

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	City Growth and Resources
<b>DATE</b>	05 December 2019
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Vehicular Access to the Deeside Way
<b>REPORT NUMBER</b>	RES/19/424
<b>DIRECTOR</b>	Steven Whyte - Resources
<b>CHIEF OFFICER</b>	Stephen Booth - Corporate Landlord
<b>REPORT AUTHOR</b>	Ian Harris
<b>TERMS OF REFERENCE</b>	3.1

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### 1. PURPOSE OF REPORT

- 1.1 This report responds to a Notice of Motion put forward by Councillor Boulton regarding the restricting of future vehicular access to the Deeside Way.

### 2. RECOMMENDATIONS

That the Committee: -

- 2.1 agree that there is no change required to the current position, whereby any temporary access required to the Deeside Way for all purposes, including construction vehicles to facilitate development, is strictly controlled under the Delegated Power granted to the Chief Officer – Corporate Landlord, for the issuing of Licences of Temporary Occupancy, and that these current practices are considered to work effectively and provide robust control of vehicular access to the Deeside Way, without the need to further prohibit the majority of vehicles;

### 3. BACKGROUND

- 3.1 Councillor Boulton has put forward the following Notice of Motion - “Council acknowledges the value of the Deeside Way both as a Core Footpath and a wildlife corridor. Accepts the Deeside Way is accessed by a variety of users, leisure and commuter cyclists, walkers, adults, children, from the elderly to babies in prams, vulnerable individuals, including wheelchair users. Instructs the Chief Officer – Corporate Landlord to report to the next meeting of the City Growth and Resources Committee with regard to the feasibility of making amendments to the Council’s procedure restricting vehicular access to the Deeside Way to:-

- 1.maintenance/refuse collection vehicles and emergency vehicles only for the Deeside Way; and
- 2.prohibit any other access by any other vehicles for any other purpose.”

Officers have also been requested to include in the report, proposals as to how signage might be improved in the interests of improving the safety of all users of the Deeside Way.

- 3.2 The Deeside Way is a disused railway line, which, when closed by the former British Railways Board, was passed into Local Authority ownership in the early 1970s. It has since become a popular leisure route made use of by walkers, cyclists (pedal powered and electric), horse riders, and disability users, along with being an important wildlife corridor. The stretch of route owned by the City Council is mainly a tarmac surfaced path, generally about 3 metres in width with large vegetated embankments, verges, etc.
- 3.3 The Deeside Way is valued as a Core Path, National Cycle Route and a wildlife corridor designated as a Local Nature Conservation Site. For the purpose of this report, the Deeside Way refers to that section of this long-distance route, heading west towards Deeside, within Aberdeen City Council's jurisdiction – this being from where the route begins beside Duthie Park out to the City boundary just west of Peterculter, from there control of it passes to Aberdeenshire Council.
- 3.4 The Deeside Way is managed and maintained by the City Council, primarily through the Operations Service and Environmental Services (within this Service) and their Ranger Service with the issuing of Licences for Temporary Access undertaken by the Chief Officer - Corporate Landlord within Resources, in consultation with Environmental Services. The general public have access rights over the Deeside Way in terms of the Land Reform (Scotland) Act 2003 and, accordingly, are entitled to use it for walking, cycling, horse riding, and disability access. It is also designated as a Core Path (CP66) and is part of the National Cycle Route (No. 195), and, as such, the general public's right to make use of it is protected. The primary use is for walking and cycling, both recreationally and as a means of commuting. In addition, there is disability access, and also access for horse riding, amongst other uses.
- 3.5 **In respect of vehicular access**, there are no general rights of access for motorised vehicles over the Deeside Way. However, there are various access points, which enable vehicular access, should it be required. These access points are secured by locked gates or barriers, which are controlled by the Ranger Service. In addition, the driving of vehicles in open spaces is prohibited Without Written permission under the Aberdeen City Council (Parks and Outdoor Areas) Management Rules 2014, which state:- "4. No person within any areas described as 1. above, shall, except with prior written consent of the Council: (a) Ride, drive, or wheel any motorised vehicle except in areas designated for that purpose. This rule does not apply to vehicles adapted for use by a person with a disability provided the adapted vehicle is being used by such a person."
- 3.6 The Council, however, is required to take motorised vehicles onto the Deeside Way for maintenance and upkeep purposes of the Deeside Way itself. Access is facilitated by the Ranger Service and in the unlikely event that there is any damage caused, it is rectified.

