

**COUNCIL
8 APRIL 2014**

TORFAEN COUNTY BOROUGH COUNCIL

CHIEF EXECUTIVE'S DECISION

**SUBJECT: ACCESS LICENCE AGREEMENT – BLAEN BRAN COMMUNITY
WOODLAND GROUP, BLAEN BRAN COMMUNITY WOODLAND,
UPPER CWMBRAN, TORFAEN**

DECISION:

1. That the Chief Executive approves under the provisions of 12.5.1 of the Constitution the grant of an access licence agreement to Blaen Bran Community Woodland Group based on the terms detailed in this report and
2. That the decision is implemented as a matter of urgency for the reasons given in the report.

REASONS FOR DECISION: as set out in the report

CONSULTATION: as set out in the report

REPORT: attached as an appendix

**REPORT TO THE CHIEF EXECUTIVE FOR DECISION UNDER DELEGATED POWERS
(Para 12.5.1 of the Constitution)**

24 February 2014

ACCESS LICENCE AGREEMENT - BLAEN BRAN COMMUNITY WOODLAND GROUP, BLAEN BRAN COMMUNITY WOODLAND, UPPER CWMBRAN, TORFAEN

Report Submitted by: Lynda Willis, Chief Legal Officer & Monitoring Officer
Report Written by: Andrew Gear, Senior Valuer
Supported by: Robert Flower, Estates & Valuation Manager

1. Area Affected

1.1 Upper Cwmbran Ward.

2. Purpose of Report

2.1 To seek approval under delegated powers granted to the Chief Executive under para 12.5.1 of the Constitution)for the grant of a licence agreement to Blaen Bran Community Woodland Group to access Blaen Bran Woodland in Upper Cwmbran across land within Torfaen County Borough Council ownership for the purpose of removing diseased larch trees.

3. Key Messages

- 3.1
- The top section of Blaen Bran Woodland situated to the North West of Upper Cwmbran has been infected with larch disease, Phytophthora Ramorum, affecting a large area of the woodland.
 - A Statutory Plant Health Notice has been served by Natural Resources Wales which requires the removal of approximately 18,000 trees by April 2014 although it may be that this period has been extended and indeed there is a change in policy which allows trees to remain if work has not commenced. However in this case the Group have commenced some felling themselves.
 - In order to facilitate the removal of the trees by lorry it is considered that, on the basis of current information the Group who own and manage the woodland require an access licence agreement to use a Council track.
 - Following an examination of the Group's Memorandum of Association and other Trust documentation it is clear that any income accrued is to be devoted to the future development of the woodland and therefore it is proposed that the Council forgoes a fee based on commercial consideration and instead grants the licence on a concessionary basis.
 - As this proposed arrangement is not for a commercial consideration, the decision would normally be taken by Cabinet which next meets on 25 March. However the matter needs to be dealt with urgently as the Group have contractors waiting for entry in order to carry out the removal of trees within the time limit referred to.

4. Background

- 4.1 Blaen Bran Woodland is situated to the North West of Upper Cwmbran and is owned and managed by Blaen Bran Community Woodland Group (BBCWG). The Group are a registered charity and through the woodland they provide an excellent and popular local amenity and have a good working relationship with the Council. In addition they operate a social enterprise which provides excellent opportunities for volunteers to engage in productive tasks, improve basic skills, build self esteem, and improve employment prospects.
- 4.2 Unfortunately however the top section of the woodland has been infected with larch disease, Phytophthora Ramorum, affecting a large area of the woodland, and a Statutory Plant Health Notice has been served by Natural Resources Wales (NRW) - see Appendix 3; Briefing Note 17 Nov 2013. In order to comply with this notice the Group must fell and remove approximately 18,000 trees by April 2014 although it may be that this period has been extended and indeed there is a change in policy which allows trees to remain if work has not commenced. However in this case the Group have commenced some felling themselves.
- 4.3 It is anticipated that between 80 and 100 lorry loads will be extracted over a period of 6 to 8 weeks, typically between two and four loads per day, throughout the period.
- 4.4 Various access routes to the woodland were considered, including the mountain road from Cwmynyscoy, but the existing access track within Council ownership leading from The Square in Upper Cwmbran has been deemed the most suitable and least likely to cause significant damage to the highway (see Appendix 2 - Plan; access track shaded brown).
- 4.5 Accordingly it has provisionally been agreed to grant the Group a 12 week access licence agreement which will indemnify the Council against third party claims and any damage caused to the track by the lorries.

