

**REPORT TO:** Cabinet

**MEETING DATE:** 25 May 2021

**BY:** Executive Director for Place

**SUBJECT:** East Lothian Coast & Countryside Management –  
Land Management Rules

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## **1 PURPOSE**

- 1.1 To advise Members on the consultation on Land Management Rules and recommendations to enhance operational management on the ground and public enjoyment of these areas.

## **2 RECOMMENDATIONS**

- 2.1 Cabinet is asked to approve the land management rules set out in Appendix 3 of this report, following public consultation; and
- 2.2 Cabinet is asked to note that officers will continue to review land management arrangements in light of this year's experience and bring forward any further proposals as required.

## **3 BACKGROUND**

- 3.1 Members will recall both a Motion to Council at its meeting on 27 October 2020 in support of the Council's Countryside Rangers Service, and subsequent Members' Library report in January 2021, on East Lothian's coast and countryside management, and the experiences captured during 2020.
- 3.2 In the Members' Library report of January 2021 one of the recommendations within that report was for Members to note the consultation exercise on Land Management Rules being embarked upon with the outcome and recommendations being reported to Cabinet.
- 3.3 The purpose of the Land Management consultation was to agree a set of Land Management Rules to ensure that land owned, leased, occupied or

managed by the Council and available to the public for use remains accessible, well maintained and is not used irresponsibly. In order to be able to appropriately empower and support the Countryside Rangers three different types of legislation/regulations over land are envisaged. These are:

- Land Management Rules
- Bye-Laws
- Existing legislative powers which empower Countryside Rangers, other Council officials (e.g. dog wardens) and other partner authorities, (i.e. Police), as appropriate to take action to ensure the general public are able to enjoy these areas.

3.4 East Lothian Council in terms of Section 112 of the Civic Government (Scotland) Act 1982 is able, following public consultation, to create Land Management Rules for the Council's countryside sites, parks, nature reserves and greenspaces. The process for creating these is set out in the Civic Government (Scotland) Act 1982 and requires at least four weeks' public consultation prior to East Lothian Council being able to put in place and enforce these rules. It should also be noted that these rules can only be applicable to land owned or leased by the Council and which is above the high water mark.

#### **Land Management Rules Consultation**

3.5 The Council underwent a full consultation that resulted in a large response. On consideration of the response and for the reasons set out in this report Officers have reviewed the Land Management Rules which were consulted upon and have revised these accordingly. Appendix 1 details the consultation with Appendix 2 providing a detailed summary of the consultation responses received. In addition to Appendix 2 paragraphs 3.6 to 3.9 of this report also provide further commentary on the consultation responses received.

3.6 There was representation through the consultation that the Land Management Rules as drafted were perceived as being restrictive to visitors and local residents who wished to access public areas later in the evening/night and that this may prevent the public from responsibly enjoying the East Lothian countryside outside of designated hours. The provisions relating to evening parking have now been removed from the draft that was consulted upon.

3.7 There was also an acknowledgement that the consultation draft Land Management Rules may prevent organised or educational events and larger groups from responsibly learning about the countryside and such events taking place in East Lothian (such as Duke of Edinburgh, Scouts, Girl guides etc...). It was not the intent of the draft to introduce restrictions against young people's opportunities to benefit from educational and environmental experiences which we have supported for decades and remain committed to doing so. As such the draft Rules have been adjusted

to permit such larger organised events taking place with prior written consent of East Lothian Council.

- 3.8 It was also noted that there was a large representation from the mobile home and camper van community. In response to their comments East Lothian Council intends to take forward a full review of visitor management which will include provision for campervans and recommendations in respect of appropriate infrastructure such as Aires. This will be dependent upon funding and site availability, and consideration will be given in respect of an application to the Rural Tourism Grant Fund to deliver in 2022.
- 3.9 Appendix 3 sets out the Land Management rules that are considered appropriate following consultation and amendment.

### **Bye-Laws and Other Enforcement Tools**

- 3.10 Not all desired protections to be enforced by the Countryside Rangers are competent to introduce via Land Management Rules. Some must be established through bye-laws, the provision of which is provided for through Land Reform (Scotland) Act 2003. The establishment of bye-laws requires both a consultation period and Scottish Government consent. Some bye-laws are specific to the area being covered by the bye-law, others can be replicated across zones so as to in effect cover a larger area. It is therefore proposed that provision of bye-laws will be reviewed to complement the Land Management Rules in due course.
- 3.11 In addition to the powers previously referred to there are statutory powers which also regulate use of land. Some of these powers are delegated to other partnering authorities such as the Police, and not for the Countryside Ranges, to enforce.
- 3.12 Improving public awareness of responsible behaviours when accessing the East Lothian coast is a key objective. Communications officers are planning and delivering a range of public messaging to support and enhance this objective through a range of mediums and in a timely fashion.
- 3.13 Virtually all of East Lothian's coastline is subject to national, European and international designations to protect natural heritage. Yet it remains the busiest by visits, per kilometre, in Scotland. Protecting and managing this essential and highly valued environmental asset is crucial for the county.