- 3.7 In addition, a number of Wayleave Agreements and Deeds of Servitudes have been granted over the years to statutory undertakers, utility and telecommunication companies, e.g. gas, electricity, water, telecom, etc., for the installation of either underground pipes, cables, ducts, etc., or overhead cables, either across or along the Deeside Way and which, for all time coming (while their equipment is located within or over the ground and operational) they have the right to take access to maintain, repair, renew, etc. their equipment. This shall require an unknown number of vehicular access requests, which still require to be discussed and approved in advance with the Ranger Service and the Chief Officer – Corporate Landlord, unless in an emergency situation, and they are still required to make good any damage which they may cause.
- 3.8 Whilst the general public have no general right of vehicular access over the Deeside Way there may be circumstances which require them, or, more likely, their contractors, to utilise it to obtain access only to their property adjoining the Way, primarily in locations where there is limited or no alternative access to the rear of such property, for works such as tree surgery works, erection of extensions, building maintenance, garden landscaping, etc. However, where access over the Deeside Way is required by contractors to enable construction works to be carried out to a property adjoining the Way, and for which Planning Consent has been obtained, the access is not a Planning matter, and wholly the responsibility of the Council, as owner of the Way, to determine.
- 3.9 The vast majority of applications received over the years for temporary vehicular access/egress to the Deeside Way have been to carry out tree works. The number of Licences which are issued by the Chief Officer – Corporate Landlord under Delegated Power, is very low, e.g. for the last 5 years, since 2014, a total of only 6 Licences have been issued with 3 for tree surgeon works (one of which was for a utility company clearing vegetation from below a cable route), 2 for access for ground investigation works within an adjoining privately-owned property, and 1 to enable access to another adjoining privately-owned property for construction of a house extension. The Ranger Service was satisfied with the outcome in each instance.
- 3.10 Therefore, in summary of the above:-
- (i) the number of requests seeking to take temporary vehicular access/egress to the Deeside Way is minimal, whether for construction or other purposes;
  - (ii) there is minimal disruption to users of the Deeside Way when any temporary vehicular access/egress is taken, and the managing Service have been satisfied with all authorised users to date;
  - (iii) there is an existing robust procedure in place to govern vehicular access/egress to the Deeside Way for any purpose;
  - (iv) there is a requirement to continue to allow vehicular access/egress to the Deeside Way for all statutory undertakers, utility and telecommunication companies who have been granted Wayleaves or Deeds of Servitude for pipes, ducts, cables, etc., whether along, across or over the Deeside Way;
  - (v) there is an infrequent requirement for owners of property adjoining the Deeside Way, whether private or public, to seek vehicular access/egress from the Deeside Way to the rear of a property for a variety of uses, and for which

there are either limited but costly/disruptive alternatives, e.g. crane hire, or no alternatives available; and

(vi) restricting vehicular access to the Deeside Way to Council and emergency vehicles only, thereby preventing any third party from being able to access the Deeside Way for any of the aforementioned purposes, could be open to challenge via Judicial Review in the Court of Session.

- 3.11 Accordingly, in view of the above, it is considered by officials that it would be unreasonable of the Council to further prohibit vehicular access by any third-party.
- 3.12 The Committee should also note that a report on this topic was previously submitted to the Communities, Housing and Infrastructure Committee of 24<sup>th</sup> May 2017, Report CHI/17/080 – “Vehicular Access to the Deeside Way”(Article 15). The Committee resolved:- “to note the terms of this report and to acknowledge that presently access to the Deeside Way by construction vehicles to facilitate development is strictly controlled under the current practices and that these current practices work effectively and provide robust control of vehicular access to the Deeside Way.”
- 3.13 **In respect of signage for the Deeside Way**, while the Way is not managed operationally by Resources, it is understood that there is signage on all approaches to it, which encourages people to use it respectfully. However, there are often considered to be conflicts between pedestrians and cyclists, in particular, especially around the speeds of cyclists. Accordingly, the matter of signage requires to be investigated further by appropriate officials and reported back to a future meeting of the Operational Delivery Committee.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no direct financial implications to the Council arising from the recommendation of this Report.
- 4.2 However, it should be noted that the current procedure for the issuing of Licences for authorised vehicular access to the Deeside Way consists of payment of an Estates Team Admin Fee of £370.80 (£309.00 plus £61.80 VAT). In addition, a Licence Fee may also be charged, where appropriate, e.g. where overseeing access/egress entails the Ranger Service resource being ‘tied up’ for a significant period of time, or a greater than normal amount of access/egress and use of the Deeside Way is required. This shall be determined on a request by request basis. If this procedure was to be changed, or be withdrawn, it would impact on any income received.