5. Issues and Findings

- 5.1 It is Council policy to negotiate commercial terms and receive 'best consideration' in property transactions. The Group will receive grant funding from NRW to remove the trees and although paying for the services of a contractor to carry out the extraction works, will also receive payment for the timber removed.
- 5.2 It is therefore not an unreasonable commercial approach that the Council should seek a payment of 50% of any profit the Group make from the exercise, but this is an unknown at present because they will not know what payment they will receive for the timber until it is extracted or the cost of reinstatement of the Council track. They are realistically hoping to break-even but have confirmed that should they make any profit it will be invested back into the woodland, specifically road repairs, clearance of the site, and the replanting of the affected area of woodland with broadleaf trees. This will take several years at least to achieve due to their reliance on a volunteer workforce.

5.3 It is felt that due to the fact that no income is retained by the Group but is used to finance the activities set out in 4.1 that the Council should forego any potential income and a concessionary fee should be charged in this particular instance.

5.4 The Group have had difficulty in identifying a suitable contractor and under the proposed contract works will need to commence before the end of February.

6. Consultation

6.1 The Council's Countryside Section and Highways Maintenance Division have had full input into this matter from the outset.

6.2 The Local Ward Members for Upper Cwmbran have not been formally consulted but a copy of the approved report will be forwarded to them for information.

6.3 In accordance with 12.5.1 of the Constitution consultation on the proposed decision has been made with members of the Cabinet.

7. Financial Implications

7.1 The Council will forego the receipt of any potential income and a concessionary licence fee of £1 will be charged for the benefit of the access licence agreement.

7.2 The Group however will be responsible for the payment of the Council's costs incurred in drafting the licence agreement in the sum of £200 (Two Hundred Pounds).

7.3 The Group will indemnify the Council from any claims arising and be responsible for reinstatement of the Council's track. In this respect the Group have agreed to the payment of a £1000 bond

7.4 The Group receive funding from the Community Enterprise Development Programme through the external grants section of the Council.

8. Policy Impact Assessment

8.1 There are no significant policy implications.

9. Risks

9.1 There are no particular risks or concerns arising from this report.

10. Action to be taken following decision

10.1 If the report is approved the decision will be implemented urgently and Legal Services will be instructed to draft an appropriate licence agreement.

10.2 Further discussions will take place with the Group with a view to granting them a more formal legal access right across the track in question in order to access

the woodland in the future based on the terms set out in this report.

- 10.3 The decision will be reported to Council as would any ordinary decision of Cabinet.

11. Measures of Success

- 11.1 The measure of success for this decision will be completion of the licence agreement and the removal of the larch disease infected trees within the allotted timescale set by NRW.

12. Conclusion/summary

- 12.1 The top section of Blaen Bran Woodland situated to the North West of Upper Cwmbran has been infected with larch disease, Phytophthora Ramorum, affecting a large area of the woodland, and a Statutory Plant Health Notice has been served by Natural Resources Wales.

- 12.2 In order to facilitate the removal of approximately 18,000 trees by lorry the Group who own and manage the woodland require an access licence agreement from the Council to access the woodland across an access track in Council ownership leading from The Square in Upper Cwmbran. That licence is required urgently due to the fact that the Group have had difficulty finding a contractor who is prepared to undertake the work due to its location and access problems. I have been advised that the contractor they have identified is only prepared to undertake the work if he can commence operations by the beginning of March at the latest.

