

## **DUNDEE CITY COUNCIL**

**REPORT TO: Leisure and Arts Services Committee - 18 September 2006**

**REPORT ON: Land Reform (Scotland) Act 2003 Section Procedures- Draft**

**REPORT BY: Director of Leisure and Communities**

**REPORT NO: 529-2006**

### **1.0 PURPOSE OF REPORT**

- 1.1 To gain Committee approval for the processes required to implement the section procedures in the Land Reform (Scotland) Act 2003: Part 1.

### **2.0 RECOMMENDATIONS**

It is recommended that the Committee:

- 2.1 approves the methods outlined in the appendix of this report for applying the section procedures described.

### **3.0 FINANCIAL IMPLICATIONS**

- 3.1 There is no budget required to undertake these statutory procedures.
- 3.2 The applicant will cover the cost of placing a public notice.
- 3.3 Where remedial action has to be taken by the Council, the landowner will be liable for covering the cost of the action taken.

### **4.0 LOCAL AGENDA 21 IMPLICATIONS**

- 4.1 Implementing the section procedures from the Land Reform (Scotland) Act 2003 will be advantageous to all users of non-motorised forms of access. The procedures will help to increase, improve and encourage access to green and open spaces.

### **5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 Access rights apply to all people.

### **6.0 MAIN TEXT**

- 6.1 Reference is made to Article IV of the Policy and Resources Committee of 15 August 2005 when approval was given for Dundee's Outdoor Access Strategy.
- 6.2 The Land Reform (Scotland) Act 2003 (the Act) contains duties and powers relevant to all local authorities. The five main duties are referred to in Dundee's Outdoor Access Strategy. These are: Core Path Planning, holding a Local Access Forum, publicising the Scottish Outdoor Access Code, upholding access rights and reviewing Byelaws. To assist with the implementation of these duties the Act gives local authorities powers in section procedures.
- 6.3 The section procedures, summarised below, relate to the duty to uphold access rights. It is necessary to have a system in place to deal with any issue that may arise quickly. To ensure that this is done efficiently it is recommended that the Council approve the methods outlined in the appendix of this report.
- 6.4 **Section 11: Power to exempt particular land from access rights**  
This section provides the local authority with the power to exempt land from access

rights. The exemption may last between 6 days and 2 years. To put an Order in place the local authority should consult landowners and local access forums, give public notice, invite objections, and have it approved by Ministers. If an area of land is to be exempt from access rights for 5 days or less the local authority only needs to give public notice. Possible reasons for exemptions are outlined in the Act.

- 6.5 **Section 14: Prohibition signs, obstructions, dangerous impediments**  
This section provides local authorities with the power to remove notices or carry out remedial action if landowners prevent or deter access users by erecting signs or notices; putting up fences, walls, hedges; positioning at large any animal; undertaking agricultural or other operations, or any other actions.
- 6.6 **Section 15: Measures for safety, protection etc.**  
This section gives local authorities the power to warn of hazards and to require that any fences, walls etc which may be a risk of injury should be remedied to remove the risk. A written notice may be served on the landowner to remedy the situation. Power is also given to the local authority to install gates, stiles, seats, toilets etc anywhere with the landowners' agreement.
- 6.7 **Section 21: Path agreements for land subject to access rights**  
This section gives local authorities the power to enter into a path agreement for the delineation, creation and maintenance of the path.
- 6.8 **Section 22: Path Orders for land subject to access rights**  
This section gives local authorities the power to make path orders that delineate existing or new paths, in circumstances where path agreements are impracticable, and must maintain existing paths and create and maintain new paths delineated in this way.
- 6.9 **Section 23: Ploughing etc.**  
Where ploughing or other activities for reasons of good land husbandry disturb core paths and rights of way, the owner of the land or path must reinstate the core path or right of way within 14 days. It is an offence not to reinstate and local authorities have the power to undertake the work themselves and recover the cost, if the owner does not comply. Examples of operations that might disturb a path surface include: ploughing; other land management practices such as digging for irrigation purposes; drainage; moving heavy machinery.
- 6.10 Scottish Executive will be monitoring the use of section procedures alongside the other duties of the Land Reform (Scotland) Act 2003: Part 1.

