

**Diversion of Public Paths at Mauricewood, Penicuik****Report by Ricky Moffat, Head of Commercial Operations, Resources.****1 Purpose of Report**

The purpose of this report is to seek approval to progress with a Public Path Diversion Order under the Countryside (Scotland) Act 1967 for an existing path crossing the site of the new housing development at Mauricewood, Penicuik (see Appendix A).

**2 Background**

- 2.1** The Council's Register of Believed Rights of Way shows a path (Believed Right of Way No 17) starting at Charles Street which runs north east along the eastern edge of an agricultural field to Mauricewood Bing terminating at Mauricewood Road.
- 2.2** In addition to Right of Way 17, there is also a nearby path listed in the Scottish Rights of Way Society's Catalogue of Rights of Way (LM 189). This path starts at a point further north-west along Charles Road. However, it terminates at the same locus and part of the route appears to be a short cut for Right of Way No 17.
- 2.3** The developer, the Mauricewood Consortium, comprising Cala Management Limited and Avant Homes (Scotland) Limited, is seeking to divert the paths to accommodate the development footprint while still providing access between the two points covered by the respective rights of way and without undue change to the function of the routes
- 2.4** The existing paths will be diverted to accord with the footprint of the site. They will be replaced by a network of paths and footways which will not result in a diminution in the level of public access currently provided by the two existing paths.
- 2.5** The existing paths will be removed this year and replaced by a temporary path until completion of the path network in 2023.

The process for completing the Path Diversion Order is as follows:

- I. Preparation of the Order and plan.
- II. Serve notice of Order on owners, occupiers and tenants affected by the proposal.
- III. Erect notice at either end of section of path to be diverted and advertise notice of proposed Order in the Midlothian Advertiser allowing a 28 day period for objections.
- IV. If there are no objections, or any objections are withdrawn after consultation, the order will be confirmed by reporting to Cabinet.

- V. If there are objections which are not withdrawn the proposed Order must be referred to the Scottish Ministers for confirmation. This may require a Public Inquiry. Upon confirmation by the Council or the Scottish Ministers, advertise Notice of coming into operation of Order. The public then have 6 weeks to appeal to the Court of Session on a point of law.
- VI. After 6 weeks, register Order in Land Register and update the Midlothian Council Core Paths Plan to reflect the position.

### **3 Report Implications**

#### **3.1 Resource**

The Mauricewood Consortium has agreed to pay the Council's reasonable costs and outlays up to a maximum cost of £2,000 which is considered to be more than sufficient to cover the costs of making the Order and responding to any competent objections.

The changes to the existing Core Path Plan will be met out of the existing Resources Directorate budget.

#### **3.2 Risk**

The risk rests largely with the developer whereby if objections are raised over the proposed diversion these could create significant delays to the project.

The path noted on the Scottish Rights of Way Society map may not be a right of way due to the proximity of route No 17 on the Council's Register of Believed Rights of Way. It was considered, however, that this path should also be included in the Order to avoid any future claims against either the developer or the Council.

#### **3.3 Policy**

##### **Strategy**

This development at Mauricewood is set out in the Midlothian Local Plan and is an important expansion to Penicuik.

##### **Equalities**

A detailed Integrated Impact Assessment has been completed for this proposal

##### **Sustainability**

The diverted paths will be within the housing development and will be used much more by pedestrians than has been the case to date therefore providing the community with a more sustainable solution for the future.

### **3.4 IT Issues**

There are no IT issues.

## **4 Recommendations**

Cabinet is recommended to instruct the Director, Resources to progress the Diversion Order in line with the process described under Section 2 of this report.

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**Background Papers:**

Appendix A