- 12.3 In view of the fact that any income generated by the Group is solely devoted preserve the woodland for the benefit of the community and development of a social enterprise which provides opportunities for volunteers to engage in productive tasks it is proposed that the Council forgoes any potential income it may ordinarily receive and instead grant the licence on a concessionary basis.

13. Recommendation(s)

- 13.1 It is recommended that the t Chief Executive approves under the provisions of 12.5.1 of the Constitution the grant of an access licence agreement to Blaen Bran Community Woodland Group based on the terms detailed in this report and
- 13.2 That the decision is implemented as a matter of urgency for the reasons given in the report.

Appendices	<ol style="list-style-type: none">1. Policy Impact Assessment Screening Matrix.2. Plan.3. Briefing Note 17 Nov 2013.
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Background Papers	Note: Members of the public are entitled, under the Local Government Act 1972, to inspect background papers to reports.
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	<p>The following is a list of the background papers used in the production of this report.</p>
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None.

<p>For a copy of the background papers or for further information about this report, please telephone:</p>

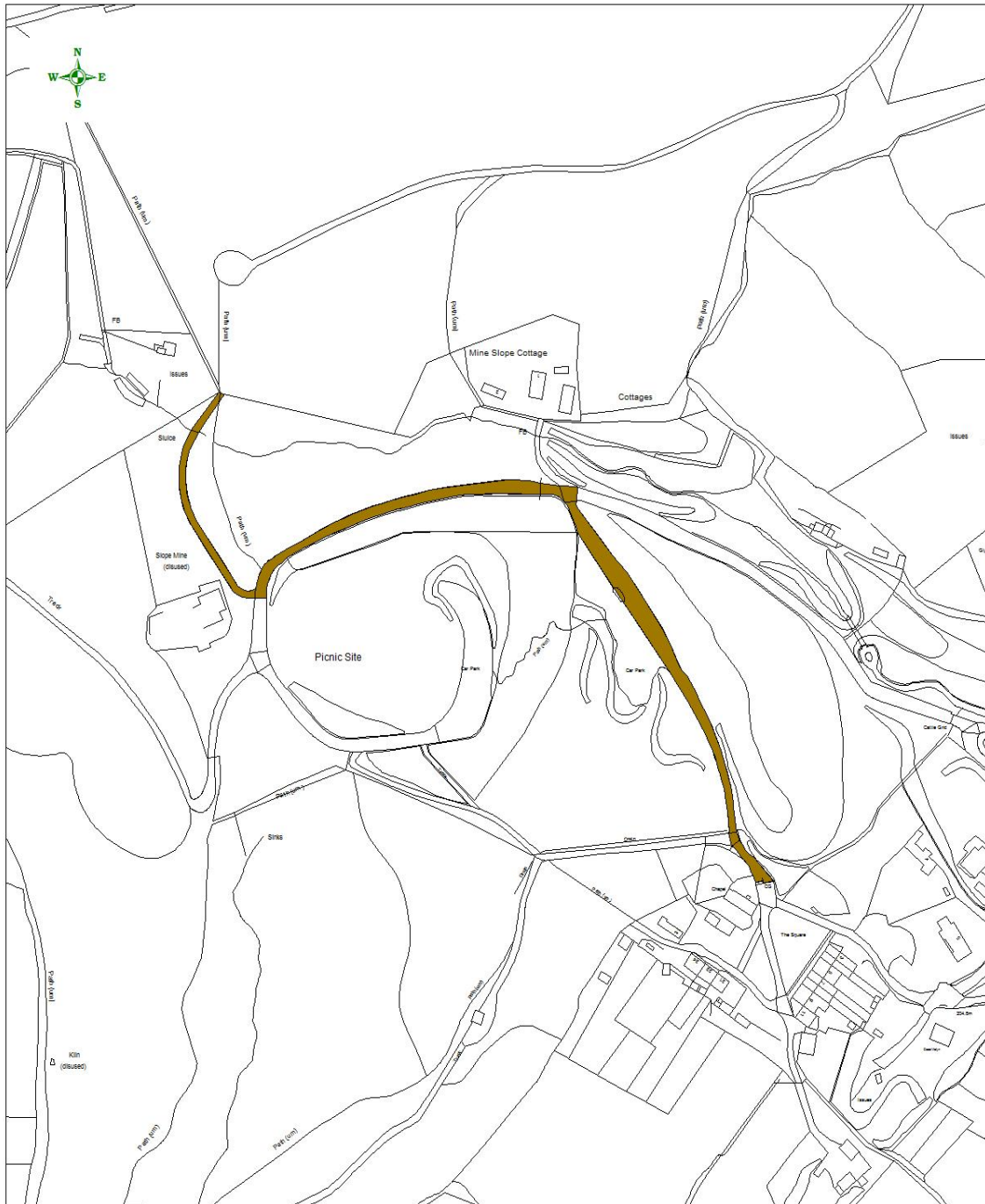
Andrew Gear, Senior Valuer on (01495 74) 2900. email: andrew.gear@torfaen.gov.uk