## **7.0 CONSULTATION**

- 7.1 The Chief Executive, Depute Chief Executive (Support Services), Deputy Chief Executive (Finance), Assistant Chief Executive (Community Planning) and the Director of Planning & Transportation have all been consulted on this report and are in agreement with its contents.

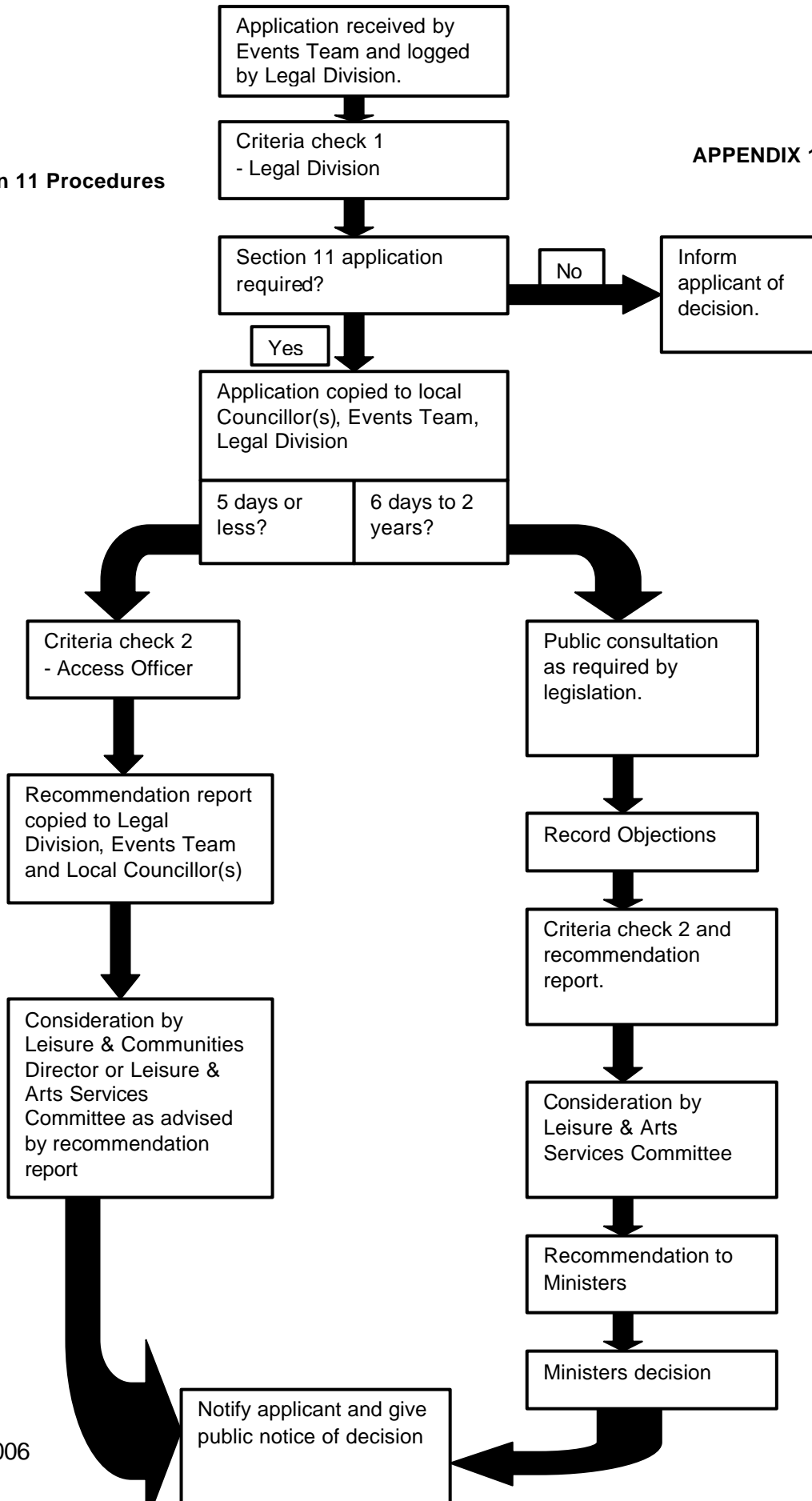
## **8.0 BACKGROUND PAPERS**

- 8.1 Article IV of the Policy and Resources Committee of 15 August 2005.

