
Report To:	The Petitions Committee	Date:	17 May 2018
Report By:	The Head of Legal and Property Services	Report No:	LP/060/18
Contact Officer:	Peter MacDonald	Contact No:	01475 712618
Subject:	Council Support to bring Inchgreen Dry Dock into Public or Community ownership		

1.0 PURPOSE

- 1.1 The purpose of this report is place before the Committee for consideration a petition by Mr Robert Buirds (“the Petitioner”) seeking Council support for the principle of bringing Inchgreen Dry Dock into public or community ownership

2.0 SUMMARY

- 2.1 A petition was handed in to the Council to “Save Inchgreen Dry Dock”, which called upon the Council to support the principle of bringing the dry dock into public or community ownership and to engage with the Scottish Ministers with a view to achieving that end.
- 2.2 This petition has in excess of 100 signatures and is now being brought before the Committee for consideration.
- 2.3 The comments on the Petition by the Council Services affected by it are set out in Appendix 1.

3.0 RECOMMENDATIONS

It is recommended that the Committee

- 3.1 considers the terms of the petition as set out in this report, and as part of that consideration consider oral representations (if any) made by the relevant Council officers and by the Petitioner, all in accordance with the Rules of Procedure for Oral Representations adopted previously by the Committee (Appendix 1); and
- 3.2 following such consideration **either:**
- (a). supports this petition, remitting to the Corporate Director, Environmental and Regeneration Services to bring a report to the appropriate substantive Committee of the Council with recommendations on this matter; **or**
 - (b). reject the petition, bringing matters to an end.

4.0 BACKGROUND

- 4.1 The Petitioner is an individual who created an online petition through the www.38degrees.org.uk website seeking to save Inchgreen Dry Dock.
- 4.2 The full description of this petition entered by the Petitioner can be found on the www.38degrees.org.uk website using the following link:

<https://you.38degrees.org.uk/petitions/campaign-to-save-inchgreen-dock-1>

The Petitioner printed this off and handed it in with the petition, and copies have been distributed separately to the Members of the Committee, along with the covering letter handed in by the petitioner.

- 4.3 As at the date of writing of this report, this petition has received in the region of 1600 signatures online (it is at the date of writing still open to receive further signatures), and in addition copies of in the region of 1962 written signatures were handed in (copies only were provided as we are advised the petition is simultaneously being handed to the Scottish Ministers), meaning the level of support demonstrated as at the date of writing is in excess of 2500 signatures. As the petition has received more than 100 signatures, the petition is being brought forward for consideration by the Committee, all as provided for in the Council's Petitions Criteria.
- 4.4 Although not included in the text of the petition in terms of the www.38degrees.org.uk website, the Petitioner did in his covering letter make reference to his (and his campaign) group's) wishes as to how this site should be treated in the new Local Development Plan (LDP). The process for producing the LDP is a planning matter dealt with through a separate Council procedure, which is governed by statute and includes a public consultation. As such, this particular element cannot be considered by the Petitions Committee (in terms of the petitions criteria). The Petitioner has been advised that he and his group should make separate representations as part of the LDP process and how he (and they) may do so.
- 4.5 The Rules of Procedure for Oral Representations at the Petitions Committee were approved by the Committee at its meeting of 15 June 2017, and are designed to ensure a fair hearing for all concerned, in relation to petitions coming before the Committee. These will apply in relation to the consideration of this petition by the Committee and are reproduced at Appendix 1 for ease of reference.
- 4.6 The appropriate Council service, in this case the Directorate of Environment, Regeneration and Resources, has set out view on the in relation to the Petition in terms of Appendix 2.

5.0 IMPLICATIONS

Finance

- 5.1 None from this report.

Legal

- 5.2 The Committee approved "The Rules of Procedure for Oral Representations at the Petitions Committee" on 15 June 2017, which designed to ensure a fair hearing for all concerned, in relation to petitions coming before the Committee. These rules will apply at this meeting of the Committee in relation to the consideration of this petition.
- 5.3 In terms of the Council's approved petitions procedures, in their consideration of a petition, the Committee can decide that:
1. that the issues raised merit further action and will refer the matter to the relevant decision making body (which may be within the Council) and which may require further work, resolution or influence from the Council;

2. that the issues raised do not merit any further action; or
3. to take any other action, provided there is no financial impact for the Council's service committees, as may be decided as appropriate.