#### **5. LEGAL IMPLICATIONS**

- 5.1 Statutory undertakers, utility and telecommunication companies currently have parts of their operational network installed either across or along the Deeside Way, whether with underground pipes, ducts, cables, etc., or overhead cables, and for which either a Wayleave Agreement or Deed of Servitude has been put in place. While these remain operational, the companies concerned shall retain a right for all time coming to access their equipment for the purposes of

maintenance, repair, renewal, etc. Any decision taken to prohibit vehicular access to the Deeside Way in the future could prevent the statutory undertakers, utility and telecommunications companies from being able to maintain, repair or renew their equipment. This could lead the Council to being open to claims by the companies.

- 5.2 Any access policy and/or procedure must not prevent the right to obtain access to the Deeside Way for emergency work to be carried out to adjoining property, whether privately or Council-owned.
- 5.3 A decision to further prohibit vehicular access to the Deeside Way could prevent legitimate development being carried out to adjoining privately-owned property.
- 5.4 Any decision taken to further prevent access, could be open to challenge via Judicial Review in the Court of Session on the grounds of reasonableness and proportionality.

## 6. MANAGEMENT OF RISK

- 6.1 If the Committee is minded to agree to the Recommendations of this report, to keep the current procedure for vehicular access, there are no risks to be reported.
- 6.2 However, if the Committee is not minded to agree with the Recommendations and wish to further prohibit access to the Deeside Way by any vehicles other than maintenance/refuse collection and emergency vehicles, the risks are that the denial of a right to access to the operational network of statutory undertakers, utility and telecommunication companies (granted Wayleaves and Deeds of Servitude for the Deeside Way) or any owners of adjoining property may be restricted, and could be open to challenge via Judicial review in the Court of Session.

	Risk	Low (L), Medium (M), High (H)	Mitigation
<b>Financial</b>	Loss of Admin Fees and, where appropriate, Licence Fees	L	Minimal sums involved.
<b>Legal</b>	A decision to further prohibit vehicular access, which:-  (i)could prevent development being carried out, or statutory undertakers, utility companies or telecommunication companies from	H	Continue to allow restricted vehicular access via the current procedure of a Licence of Temporary Occupancy being issued under Delegated Power by

	<p>maintaining services installed on, over, or under the Deeside Way; and/or</p> <p>(ii)could prevent members of the public, who are owners of property adjoining the Deeside Way, from taking vehicular access, or their contractors from taking access to carry out works on such property;</p> <p>-could be open to challenge via Judicial review in the Court of Session.</p>	H	<p>the Chief Officer - Corporate Landlord.</p> <p>Continue to allow restricted vehicular access via the current procedure of a Licence of Temporary Occupancy being issued under Delegated Power by the Chief Officer - Corporate Landlord.</p>
<b>Employee</b>	None in relation to this recommendation.		N/A
<b>Customer</b>	Members of public who are owners of property adjoining Deeside Way, likely to feel aggrieved at future prohibition of vehicular access along Deeside Way.	M	Continue to allow restricted vehicular access via the current procedure of a Licence of Temporary Occupancy being issued under Delegated Power by the Chief Officer - Corporate Landlord.
<b>Environment</b>	Damage to the Deeside Way, e.g. vegetation, trees, path surface, etc. And not permitting authorised access to the Deeside Way, may result in an increase in unauthorised access being taken, potentially resulting in damage to the infrastructure and habitats, plus put public safety at risk.	M	Continue to allow restricted vehicular access via the current procedure of a Licence of Temporary Occupancy being issued under Delegated Power by the Chief Officer - Corporate Landlord.
<b>Technology</b>	None in relation to the recommendation		N/A

<b>Reputational</b>	Potential negative publicity for the Council from members of the public who are owners of property adjoining Deeside Way and are likely to feel aggrieved at future prohibition of vehicular access potentially preventing development or maintenance of their properties.	H	Continue to allow restricted vehicular access via the current procedure of a Licence of Temporary Occupancy being issued under Delegated Power by the Chief Officer - Corporate Landlord.
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## 7. OUTCOMES

7.1 The proposals in this Report have no impact on the LOIP/TOM.

## 8. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	Not required.
<b>Data Protection Impact Assessment</b>	Not required.
<b>Duty of Due Regard / Fairer Scotland Duty</b>	Not applicable.

## 9. BACKGROUND PAPERS

9.1 Communities, Housing and Infrastructure Committee Report of 24 May 2017 CHI/17/080 – “Vehicular Access to the Deeside Way” (Article 15).

## 10. APPENDICES (if applicable)

10.1 None

## 11. REPORT AUTHOR CONTACT DETAILS

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