Project/Activity	ACCESS LICENCE AGREEMENT - BLAEN BRAN COMMUNITY WOODLAND GROUP, UPPER CWMBRAN, TORFAEN		
Project Manager:	Andrew Gear, Senior Valuer	Appraiser:	Andrew Gear
		Date:	20 February 2014

Theme	Criteria	Type of impact	Significance of impact	Notes
		Positive + Negative – None NA	High H Low L	
Resource Implications	Legislation	N/A		The Council will forego the receipt of any potential income but will receive payment of its costs incurred in drafting the licence agreement.
	Finance	-	L	
	Communication	N/A		
	Employees	N/A		
	Partnership/Collaboration	N/A		
Health	Physical Health	N/A		
	Mental Health	N/A		
	Healthy Lifestyles	N/A		
Education	Educational Attainment	N/A		
	Basic Skills	N/A		
	Continuous Learning	N/A		
Housing	Good Quality Housing	N/A		
	Homelessness	N/A		
	Affordable Housing	N/A		
Economy	Poverty	N/A		
	Employment	N/A		
	Business	N/A		
	Community Enterprise	N/A		
Equality	Age	N/A		
	Disability	N/A		
	Gender	N/A		
	Marriage & Civil Partnership	N/A		
	Pregnancy & Maternity	N/A		
	Race	N/A		
	Religion & Belief	N/A		
	Sexual Orientation	N/A		
	Welsh Language	N/A		
	Group not achieving equality of service	N/A		
Human Rights	N/A			
Safer Communities	Crime	N/A		
	Anti Social Behaviour	N/A		
	Safety of area or people	N/A		
Transport	Public	N/A		
	Private	N/A		
	Walking / Cycling	N/A		
Built Environment	Local Distinction & Heritage	N/A		
	Waste & Recycling	N/A		
	Energy / Water Efficiency	N/A		
Pollution	Air / Water / Ground	N/A		
Natural Environment	Climate Change	N/A		Will facilitate the removal of larch disease infected trees from Blaen Bran Woodland, Upper Cwmbran.
	Animal / Plant Species	+	H	
	Habitat / Landscape	N/A		

Appendix 1

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 <p>TORFAEN COUNTY BOROUGH</p> <p>BWRDEISTREF SIROL TORFAEN</p> <p>CHIEF LEGAL OFFICER & MONITORING OFFICER</p> <p>Lynda Willis, BA, Solicitor</p>	Drawing Title Access Track leading from The Square, Upper Cwmbran to Blaen Bran Community Woodland				
	Drawn O.S/SJM	Date 05/02/2014	Scale 1:2500	File Ref	Checked by:
	<small>Reproduced from Ordnance Survey with permission of the Controller of Her Majesty's Stationary Office (c) Crown copyright and database rights (2011) Ordnance Survey (100023426). Unauthorised reproduction infringes Crown copyright and may lead to prosecution/civil proceedings.</small>				
	<small>Athgylchwyd o Fapiau'r Ordnance Survey gyda chaniatad Rheolwr Llyfrfa Ei Mawrthdy © Hawlfraint y Goron a hawlau cronfa ddata [2011] Arolwg Ordans [100023426]. Y mae atgynhyrchu heb awdurdod yu torri Hawlfraint y Goron a gall arwain at erlyniad neu achosion sifil.</small>				