It is the view of Officers that, by its nature, support of this petition will have possible financial implications and that the appropriate route, should the Committee decide to support the petition, is that the matter be remitted to the appropriate Service Committee.

Human Resources

- 5.4 None from this report.

Equalities

- 5.5 None from this report.

Repopulation

- 5.6 There are no repopulation implications.

6.0 CONSULTATIONS

- 6.1 The Corporate Director, Environment, Regeneration and Resources has been consulted on the terms of this report.

7.0 LIST OF BACKGROUND PAPERS

- 7.1 None.

Appendix 1

INVERCLYDE COUNCIL

PETITIONS COMMITTEE

RULES OF PROCEDURE FOR THE ORAL REPRESENTATIONS AT THE PETITIONS COMMITTEE.

During the consideration of a petition as an item of business (“**the Petition**”) at the Petitions Committee, the person responsible for the submission of the Petition (“**the Petitioner**”) will be given an opportunity to make oral representations in relation to the subject matter of the Petition. Council Officers (“**the Council Officer(s)**”) from affected Council Services will also be given the opportunity to make such representations, as will any Ward Members (see g) below). Below are the rules of procedure under which such representations will be heard at meetings of the Petitions Committee (“**the Rules of Procedure**”), and they have been designed to:

- create the right atmosphere for discussion;
- eliminate or reduce formalities; and
- give everybody a fair hearing.

The Rules of Procedure are as follows:

- a) The Convener will conduct the consideration of the Petition.
- b) At commencement of consideration of the Petition, the Convener will identify those intending to make oral representation on the merit of the Petition, namely : the Council Officer(s) present; the Petitioner (if present, or any person who, with the approval of the Convener, the Petitioner wishes to speak on his or her behalf); and any Ward Member in terms of g) below.
- c) The Convener will outline the procedure, explaining that it will take the form of a discussion which he will lead based on the Report to the Petitions Committee issued in relation to the Petition (“**the Report**”). The Report will have been circulated to the Members of the Committee, the Council Officer(s) and the Petitioner prior to the meeting. Copies will also be made available at the meeting.
- d) The Convener will ask the Petitioner whether or not he/she is content with the synopsis of the Petition contained in the Report. If the Petitioner disagrees with the summary he/she will be invited to clarify. This allows the Petitioner to ensure that the members of the Committee have a good understanding of the Petition.
- e) The Council Officer(s) will be invited to present the view of the affected Council Services on the merit or otherwise of and implications of the Petition, with their recommendation as to whether or not it should be supported, to set the scene for the discussion, with a time limit of 5 minutes.

- f) The Petitioner will be invited to speak to his/her Petition and comment on the representations made by the Council Officer(s), with a time limit of 5 minutes.
- g) Where the Petition relates to a specific part of the Inverclyde Council area, any Member of the Inverclyde Council whose ward includes all or some of that part (“**Ward Member**”) may make representation in support of or against the Petition. Any such Ward Member present will be invited to do so, with a time limit of 5 minutes.
- h) Where a Ward Member makes representation in terms of g) above and is also a Member of the Committee, he or she will not be entitled to participate in the decision of the Committee on the Petition. Similarly, any Member of the Committee who has prior to the consideration of the Petition at the meeting made it clear that he or she is either for or against the Petition will also not be entitled to participate in the decision of the Committee on the Petition. This is essential to ensure that the Petition is given a fair and proper hearing and will avoid any impression of bias in relation to the Committee’s decision-making processes.
- i) The Council Officer(s) will be invited to reply to the representations of the Petitioner or any Ward Member (introducing no new material), restricted to a time limit of 5 minutes.
- j) The Convener will allow the Petitioner the final word (introducing no new material), if he/she wishes it, by way of summary and in relation to any comments by a Ward Member, or the Council Officer(s), restricted again to a time limit of 5 minutes. The Convener will discourage repetitive or superfluous comments. At no time will cross examination be permitted. The Convener will indicate when he or she considers that sufficient clarification of the Petition has been achieved, and the discussion will then move on in terms of these rules, the oral representations element being at an end.
- k) The Committee will then proceed with consideration of the Petition as an item of business in terms of the Standing Orders.