## **4 POLICY IMPLICATIONS**

- 4.1 This report supports the Council in managing its highly valued environmental assets for both local residents and visitors to the county, and contributes to the Council's duty in managing designated environmental assets.

## **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report has been through the Integrated Impact Assessment process and no negative impacts have been identified.

## **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – there are no financial implications produced through the implementation of land management rules.
- 6.2 Personnel – None
- 6.3 Other – None

## **7 BACKGROUND PAPERS**

- 7.1 Appendix 1 – Consultation on Land Management Rules
- 7.2 Appendix 2 - Summary of Consultation Responses
- 7.3 Appendix 3 - draft Land Management Rules
- 7.4 Members Library Report, Coast & Countryside Management, January 2021 ([Agendas, reports and minutes | East Lothian Council](#))
- 7.5 Motion to Council in relation to Countryside Rangers Service, 27 October 2020 ([Agendas, reports and minutes | East Lothian Council](#))

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<b>DATE</b>	May 2021

## Appendix 1 - Consultation

### Feedback from LMRs consultation

These new Land Management Rules are produced to address growing concerns about the use of East Lothian outdoor spaces following the changing ways we are all using these spaces in light of the ongoing COVID-19 pandemic. East Lothian Council is committed to ensuring all residents, visitors and users of our green spaces can continue to enjoy these areas. These new rules are designed to give our countryside rangers and wardens the confidence and scope to keep all users safe, while ensuring that all users are aware not only of what is expected of them while in our green spaces but also of the consequences for those who do not respect our green spaces and or repeatedly use these spaces irresponsibly and without consideration for others.

We invite all those with an interest in East Lothian green spaces, parks, nature reserves and countryside sites to comment on these proposed rules.

Particular matters relative to the proposed Rules that may be subject of comment include:

1. The distinction between camping and residing in a motorhome.
  - Is this clear?
  - Do you agree that these ways of visiting and enjoying the outdoors need to be managed differently?
  - Do you have any further comments on this topic?
2. Support of responsible “wild camping”
  - Do you agree that they do?
  - Is this the only form of camping that should be supported in Countryside sites, Parks and Greenspace?
  - Do you have any further comments on this topic?
3. The General Rules Applicable to All Areas identify some behaviours that need to be regulated because of disruption to the enjoyment of others.
  - Are there other behaviours that you feel should be included?
  - Do you have any further comments on this topic?
4. The General Rules Applicable to All Areas makes mention of dog free areas.
  - Do you support the principle of dog free areas?
  - If so for what reasoning?
  - Do you have any further comments on this topic?
5. The Rules Specific to Motor Vehicles confine vehicles to designated parking areas and designated roads only
  - Do you agree or disagree with these restrictions?
  - Do you have any further comments on this topic?
6. The Rules Specific to Motor Vehicles restrict overnight parking.
  - Do you agree or disagree with this restrictions?
  - Do you have any further comments on this topic?

## **Appendix 2**

### **Summary of Consultation Responses Themes and Proposed Changes to Land Management Rules**

#### **Introduction**

The Consultation on Land Management Rules opened on the 27th of January 2021 and closed on 1<sup>st</sup> of March 2021. During the first week of the consultation it appeared that there were challenges from consultees accessing and submitting their response from mobile devices such as tablets and phones. Accordingly, the format, but not the substance of the consultation, was changed. This took place on 4 February 2021.

A total of 579 responses were received throughout the consultation with 522 of those being received on or after 4 February 2021. While the comments from consultees prior to the 4 February 2021 have all been taken into account and considered these responses do not form part of the statistical information set out below due to the changes of the formatting of the consultation.

From the consultation responses it was noted that:

- a. 87.8% were of the view that responsible “wild camping” should be the only form of camping that should be supported in Countryside sites, Parks and Greenspace.
- b. 73.6% felt that the distinction between camping and residing in a motorhome was clear and 87.8% agreed that the ways of visiting and enjoying the outdoors need to be managed differently.
- c. 77.6% supported the principle of dog free areas.
- d. 82.2% were supportive of motor vehicles being confined to designated parking areas and designated roads only.
- e. 69% agreed with the restrictions that were specific to overnight parking of motor vehicles

The above showed strong support for the Land Management Rules as drafted. In addition to the above the majority of the consultees provided further comments. The themes extracted from these comments are summarised below.