Appendix 2 - Plan

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Appendix 3

Briefing Note 17 Nov 2013

Phytophthora ramorum **Disease affecting larch trees in Torfaen**

There have been reports in the news recently regarding *Phytophthora ramorum* which is affecting primarily **Larch** in the UK and has resulted in felling a significant number of trees at Wentwood Forest. This briefing note summarises the situation in Torfaen as there is likely to be significant landscape change taking place over the next couple of years.

Background

Phytophthora ramorum (*P. ramorum*) is a fungus-like pathogen of plants that causes extensive damage and mortality to trees and other plants. The first UK finding was made on viburnum in February 2002 but few trees in the UK were affected until 2009, when *P. ramorum* was found infecting and killing large numbers of Japanese larch trees in South West England. In 2010 it was found on Japanese larches in Wales. Since then it has spread very quickly and it seems that Torfaen is at the leading edge of the spread in South East Wales. A number of large woodland areas are now confirmed to be infected in Torfaen. For more information regarding the disease please see these websites: <http://www.forestry.gov.uk/pramorom>
<http://www.forestry.gov.uk/forestry/INFD-85TDX6>

The 'Outbreak map' is particularly revealing when you note that the extent of 2013 infections are located on the western and northern boundary of Torfaen. It seems only a matter of time before most larch in Torfaen are infected.
[http://www.forestry.gov.uk/pdf/OMT_Outbreak-Map_291013.pdf/\\$FILE/OMT_Outbreak-Map_291013.pdf](http://www.forestry.gov.uk/pdf/OMT_Outbreak-Map_291013.pdf/$FILE/OMT_Outbreak-Map_291013.pdf)

Torfaen

The woodlands we are aware of where *P. ramorum* is present and where we understand all larch will all need to be removed are:

- **Blaen Bran Community woodlands** (Upper Cwmbran), The Community Group have had a 'Plant Health Notice' from Natural Resources Wales (NRW) which requires them to fell larch trees within 6 months (About half the woodland is affected). There are ongoing discussions about how the trees will be removed and how this might affect public access, residents and the public highway. Access here is very difficult and the group are in discussion with the Council to find the most appropriate way to remove the trees.
- **Blaenavon Wood** (Blaenavon), NRW will look to fell and remove the larch between September 2014 and March 2015.
- **Lasgarn Wood** (Trevethin) – Unclear whether this will take place in 2014 or 2015 but this will involve felling of much of the woodland in this area which is popular with walkers and cyclists from Trevethin and Abersychan
- **Cwmcarn Forest Drive** (part of the forestry area is in Henllys) High percentage of Larch that all need felling. No other details at present

None of these is owned by Torfaen County Borough Council (TCBC)

Likely impacts:

Short term – reduced public access, additional traffic from large lorries, areas of scarred landscape from clear felling.

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Long term - significant change in the landscape as NRW will look to replace with native broadleaved trees.

TCBC owned land

TCBC has plantations of larch mixed with other species in **Pontypool Park, Garn Lakes LNR** and **Tirpentwys LNR** but no disease has been reported in these areas to date; but it is considered to be likely that this is only a matter of time before the infection is found here.

Countryside wardens have programmed to remove the larch at Garn Lakes this winter. There are not expected to be any significant issues as they are mixed with other species and were only planted as nurse species, so it was always intended to remove them. We are looking into the feasibility of felling the larch at Tirpentwys LNR this winter as well

There are no plans to fell larch in Pontypool Park at the moment.

There are many small groups or individual trees across the borough that might need to be considered in future as well.

Further information

If you have any queries please contact Natural Resources Wales (NRW)

alan.hubbuck@cyfoethnaturiolcymru.gov.uk

Tel: 0300 068 0251

I will keep you updated of any further developments

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