

EAST RENFREWSHIRE COUNCIL

CABINET

28 January 2016

Report by Director of Environment

SECTION 21 PATH AGREEMENT AT SALTERLAND, BARRHEAD

PURPOSE OF REPORT

1. The purpose of this report is to seek approval for a Section 21 Path Agreement between East Renfrewshire Council and Mrs Lorna McKay. The proposed agreement will allow completion of a new section of the Lavern Walkway path in Barrhead.

RECOMMENDATIONS

2. The Cabinet is asked to approve the proposed Salterland Path Agreement.

BACKGROUND

3. The Land Reform (Scotland) Act gives Local Authorities powers to enter into a Section 21 Path Agreement. Such agreements allow the construction or improvement of paths on private land by agreeing the line of a path and defining the responsibility and duties of both parties. A Section 21 Agreement does not create a right of access, as a statutory right of responsible access is established under Part 1 of The Act.

4. The Council has received grant funding of £37,000 from two separate funding sources to extend the Lavern Walkway (the riverside path in Barrhead – from the Water Works on Glasgow Road to Salterland Bridge).

5. The Agreement will allow construction of an incomplete section of the Lavern Walkway. The completion of the walkway is included in Schedule 7 of the adopted East Renfrewshire Local Development Plan and the Core Paths Plan July 2012.

REPORT

6. The Section 21 Agreement will cover 27 metres of path over land in private ownership (see Appendix 1). A further 193 metres of path on land in Council ownership completes this part of the Lavern Walkway.

7. The Agreement will last for a period of 15 years and covers the public liability for the path, the maintenance and management of the path and the dimensions and location of the path and the associated structures. A copy of the Agreement is attached as Appendix 2.

8. The path is located to the north of the Water Works east of the Glasgow Road in Barrhead. The section of path covered by the Agreement runs from the bridge on Salterland Road to the railway viaduct crossing the Lavern Water. On conclusion of the Agreement, it is anticipated that the path will be completed in March 2016.

FINANCE AND EFFICIENCY

9. The new path will be built utilising grant funding from the Regeneration Capital Grant Fund (£20,000) and the Central Scotland Green Network Fund (£17,000). The Council is not required to commit any capital funding for its construction

10. Litter picking on the path will be provided by the Barrhead Water Works volunteers, who already provide this service within the Water Works area.

CONSULTATION

11. The need for the path was identified during community consultation on the Core Paths Plan and the community workshops held when designing the Water Works.

12. The terms of the Agreement has been developed through discussion with the land owner Mrs McKay.

PARTNERSHIP WORKING

13. The concept, layout and specification of the path have all been developed by the community partners involved in creating the Water Works.

IMPLICATIONS OF THE PROPOSALS

14. The Agreement has duration of 15 years. At 27 metres in length the section of path in question is small and the associated duties are likely to be minor. There are no IT, sustainability, staffing, state aid or other implications arising from this report.

CONCLUSIONS

15. The Salterland Path Agreement will allow the proposed path to be constructed.

RECOMMENDATIONS

16. The Cabinet is asked to approve the proposed Salterland Path Agreement.

Director of Environment

Further information can be obtained from: Iain MacLean, Head of Environment on 0141 577 3720 or iain.maclean@eastrenfrewshire.gov.uk

