

# WEST DUNBARTONSHIRE COUNCIL

## Report by Director of Corporate Services

### Housing, Environment & Economic Development Committee 7 May 2008

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**Subject: Ownership, Moorings and Development Issues concerning the River Leven**

#### **1. Purpose**

- 1.1 To update the Committee with regard to the ownership, moorings and development issues concerning the River Leven

#### **2. Background**

- 2.1 The Royal Charter of 1609 conveyed to the Provost, Baillies and Councillors of the Burgh of Dumbarton and their successor *inter alia* "ALL and WHOLE the said River of Dumbarton from Balloch to the Castle of the said Burgh with the fishings of salmon and other fishes therein together with the liberty of the same on both sides to the limit of the sea waves". Therefore, by virtue of the Royal Charter, West Dunbartonshire Council has title to *inter alia* the River Leven.
- 2.2 However, despite the fact that a proper title was vest in the Council, portions of the River Leven have been included in the Land Certificates granted by the Keeper to adjacent owners. Private pontoons have been erected and some local boat owners, accustomed to mooring on the Leven free of charge, have complained to the Council.
- 2.3 The Council has considered the moorings, ownership and development issues relating to the River Leven in previous Reports to the Community Safety and Environmental Services Committee dated 2 February and 1 June 2005, 11 January 2006 and the Housing, Environmental & Economic Development Committee on 5 September 2007.
- 2.4 The Council has corresponded and met with various parties who have been issued with Land Certificates and also met with Scottish Enterprise and National Park Officers and the local MSP with the aim of trying to resolve these issues. An inter-departmental Working Group meets on a regular basis with the same aim. The Council sought answers to various complex legal questions from a conveyancing professor and has also referred issues for Counsel's Opinion.

- 2.5 An application to the Keeper to rectify one title has been rejected. The Keeper took the view that the Lands Tribunal or Court of Session would be a more appropriate body to decide this issue.
- 2.6 Members were advised in the Report of 5 September 2007 that the Council would appear to have the following options available to it with regard to reclaiming or retaining its rights and/or a measure of control over the River, in particular in the area of Balloch Bridge:-
- Option 1 - Take no further action.
  - Option 2 - Promote a Compulsory Purchase Order.
  - Option 3 - Raise an Action of Declarator.
  - Option 4 - Appeal the Keeper's decision to the Court of Session/Lands Tribunal
- 2.7 Members authorised Officers to obtain Counsel's Opinion with a view to ascertaining the chances of success of an Action of Declarator.

### **3. Main Issues**

- 3.1 The Council has now received Counsel's Opinion regarding its position relating to the River Leven. This has proved helpful, however, further clarification is required regarding certain aspects of the Opinion and this has been requested. It is hoped that this will be available shortly.
- 3.2 It is felt that release of the information contained in the Counsel's Opinion may seriously prejudice the Council's chances of success in any Court proceedings and, hence, it is not being copied as an annexation to this Report.
- 3.3 The Opinion constitutes information in respect of which a claim of confidentiality of communication could be maintained in legal proceedings and is therefore considered exempt in terms of s36(1) of the Freedom of Information (Scotland) Act 2002.
- 3.4 There are currently several ownership, management and development issues affecting the River Leven. Members of the public have expressed an interest in several of these.
- 3.5 Examples of these issues are the pontoons at Sandpoint, the management of Dumbarton Harbour, Flood Prevention and the canalisation of the River. These and other issues will be addressed in the presentation to Committee. An agenda for the presentation is attached to this Report as an Appendix.

#### **4. Personnel Issues**

This Report does not have any direct personnel implications, but there may be a requirement for additional personnel resources if the Council decided to take a more active role in dealing with issues affecting the River (for example, regulating moorings or dredging).

#### **5. Financial Implications**

While there are no financial implications arising directly from this Report, depending on future decisions made by the Council, costs may be incurred, for example, as a result of any Court actions which may be required. There would also be financial implications if the Council assumed a more active role in dealing with issues affecting the River e.g. dredging.

#### **6. Risk Analysis**

- 6.1 A risk analysis is not required for this Report, but if the Council embarked on Court proceedings there is always the risk that such proceedings are not successful. The completed Counsel's Opinion will make the level of risk involved in raising a Court Action easier to assess.
- 6.2 The Council will also require to consider safety implications when determining if action requires to be taken to regulate moorings and activities within Dumbarton Harbour.

#### **7. Conclusions**

- 7.1 The issues affecting the River will be discussed in greater depth during the Presentation and it is hoped that this will be an appropriate way of raising awareness and obtaining Members views as regards these issues.

#### **8. Recommendations**

- 8.1 The Committee is asked to note the position with regard to the title situation and following the presentation, provide views as regards the issues mentioned in the Appendix.
- 8.2 It is recommended that a comprehensive Report, taking into account the views of Members expressed at the Presentation and also the advice of Counsel, be submitted to the next Meeting of this Committee on 6 August 2008.

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Background Papers: Reports to Community Safety and Environmental Services Committee of 2 February 2005, 1 June 2005, 11 January 2006.

Report to Housing, Environmental & Economic Development Committee on 5 September 2007.

Conveyancing Opinion.

Counsel's Opinion.

Appendix (Agenda of Presentation).

Wards Affected: Lomond, Leven and Dumbarton.

## APPENDIX

### AGENDA PRESENTATION REGARDING RIVER LEVEN ISSUES

#### 1) OVERVIEW

- (a) Historic Background.
- (b) Recap per previous Housing, Regeneration and Environmental Services Committee Report.
- (c) Environmental/Biodiversity aspects.

#### 2) OWNERSHIP ISSUES

- (a) General Title Position/Problems (extent of Council's title, competing titles, common good aspects, rights of port and ferry).
- (b) Specific Areas of Concern:-
  - (i) Balloch, North of Weir (Pontoons at Balloch Bridge, Monkey Island, West Riverside, Humane Society Premises).
  - (ii) Sandpoint.
  - (iii) Dumbarton Harbour.
- (c) Counsel's Opinion.

#### 3) MANAGEMENT ISSUES

- (a) Navigational Problems (pontoons and moorings, dredging navigation channel).
- (b) Dumbarton Harbour (In-house Harbour Master and/or obtaining consultancy service in Marine Management from Clydeport?).
- (c) Balloch Bridge (navigational and crowding).
- (d) Sandpoint.
- (e) Balloch Moorings
- (f) Security and Safety

#### **4) DEVELOPMENT ISSUES**

- (a) Flood Prevention.
- (b) West Riverside Development by Scottish Enterprise Dunbartonshire.
- (c) Canalisation of River Leven (consideration of related leisure facilities and development and also blight problems).
- (d) Linking West Riverside/Lomond Shores and Balloch Country Park (bridge or ferry type crossing).
- (e) Possible other river issues:-
  - (i) Future marina/residential type development at Dumbarton Harbour.
  - (ii) Consideration of River Leven potential for generating hydro-electric power.

#### **5) DISCUSSION AND WAY FORWARD**