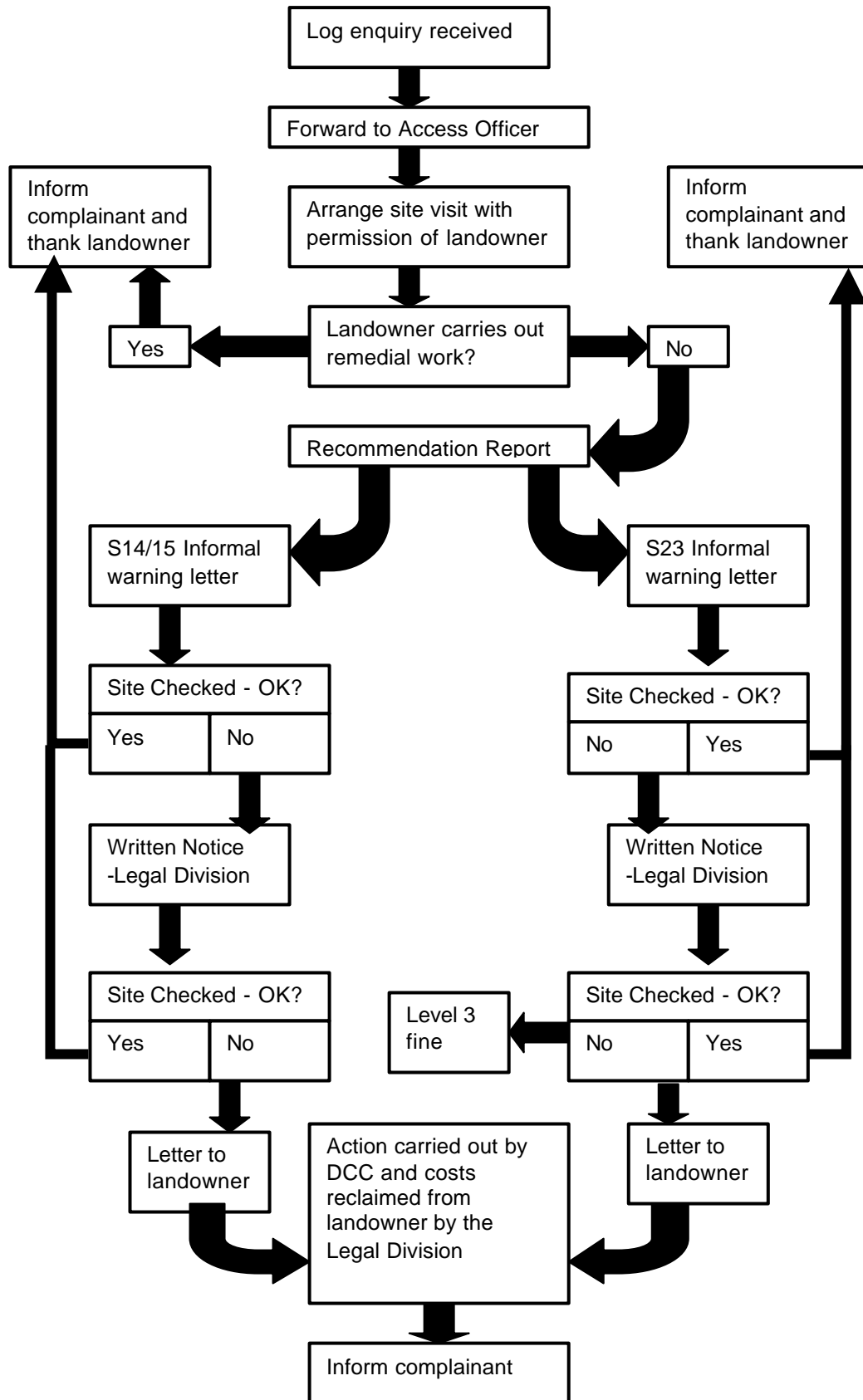
**STEWART MURDOCH  
DIRECTOR OF LEISURE AND COMMUNITIES  
17 AUGUST 2006**

Section 11 Procedures

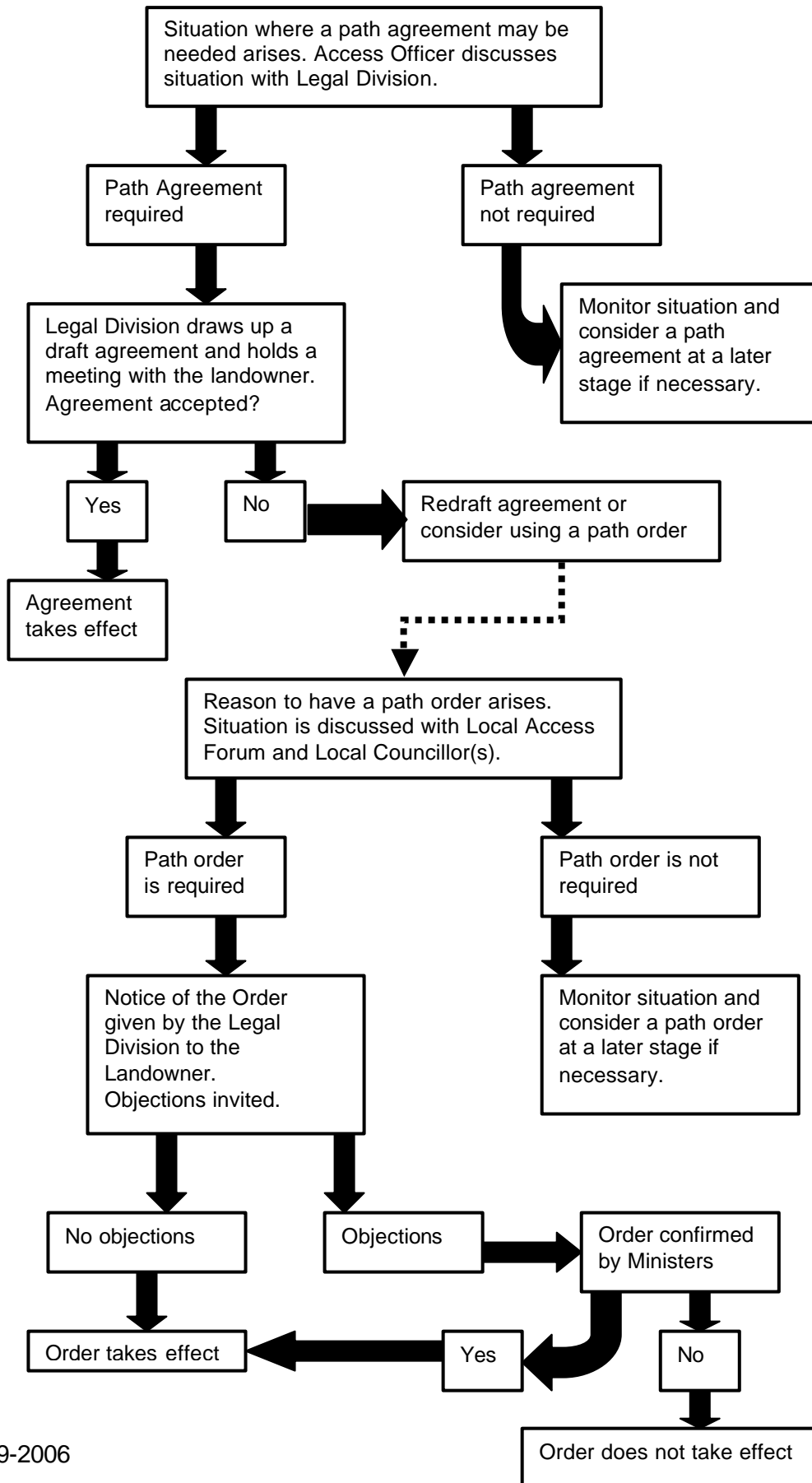
APPENDIX 1



**Section 14, 15, 23 Procedures**



**Section 21, 22 Procedures**



## Section 11 Criteria Checks

### Criteria Check 1: Is the area applied for within access rights?

Section 11 applications would be refused at this stage if the area or activity applied for is already legislated for in Section 6 or 7 of the Land Reform (Scotland) Act 2003.