Appendix 2 – Position of Council Officers

Petition to Save Inchgreen Dry Dock (call upon the Council to support principle of the bringing of the dry dock into public or community ownership and to engage with the Scottish Ministers with a view to achieving that end)

1. Introduction

- 1.1. The Petition, at its broadest, is a call for an expression of Council support for the proposal of public or community ownership of the dry dock at Inchgreen, and for Council engagement with the current owners (Peel), the Scottish Ministers and other interested parties. The expression of support of this sort is within the Council's powers.

2. Background

- 2.1. The site is currently in the ownership of the Peel group of companies.
- 2.2. From the terms of the petition, it would appear that the motivation for the campaign group is a view that the dry dock is not being utilised. It is the view of officers that while there have been extensive periods during which it is not in active operation, there do appear to have been periods of active use of the site, extending from a number of months to a number of years, by the current owner. Most recently, the dry dock has been emptied which demonstrates that this facility remains operational.
- 2.3. Officers understand there have been commercial discussions with a view to increased utilisation of the dry dock facility, however do not have any factual detail in this regard as this is a commercial matter. It is the view of officers that any Council involvement in or expression of views on the site or the proposal would be inappropriate in the circumstances, as we would not want to risk impacting or influencing the progress of any commercial discussions that may be ongoing.
- 2.4. From a planning policy perspective, within the current local development plan (LDP) Inchgreen forms part of the wider Pottery Street North / Inchgreen area e6a strategic economic investment location and is protected accordingly. In terms of part (a) of Policy ECN1 – Business and Industrial Areas:
“The strategic economic locations listed in Schedule 4.1 of the LDP and identified on the Proposals Map as ECN1 (a) will be safeguarded, with favourable consideration given to:
 - (i) new development in support of green technologies and business and financial services within the Inverclyde Waterfront Strategic Economic Investment Location (SEIL);
 - (ii) new development and support for the continuation of current uses for the operation of the international Ocean (Container) Terminal Strategic Freight Transport Hub; and
 - (iii) new development proposals for business, general industrial and storage or distribution (Use Classes 4, 5 and 6); and all subject to Policy ECN3.

2.5. As the Committee will be aware, the Council is in the process of preparing a new local development plan, which it is anticipated will be adopted by August 2019. The Committee should be aware that in its current form the proposed new plan seeks to safeguard the site for marine operations.

2.6. Additionally, Schedule 2 of the proposed plan identifies a series of priority places of which James Watt / Garvel Island is one. The proposed plan states:

“Mixed use development including housing, business, assembly and leisure, hotel and hostels, residential institutions, non-residential institutions, maritime-based commercial enterprises, and ancillary retail and food and drink.”

Officers believe that this policy provides greater protection to the existing marine based activities however if the Petitioner or the campaign group as a whole wished to make formal representation on the proposed plan then they are entitled to do so under the consultation process, as detailed below.

2.7. There is nothing in either in the current LDP or the proposed plan that points towards either the Inchgreen site, or the dry dock being used for housing.

2.8. The Committee should of course note that this is the current proposed plan, and as discussed subject to consultation, and so the final plan when adopted may or may not include such a statement.

2.9. The Petitioner and the campaign group as a whole are of course entitled to make representations on the new local development plan as part of the process. The consultation is open for responses up to the 29th of June 2018. More information is available here:

<https://www.inverclyde.gov.uk/planning-and-the-environment/planning-policy/development-planning/new-ldp>

2.10. In the context of land uses as identified for this location in both the current and the proposed Local Development Plans, a Strategic Business Case is being developed in respect of the City Deal funding of £9.4M allocated for the wider Inchgreen Site. In partnership with Peel, investment options are being explored which would encourage new business into this location and grow the local job market. Any proposals will of course require to be State Aid compliant and approved by Inverclyde Council.

2.11. In terms of the aspirations of the petition, officers recognise the benefits of increased commercial usage of the dry dock and surrounding site. Indeed the importance of this is reflected in the inclusion of this site within City Deal. Officers cannot however recommend that it is appropriate for this Council to support a call for the site to be brought into public or community ownership. The reasons for this position are set out below.