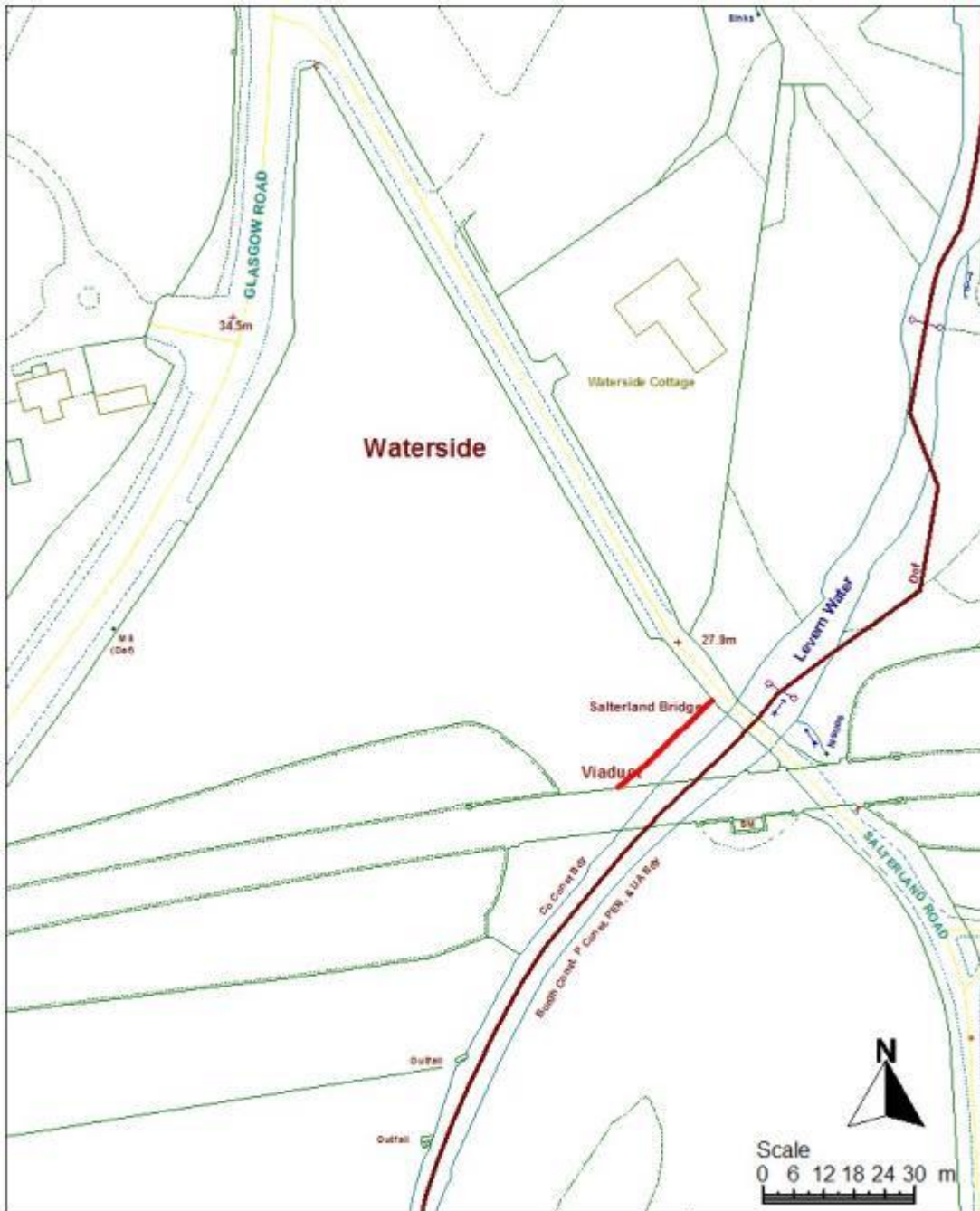
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January 2016

KEY WORDS - Land Reform (Scotland) Act, Section 21 Path Agreement, Lavern Way, Water Works



Appendix 1: Plan of Path.

Path shown as red line



MAP REFERENCE: NS5160SW

DATE: 21/12/2015

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Section 21 PATH AGREEMENT: Path at Salterland Road

between

East Renfrewshire Council, Eastwood HQ, Eastwood Park, Giffnock, G46 6UG (hereinafter referred to as 'the Local Authority'),

And Lorna McKay, 55 Hawthorn Avenue, Bearsden Glasgow, G61 3NF and Rona Saurin, Hill Cottage, Spey Road Inverkip, Renfrewshire (hereinafter referred to as 'the Owners'), being the owners of the property situated in Salterland Road, Barrhead and known as the Salterland Path.

1. This Agreement is a Path Agreement under Section 21 of the Land Reform (Scotland) Act 2003, ('the Act') for the creation and maintenance of a path within land in respect of which access rights are exercisable. Nothing in this Agreement shall diminish or displace the rights, responsibilities, duties or powers under the Act or under the Scottish Outdoor Access Code, made under section 10 of the Act and approved by the Scottish Parliament on 1 July 2004, of either party, nor of any third party nor of the public.

2. Delineation -

The path is as shown delineated in red on the plan attached and signed as relative to this agreement (Annex One).

3. Creation / Improvement of the Path -

The Local Authority shall create the path through the installation of a surfaced pathway/ steel fence / stone wall/ (as specified in Annex Two), all at its own expense.

4. Management and Maintenance of the Path -

The Local Authority or its approved agent (as set out in paragraph 15) shall manage and maintain these specified pathworks for the duration of the Agreement (as detailed in Annex Three). Access for such management and maintenance work shall be taken under the terms and conditions of Section 26 of the Act, and under such agreed additional terms as may be set out in Annex Three.

