

Members' Library Service Request Form

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Document Title	Gullane Bents Management Agreement

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Cabinet

Additional information:

Authorised By	Monica Patterson
Designation	Ex Dir (Services for Communities)
Date	01/05/13

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REPORT TO: Members Library Service

MEETING DATE:

BY: Executive Director (Services for Communities)

SUBJECT: Gullane Bents Management Agreement

1 PURPOSE

- 1.1 To advise Cabinet of the renewal of the Management Agreement between the Hill Road Landowners, (formally known as the Gullane Feuars) and East Lothian Council over Gullane Bents car park and immediate adjacent dunes and grassland.

2 RECOMMENDATIONS

Cabinet is asked to note that:

- 2.1 The previous Access and Management Agreement between East Lothian Council and the Gullane Feuars terminated at the end of its 25 year period in 2011. This Agreement provided the legal framework for the Council to manage Gullane Bents.
- 2.2 An extension of this Agreement was agreed between both parties until a new Agreement was put in place
- 2.3 The new 25 year Management Agreement renews this legal framework between East Lothian Council and the Hill Road Landowners.

3 BACKGROUND

- 3.1 The Gullane Bents car park and the immediate adjacent dunes and grassland are owned by a number of the householders of Hill Road Gullane overlooking the Bents. These householders were previously known as the Feuars and are now known as the Hill Road Landowners.
- 3.2 The Council owns Gullane beach (between high water mark and low water mark), the dunes and grassland to the east of the Hill Road Landowners ground.

- 3.3 Gullane beach is a well know, much loved destination and asset for East Lothian. The Council has managed Gullane Bents since the 1930s; conserving the sensitive dunes and ensuring a good experience for the many beach visitors.
- 3.4 The legal framework for managing the Bents was an Access and Management Agreement between the Council and the Gullane Feuars which terminated at the end of its 25 year period in 2011. Both parties agreed to be bound to the conditions of that Agreement until a new Agreement was in place.
- 3.5 A new 25 year Access Agreement has been drafted and is waiting signing by respective parties. A copy of the Management Agreement is provided in Appendix 1.
- 3.6 This new Management Agreement protects the interests and retains the same responsibilities for respective parties, accommodates new legislation and puts emphasis on the overall management of Gullane Bents via an agreed management plan.

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and Equality Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Gullane Bents Access and Management Agreement 1986 – 2011
- 7.2 Gullane Bents Management Agreement 2013

AUTHOR'S NAME	Neil Clark
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DATE	16 May 2013

Appendix 1

MANAGEMENT AGREEMENT

between

East Lothian Council incorporated under the under the Local
Government (Scotland) Act 1994, John Muir House, ,
Haddington (hereinafter referred to as "the Authority")

OF THE FIRST PART

and

(List of Grantors and house addresses to be inserted)

OF THE SECOND PART

Whereas:-

- ONE Section 49A of the Countryside (Scotland) Act 1967 provides for the making of management agreements between persons with an interest in land and a planning authority to do, or to secure the doing of, whatever in the opinion of the parties to the agreement may be necessary to preserve or enhance the natural beauty of the countryside or to promote the enjoyment of the countryside by the public.
- TWO The Authority is the Planning Authority for the area in which the land which is the subject of this Agreement (shown delineated and coloured red on the plan thereof annexed and subscribed as relative thereto (hereinafter referred to as "the Management Land")) is situated. The Grantors are the heritable proprietors proprietors of the of the Management Land which Management Land is more particularly described in the Schedule annexed and signed as relative hereto.

NOW THEREFORE it is agreed between the parties to this Agreement as follows:-

FIRST This Agreement is a Management in terms of Section 49A the Countryside (Scotland) Act 1967 ("Act") as amended from time to time;

SECOND The Management Land is the area of land described in the First Schedule hereto

THIRD Any of the Grantors (or their representatives or their successors in title) whose interest in the Management Land is disposed of shall within one month thereafter give notice in writing to the Authority of such disposal together with details, if applicable, of the new proprietors in their place;

FOURTH For the purpose of securing that safe and sufficient access will be available to the public on the access land the Authority shall undertake the carrying out of such works as the Authority in consultation with the Grantors may consider necessary and as specified in Part A of the said First Schedule.