3. Public Ownership

- 3.1. Any Council support for public ownership of the site raises the question of how could that be achieved.
- 3.2. The Council, or another public body such as the Scottish Ministers, could enter into negotiation with the current proprietor to seek to voluntarily acquire the site. Such acquisition would of course have financial implications, and would only be possible were Peel prepared to sell the site. As discussed above, a formal valuation of the site would be required before progressing with such discussions.
- 3.3. If voluntary acquisition were not a possibility, then the question of compulsory acquisition (CPO) would arise. On the basis of the information which officers currently have, it is their view that even were an appropriate compulsory purchase power identified (and of course without such a power, any attempt at CPO would be *ultra vires* and open to challenge), it is unlikely that the public necessity test would be met in the circumstances, meaning any attempt to compulsorily acquire is unlikely to succeed. To quote a Jeremy Rowan Robinson's text on CPO:

“Compulsory acquisition is justified by public necessity; if there is no such public necessity, the case for compulsory acquisition collapses.”

It should be borne in mind that, however desirable any acquisition may be, desirability does not mean necessity. On the basis of the evidence presented to date, officers are not of the view such a necessity test would be met.

- 3.4. Were the necessity test met, to proceed with a CPO would involve the seeking of CPO power from the Scottish Ministers, and to do this a satisfactory case for the exercise of planning CPO powers would need to be demonstrated to them. It is the view of officers that the factual basis for such a case has not been demonstrated.
- 3.5. Consideration must also be given to the value of the site, which is anticipated would be significant, as any acquisition will involve a payment being made (whether of price or compensation) to the owners. The sums likely to be involved would be an important consideration and need to be quantified before any such action were undertaken.
- 3.6. As stated above, public ownership is not limited to Council acquisition, and the petition is of course directed both at the Council and the Scottish Ministers. It is not for officers in the circumstances to comment on what powers the Scottish Ministers do or do not have in relation to compulsory acquisition, but discussion of such matters would feature in any engagement officers were to pursue with them.

4. Community Ownership

- 4.1. Similarly, any Council support for Community Ownership would raise the question of how that could be achieved.

- 4.2. As with the proposal of Public ownership, it would be open to a community group to seek to negotiate a voluntary acquisition of the site from the current owners.
- 4.3. The Community Empowerment (Scotland) Act 2015 introduced at Part 5 “Asset Transfer Requests”, whereby certain community bodies have a formal mechanism by which they may seek transfer of assets from public bodies. It is the view of officers that these provisions would not apply in this instance as Peel is not a public body (or in the terms of that act, a “relevant authority”) to which these provisions would apply.
- 4.4. The Community Empowerment (Scotland) Act 2015 also modified the terms of the Land Reform (Scotland) Act 2003 in relation to the registration of Community Interests in Land, which expanded this provision to include the urban as well as rural setting. The process of registration of such an interest is not one with which the Council has a formal involvement, and it would be a matter for any interested group to pursue with the Scottish Ministers to confirm if registration is competent or likely to be agreed to in the circumstances. It should be noted that registration of such an interest does not compel the sale of a site to the community group in question, but merely means in the event of a sale on the open market, that they have to be offered the site first on the same terms as any prospective purchaser, before a sale can proceed.
- 4.5. The Community Empowerment (Scotland) Act 2015 contains further provision to modify the terms of the Land Reform (Scotland) Act 2003 to allow for the registration of a Community Interest in Land for “abandoned or neglected” land. This provision is however not yet in force, and officers have not been made aware of a likely timescale for it to be brought into force. As these provisions are not in force, no established practice on their use has yet emerged, however it is the view of officers that this site would in any event not at present meet the test of “abandoned or neglected” for the purposes of this provision.
- 4.6. Again, any such acquisition will involve a payment being made to the owners, and a community body would need to consider both a valuation of the site and how they would raise funding for this.

5. Conclusion

- 5.1. In light of the points highlighted above, officers do not recommend the explicit expression of Council support of this campaign, or the taking of any steps towards Council acquisition. Officers recognise the strategic importance of this location and will continue to engage with Peel Ports on the future use of the site with a view to maximising economic activity.