#### Access rights do not apply to:

- specific land management purposes  
Statutory land-management exclusions include: fields of crops, quarries and mineral works and the curtilage around plant, fixed machinery, buildings, structures or works.
- privacy zones and or curtilage  
This is the area that forms the curtilage of a compound containing plant, fixed machinery, buildings, structures or works. It also includes privacy zones around a house, tent, caravan or similar structure used for shelter or privacy; this extends to common shared gardens separate from the house or place of residence, schools and associated playing fields or grounds.
- particular recreational purpose  
This applies to areas set out as sports or playing fields or for a particular recreational purpose. The land is excluded while the recreational activity is taking place.
- where the 90 day rule applies  
The 90 day rule is defined as land that for no fewer than 90 days, in the year ending 31 January 2001, allowed the public access by payment. If this applies charging may continue under the same conditions.
- buildings and demolition work  
Land is excluded for building, civil engineering or demolition works.
- land on which crops are growing  
This includes the area where crops are growing, excludes silage in early stages of growth and excludes field margins, headrigs and endrigs.
- land under development  
Where planning permission for a development of change of use has been granted.

#### Or where other legislation includes an exclusion of access rights:

- Health & Safety legislation
- Reasons of national security
- MOD operations
- Section 11 already in place

### Criteria Check 2: Consideration of application

#### Purpose(s) of application:

- To charge for admission
- Safety
- Security and Privacy
- Others

#### Impact on:

- the existing access provision (access type e.g. core path, PROW, access land)
- the existing access provision (the time and area applied for)
- the users (consider demand, levels of use, seasonality)
- the special qualities/landscape/habitat
- access provision in relation to other exclusions (e.g. other exemptions at the time or in the immediate area)

#### Benefits for:

- the community (fund raising events, entertainment)
- the visitors (entertainment and activities)
- the local economy

- the provision of alternative routes and information
- the length of time applied for
- the extent of the geographic area applied for

### **Impacts**

1. Consider the impact of the exclusion in relation to type and levels of access/recreational use; for example  
High priority: core path, public right of way, national cycle route, regional cycle route, right of navigation, local path network, visitor destination, country park, public green space area/park or public agency publicised path or route.  
Medium priority: non-designated path, desire lines, river routes.  
Low priority: general access rights apply only: land and water.
2. Consider the levels of use and demand, relate to seasonality and history of use of the site and any data available on levels or anticipated levels of use.
3. Consider the impact of the exclusion in relation to landscape/ habitat/ special qualities cross reference with planning permissions/licences. Impact of the exclusion may have detrimental effects on others recreating in the area, on wildlife or habitats or the special qualities of the area by displacing activity.
4. Consider the length of time applied for (5 days max for Council approval, 6 days - 2 years Ministerial approval); is it being kept to the minimum period necessary? Minimal time will reduce the impact of the exclusion.
5. Consider the extent of the geographic area applied; is it for the minimum area required for the type of activity/event? Minimal area will reduce the impact of the exclusion.
6. Are there any other exclusions in force in this area and at this time or near the time applied for? Impact could be higher if other areas in close proximity are excluded or are on following weekends or days.

### **Benefits**

1. Consider the benefits of the exclusion to the local community, are there direct benefits from approving the order such as fundraising for community projects, event for local entertainment and participation.
2. Consider the benefits to visitors, provision of entertainment and activities that encourage visitors to the area and to stay in the area. Provides a positive visitor experience to Dundee.
3. Are there benefits to the local economy and businesses through excluding the area for this particular event/activity, this may be as direct benefits by providing services at the event, charging for admission or as secondary benefits through accommodation for visitors, activity organisers etc.

### **Management Requirements**

Has appropriate provision been made to manage public round the exclusion area?  
 Ensure that provision has been made within the application to manage access and the public in relation to the excluded area and its surrounding areas. This is of particular importance in applications that have a high or medium impact rating. Amendments to the order may be required to minimise impacts.

### **Objections**

Have any significant objections been made in relation to the application or is the application contentious? If so application will be brought to Leisure & Arts Services Committee for consideration.

### **Recommendations for approval of order**