5. Promotion -

The Local Authority shall be allowed to promote and encourage public use of the route. The Local Authority will encourage, by reasonable means, users of the route to behave responsibly in keeping with the Code.

6. Public Right of Way -

Nothing in this Agreement shall create or extinguish any public right of way.

7. Reimbursement for Quantifiable Losses -

Where the Owner suffers actual and quantifiable losses resulting from this path agreement, the Local Authority will make one or more payments to reimburse the Owner. Actual losses include loss of productive land and reductions in income from leases.

8. Management of the Property -

The Owner shall be free to manage the property provided that public access is not impeded or deterred and that the public is not put at danger or prevented from using any facilities along it.

The Owner shall be able, with the prior agreement of the Local Authority (which shall not be unreasonably withheld), to divert access from the route for a limited period to enable necessary land management works, in keeping with the Scottish Outdoor Access Code. The Owner shall make good, to the satisfaction of the local authority any damage to the route caused by land management operations or by the Owner's fault or negligence.

9. Liability -

The Local Authority shall be responsible for meeting all actions, claims, costs and expenses which may be made against the Owner by reason of the construction, improvement, management including maintenance, or use of the path.

The Owner, or his agents or any interested party listed in paragraph 10, shall remain liable for any damage, injury or death which may be caused directly or indirectly through their respective fault or negligence.

10. Other Interested Parties -

The Owner agrees to notify and obtain the relevant compliance from those parties as listed below who have an interest in the land over which the path passes to the terms of this agreement:

Farm Tenant
Sporting Tenant
Secured Creditors

11. Duration of Agreement -

This Agreement shall commence on 29th January 2016 and shall continue until 29th January 2031, unless terminated for any of the reasons in paragraph 13 below. The Agreement can be renewed on completion of the agreed period.

12. Review -

The Local Authority must review with the Owner at least every two years the operation of the Agreement, when the terms of the Agreement, with the exception of paragraph 13 below, may be adjusted by mutual consent, **which must not be unreasonably withheld**. The Agreement shall also be reviewed when the Local Authority is preparing its core paths plan under section 17 of the Act, in order that the potential for the path to which this agreement relates to be listed as a core path may be considered at that time and the Agreement adjusted accordingly.

13. Termination -

The Agreement may not be terminated before the date stated in the paragraph 11 above except, given a written notice of at least [six months] by one party to the other, for the following reasons:

1. by agreement between the parties for clear and justifiable reasons, and only if an alternative route is not practical; or
2. failure by either party to comply with the terms of the Agreement, following Notice to Remedy issued by the other party.

14. Professional Costs -

The Local Authority shall meet all usual reasonable professional expenses, fees and outlays incurred by the Owner as shall be agreed relating directly to the negotiation and conclusion of this Agreement.

15. Transfer of Ownership or Responsibilities -

If at any time after this Agreement has been signed the Owner proposes to dispose of, assign or otherwise grant any interest in the land, the Owner must disclose the fact that this Agreement exists and require the person(s) acquiring such interest to be bound by the terms of the Agreement.

The Local Authority, with the Owner's consent (which will not be unreasonably withheld), may transfer its responsibilities for creating, maintaining, improving or managing the path to another agent.

16. Arbitration -

In the event of an unresolved dispute over the interpretation of this Agreement, and Arbitrator shall be appointed on the application of either party to the Chairman the Royal Institution of Chartered Surveyors in Scotland. The apportionment of the costs of arbitration shall be decided by the Arbitrator. The Arbitrator's decision shall be final and binding on both parties.