#### **Summary of Consultation Responses Themes**

##### **Scope of Rules**

There was not a general understanding as to the limited role of Land Management Rules as tools to control activities. In particular, many of the responses concerned wild life such as water birds and other sea species which cannot be covered by these rules as, in the enabling legislation, “land” does not include land below the high water mark of ordinary spring tides.

##### **General Comments about Cycling, Recreation, Wildlife and the Environment in General**

Responses highlighted the importance of not inhibiting access for the public to green spaces for exercise and pleasure and the need for Rules to protect and encourage wild life and the natural habitat. There were also largely negative with increasing numbers of off-road bikes being used

inconsiderately thereby damaging the environment, disturbing wildlife and intimidating to members of the public.

### **Rule 1**

Referencing proposed Rule 1, responses queried the inclusion of “annoy”, in relation to behaviour, as being too subjective to the attitude of a Council Official and the need for a more objective test.

### **Rule 2**

Responses indicated some confusion in relation to proposed Rule 2 [using amplifying noise equipment, model aircraft, motorised drones, toy cars, boats etc.], as it appeared there was an impression that the behaviours specified were to be subject to general prohibition, particularly as, in reference to drones, other legislation exists to regulate this area.

### **In Relation to Dogs**

A large proportion of response were negative, referencing the issues around uncontrolled dogs presenting a threat to wildlife, natural habitat and people. Pointing to the need for areas to designated as dog free. Particular concern that professional dog walkers operating in large numbers with too many dogs not properly controlled.

### **In Relation to Wild Camping**

In support of the rules, many responses are keen for the Rules to restrict inconsiderate camping that results in damage to the environment by way of litter, fires etc.

Those responses who are critical of the proposed rules suggest that the definition of “wild camping” is too narrow, for example, as relates to the permitted use of vehicles and limited numbers of a wild camping group. Specific issues have also been highlighted for large groups engaged in educational exercises with young people and other organised groups.

### **In Relation to Motorhomes (within parking provisions)**

Those favouring restrictions and critical of the use of motorhomes by parking in inappropriate locations such as, busy car parks, streets, outside houses then staying in such locations for extended periods. Leaving litter and waste

There were also many responses from users from across the UK opposed to restrictions but seeking specific provision in the form of Aires. Identifying the economic benefit of encouraging these visitors who may spend money in the local businesses. Identifying the varying types of Motorhomes from fully equipped, to be independent, to basic vans that need access to public facilities

## **Proposed Changes to LMRs in Light of Consultation Responses**

### **Definition of Wild Camping**

Responses correctly noted that there is no accepted definition of this in guidance of legislation. In the preamble ELC LMRs are amended to specifically note that the definition is for these Rules.

## **Numbers of Wild Camping groups**

Responses notes that there can be varying numbers of people participating in wild camping. Although guidance needs to be given in ELC's definition of wild camping, amendments have including "typically" before our suggested number of four within a group, to indicate that this is a suggested and partially flexible number.

### **Rule 1**

We have suggested a number of behaviours against Countryside Rangers which are unacceptable. Following feedback from consultation responders "annoy" has been removed from this list of behaviours behaviour.

### **Rule 2**

Responses were concerned that this Rule seeks to prevent the use of speakers or model planes or cars in Green Spaces. This is not the case. This Rule seeks to ensure that these are used responsibly and without negatively impacting others using these spaces. This Rule has been amended to make this intention clearer.

### **Rule 6**

An amendment is proposed to the areas where fires must not be lit, clarifying that in addition to fires being unacceptable in open areas or when high fire threats have been declared, damage must not be caused to any vegetation as a result of fires.

## **Rules Related to Motor Vehicles**

Rules 7 through 10 are being withdrawn from consideration. Following a number of consultation responses and further consideration, these have been deemed unnecessary due to existing Road Traffic orders and planned traffic reviews.

## **Rules in Relation to Exclusion and Expulsion**

It is specifically acknowledged that specific training and infrastructure will need to be put in place to ensure consistent standards are in place across all green spaces and equality and human rights of green space users are protected at all times.



## **Appendix 3- Land Management Rules**

### **ELC Management Rules for Countryside sites, Parks and Greenspace.**

**East Lothian Council in exercise of the powers conferred on them by Section 112 of the Civic Government (Scotland) Act 1982 hereby make the following Land Management Rules for the Council's Countryside sites, Parks, Nature Reserves and Greenspace.**

#### **Preamble**

##### **Enjoying outdoors responsibly**

The [Land Reform \(Scotland\) Act 2003](#) introduced new access rights to most land throughout Scotland. The Act and the accompanying Scottish Outdoor Access Code set out how to enjoy the outdoors and manage land responsibly. Users of East Lothian's Countryside sites, parks, Nature Reserves and greenspace are expected to enjoy them responsibly. Access Rights are fully explained in the [Scottish Outdoor Access Code](#).

