorporate useful information such as this.	Yes: To be included into the finished product.	Revision to the content of the displayed management rules
Scottish Natural Heritage	<i>If you are having problems with specific behaviors' then we recommend taking a pro-active educational approach either instead of or alongside the management rules.</i>	Agree	Yes	Promotion through Council web site, local press and local media sources

APPENDIX 2

Aberdeen City Council (Parks And Outdoor Areas) Management Rules 2013 - 2023

THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

ABERDEEN CITY COUNCIL (PARKS AND OUTDOOR AREAS) MANAGEMENT RULES 2013

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 leaves no trace behind. Wild campers may be asked to move to an alternative site if their presence 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 2013.
 - (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.