Signed

On behalf of East Renfrewshire Council

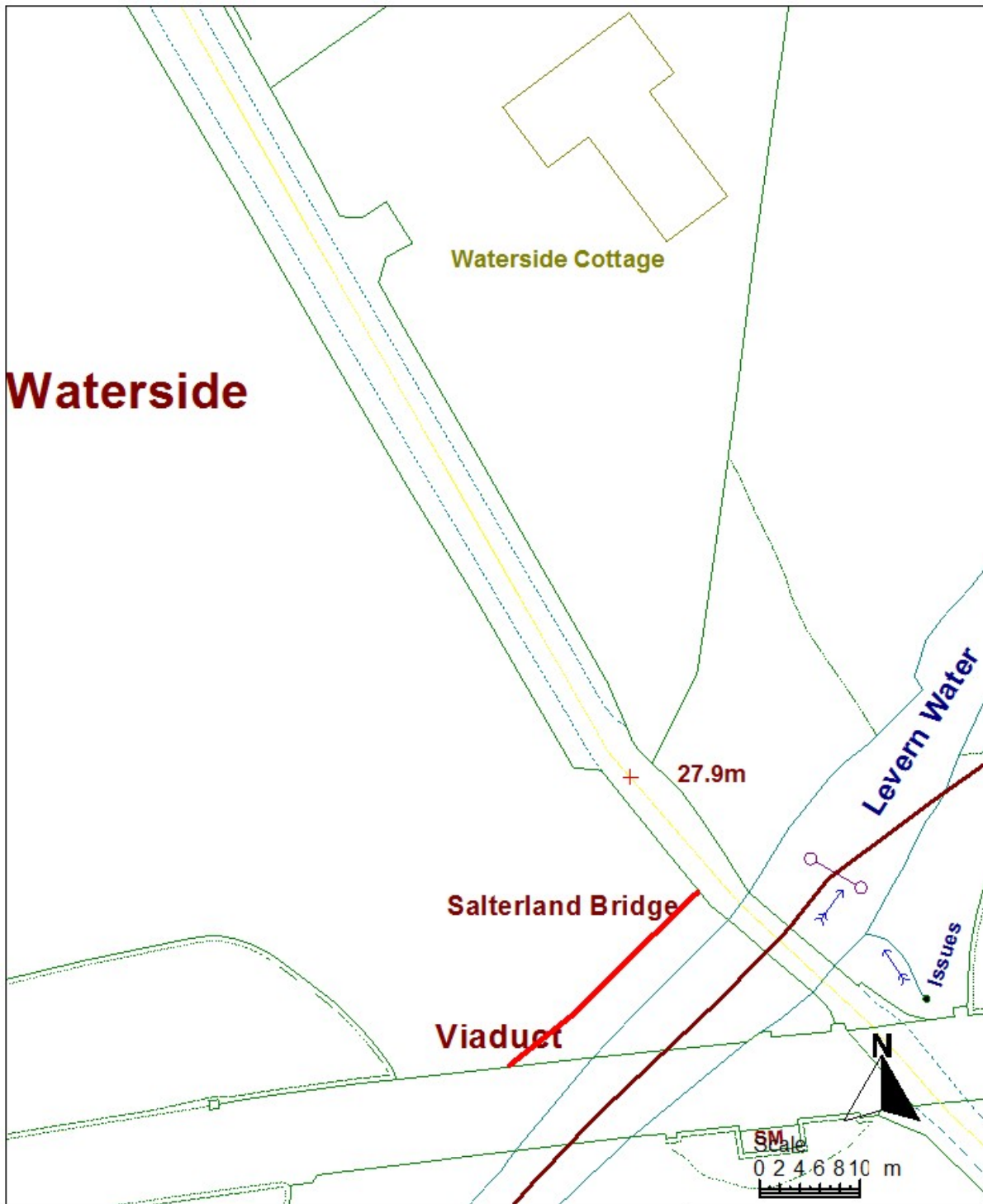
Signed


On behalf of the owner

Signed.....

On behalf of the owner

Annex One - Map of the Path shown in red. (Signed by both parties).



Annex 1: Location of Path		
MAP REFERENCE: NS5160SW	DATE: 18/11/2015	1:500 (@A4)

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Annex Two - Inventory and details of installations and structures subject to this Agreement

A path is to be established from Salterland Road to Salterland Viaduct. The path and its elements will consist of:

1. A steel palisade fence: 103 metres long and 1.8m high with steel palisade double leaf gates, running north from Salterland Viaduct to Salterland Road and then westwards alongside Salterland Road in the direction of Glasgow Road.
2. A Stone Wall stone rubble wall 8 metres in total in 2 sections: Section 1 from the parapet of Salterland Bridge westwards to the edge of the path (5 meters). Section 2 running at right angles southwards from Salterland Road between the fence and the surfaced path (3 meters)
3. An asphalt surfaced pathway 1.5 metre wide and 27 metres long running from Salterland Road to Salterland viaduct.

Annex Three - Schedule of inspection, management and maintenance programme to be undertaken by the Local Authority, or its approved agent (including works for which prior notice to the Owner will not be required).

1. Litter picking on a weekly cycle from April to October and twice monthly from October to March. The area to be litter picked is delineated as land enclosed by Salterland Road, the palisade fence and the Lavern Water
2. Inspection of the path surface on a once yearly cycle. Defects made good as required.
3. Inspection of the stone wall entrance feature on a once yearly cycle, defects and damage made good as required.