##### **Management rules for Countryside sites, Parks and Greenspace**

The Council has a duty under the Land Reform Act to uphold and promote access rights. To do this and ensure access takers behave responsibly, we have introduced Land Management Rules for countryside sites, parks, Nature Reserves and Greenspaces.

#### **Interpretation**

In these Land Management Rules the following words have the meanings given to them:

“Council” means East Lothian Council.

“Countryside sites, Park or Greenspaces” means any land, provided, owned, leased, occupied or managed by the Council within East Lothian and used as a nature reserve, country park, recreation ground, public playground, public open space, public walk, walkway, car park, path, woodland, ornamental or pleasure ground or garden and all buildings and works connected therewith.

“Council Official” means an employee of the Council or any person authorised by the Council to enforce these rules;

“Camping” means inhabiting and sleeping overnight in a tent or temporary shelter or bivouac, being under canvas or equivalent fabric, including bivvy bags. This also includes camping for non-recreational purposes. Residing in a motorhome, caravan, car or other motorised vehicle is not a form of camping.

“Nature Reserve” is an area where the management objective is primarily to conserve or enhance nature.

“Wild Camping” is, for the purposes of these Rules, a type of camping that:

- is part of a pedestrian or cycled journey;
- is lightweight (every piece of camping equipment is carried as part of that journey by the camper);
- is done in small numbers (typically a maximum of 4 campers together);
- typically stays for two nights in any one site; where access rights exist.

### **The Rules                      General Rules Applicable to All Areas**

**Any person who appears to be breaking, has broken or is about to break any of the following Rules can be asked by a Council Official to leave the area.**

1. No person shall in any countryside site, park, Nature Reserve or Greenspace wilfully obstruct, interrupt, interfere, impede or insult any Council Official in carrying out their duties.
2. Persons using countryside sites, parks, Nature Reserves or Greenspaces shall not wilfully obstruct, interrupt, interfere, impede or otherwise disrupt the enjoyment of others also using the site, park, Nature Reserve or Greenspace. Such behaviour may include, but will not be limited to:
  - using amplifying noise equipment, such as speakers in a way that adversely impacts other users of spaces;
  - using model aircraft, motorised drones, toy cars, boats or any other such motorised toy or model vehicles in a way that adversely impacts other users of spaces.
3. No persons with control of a dog or dogs shall allow said dog to enter any area in any countryside site, park Nature Reserve or Greenspace that has been designated as a dog free area, whether that designation is temporary, seasonal or permanent.

### **The Rules                      Specific to Camping and Barbeques Sites**

**All ‘wild camping’ (defined in the introductory section to these rules) must be carried out within the confines of the rules in both this and the proceeding sections.**

4. Wild camping is the only kind of camping allowed outside of designated campsites.
5. When Wild Camping, all camping equipment and accessories must be cleared away once the campsite is no longer in use.
6. When Wild Camping, any barbeques and fires must not be lit in areas where vegetation could be scorched, burnt or otherwise damaged, or when a high fire threat has been declared. Any barbeques or fires lit must be kept within close control and active observation at all times. All fire and barbeque debris, detritus or refuse must be

cleared away once the fire or barbeque is no longer required and is safe to be cleared away.

## **The Rules                      Expulsion and Exclusion from any area**

**Any person who appears to be breaking, has broken or is about to break any of the following Rules can be asked by a Council Official to leave the area. Any person refusing to leave will be guilty of an offence and liable on summary conviction, to a fine not exceeding level one on the standard scale.**

7.1 Where a Council Official has reasonable grounds for believing that a person has contravened, is contravening or is about to contravene any of these Management Rules, they may expel or asked to leave that person from the area.

7.2 Where a person has persistently contravened or attempted to contravene these Management Rules and in the Council's opinion is likely to contravene them again, the Council may decide to make that person subject to an exclusion order for a specified period of up to one year.

7.3 An exclusion order made under Rule 7.2 shall take effect on such date as the Council may decide, being not less than 14 days after the decision to make that person subject to an exclusion order. A person who has been made subject to an exclusion order:

i) shall be entitled to written notice of the decision to make the exclusion order, containing a statement of the reasons for that decision, and

ii) shall be entitled to make written or oral representations to the Council at any time up to the time that the order would have taken effect but for the representation being made.