FIFTH Management and maintenance work to be undertaken on the Management Land will be defined, as far as reasonably practicable, in a management plan draw up by the Authority in consultation and agreement with the Grantors. The plan will determine aims, objectives and policies for the Management Land. The management plan shall be reviewed and redrawn at intervals of no more than 5 years (or any other period as may be agreed between the Authority and the Grantors) to provide continuity of management. The Authority's Countryside Ranger Service shall operate throughout the Management Land to fulfil the requirements of the agreed management plan, and/or their Service work programme and/or strategy.

The Authority shall at its own expense and after consultation with the Grantors (a) continue to operate a car park on the Management Land; (b) erect and maintain lavatories in the present location as indicated on the annexed plan, it being a stipulation that any new toilet buildings must not be significantly larger than the present buildings and the design thereof must be approved by the Grantors.

SIXTH The Authority may continue to grant permits for ice cream stances on the access land.

SEVENTH The Authority shall be bound at their own expense:-

1. To manage the grassland, shown on the Plan annexed, as a meadow. This management shall include a cut in the first or second week of July to prevent seeding of undesirable plants and a second in autumn to prevent grassland becoming rank.
2. To ensure that the Management land is kept tidy and litter free as far as is reasonably possible
3. To ensure that damage by moles is minimised.
4. To ensure that the roads on the Management land are kept in good repair as far as is reasonably possible.

EIGHTH It is hereby provided and declared that the Management Land shall not at any time, , be used as a camping site or caravan site nor shall overnight parking of any vehicle be permitted on the Management Land nor shall the Management Land be used for motor vehicle racing or scrambling.

NINTH The Authority agrees it shall be responsible for any rates or taxes arising from this Agreement.

TENTH The Authority hereby reserve the right to charge such parking fees for the use of the car park as the Authority may (1) in their discretion from time to time decide or (2) have a right to do so by operation of law or (3) have a right to do so by virtue of any other enactment and/or policy. The Authority shall be permitted to operate a car park on the Authority`s land, to the east with vehicular access along the current route, as identified in the annexed Plan.

ELEVENTH The Authority shall be responsible for meeting all actions, claims, costs and expenses which may be made by reason of an act or omission of the Authority`s obligations in terms of this Agreement and without prejudice to the foregoing generality the Authority shall free, relieve and indemnify the Grantors (and for the avoidance of doubt the successors of the Grantors of this Agreement as proprietors from time to time of the Management Land) of all liability in respect of loss, injury or damage whether to person or property or of whatever nature arising as a result of the acts or omissions of the Authority or those for whom the Authority is responsible including any loss, injury or damage caused to the property or persons or third parties taking access to the Management Land or using the facilities located thereon.

TWELFTH

1. Subject to sub-clause 2 and 3 hereof the Authority shall pay to the Grantors on the effective date of this agreement and on every succeeding anniversary of such date the sum of THIRTEEN POUNDS (£13.00) if asked in consideration of the making of this Agreement.
2. The amount payable by the Authority under sub-clause (1) hereof may be varied only by the express consent of the Grantors and the Authority.

THIRTEENTH

1. The Grantors hereby undertake that they will not destroy, remove, alter or close any means of access to the Management Land or do anything whereby the use of any such means of access by the public would be impeded or the safety of the public would be endangered.

FOURTEENTH

1. Nothing in this Agreement shall be taken to affect adversely any public right of way over the Management land.

FIFTEENTH

It is hereby declared that the Authority may make byelaws under Section 12 of the Land Reform (Scotland) Act 2003 and any other appropriate legislation as respects the Management land and Authority shall gain the approval of the Grantors before making or amending byelaws.

SIXTEENTH

It is hereby declared that the Authority and or the Grantors may appoint such number of full time or part time Countryside Rangers to operate over the Management land.

SEVENTEENTH

This Agreement shall subsist for a period of twenty five years from the date or last date of execution hereof, which date shall be the effective date of this Agreement.

EIGHTEENTH

Any expression used in the Agreement of which there is a definition in the Act or in respect of which there is in that Act any provision relating to the construction thereof or of any reference thereto, has the meaning assigned to it by that Act whether for the purpose of the Act as a whole or for the purpose only of part thereof or any section of the Act.

NINETEENTH

The Authority will be liable for one half share of the Grantors' legal fees and expenses up to a maximum of £250.00 sterling and Value Added Tax thereon in the preparation and granting of this Agreement and the duplicate copy thereof and will be solely responsible for the Authority's whole own legal fees and expenses and any Stamp Duty Land Tax payable thereon and the dues of registration of same.

TWENTIETH

Any dispute or difference arising between the Authority and the Grantors concerning the construction or implementation of this Agreement, shall, failing agreement, be referred to arbitration by the parties in dispute jointly or individually. Any arbitration commenced under this clause THREE shall be conducted in accordance with the Arbitration (Scotland) Act 2010 including the schedule (and all mandatory and default rules contained in the schedule) to that Act. The said Act is referred to in this clause as "the Act".

- (ii) In the case of any referral to arbitration under this Agreement, the parties in dispute may agree the identity of an arbitrator or, in the event that agreement cannot be reached within five calendar days, the arbitration appointment provisions set out in the Act shall apply. In any event, the arbitrator shall be a solicitor, advocate, or arbiter recognised by the Chartered Institute of Arbitrators of not less than 10 years' standing.
- (iii) In respect of any such arbitration, the arbitrator shall:

- conduct such arbitration within the terms and spirit of the Act;
- have discretion in terms of the procedure governing the arbitration (such as ordering the parties in dispute to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary, except as specifically provided for in this clause);
- deliver his decision on any matter referred to him within twenty (20) business days of concluding any hearings which may have been held in connection with the matter, and in any event deliver his decision within three (3) months (or such other period as the parties in dispute may agree) of his appointment as arbitrator;
- have the power to open up, review, and revise any opinion, certificate, instruction, determination, or decision of whatever nature given or made under this Agreement, or where appropriate to order financial compensation to be paid by one of the Parties to the other(s);
- hold such arbitration in Edinburgh or East Lothian;
- state his decision with reasons and in writing;
- have discretion to award part or the whole of the costs of the arbitration against or in favour of one of the parties in dispute; and
- the decision of the arbitrator shall be final and binding.

TWENTY FIRST

This Agreement supersedes any prior agreements and arrangements between the Authority and the Grantors and constitutes the entire agreement between the Authority and the Grantors relating to the Management Land. It is acknowledged and agreed by both parties that no warranties or representations (whether written or oral) made by or on behalf of the other party, other than those expressly set out or referred to herein have been relied upon. Both parties hereby irrevocably and unconditionally waive any right it may have to claim damages for any statements or misrepresentations not expressly set out or referred to herein, unless such statements or misrepresentations were made fraudulently.

TWENTY-SECOND

The Grantors and the Authority consent to Registration hereof for preservation as well as for publication:

IN WITNESS WHEREOF

FIRST SCHEDULE

DESCRIPTION OF MANAGEMENT LAND

ALL and WHOLE that area of ground part of the ground known as The Bents on the Estate of Dirleton and others extending to Seventy Two acres or thereby Imperial Measure and being the whole subjects more particularly described in and in feu farm disposed by Feu Disposition by Lieutenant Colonel John Patrick Nisbet Hamilton Grant, DSO, in favour of Robert Octavius Pitman and others recorded in the Division of the General Register of Sasines for the County of East Lothian on Thirtieth July, Nineteen Hundred and Thirty One.

PART A

SPECIFICATION OF WORKS REQUIRING CONSULTATION WITH THE GRANTORS

- (a) The Construction of any new means of access to the Management land
- (b) The maintenance of such means of access to the Management land as mentioned in (a).
- (c) The construction of a new, or the extension or refurbishment of the current toilet block or any other building.