

EAST RENFREWSHIRE COUNCIL13 September 2023Report by Director of EnvironmentLEASE AND SERVITUDES RELATED TO AURS ROAD REALIGNMENT**PURPOSE OF REPORT**

1. The purpose of this report is to seek the approval of the Council to enter into the Lease, Licence to Occupy Agreement and Servitudes required for use of Scottish Water owned land in relation to the Aurs Road Realignment City Deal project.

RECOMMENDATIONS

2. The Council is recommended to:
 - a) approve entering into a 120 year Lease with Scottish Water to allow the construction of a promenade;
 - b) approve entering into a Licence to Occupy Scottish Water land out with the Lease required to construct the promenade; and
 - c) approve entering into the 7 Servitudes required for the use of land in Scottish Water ownership for future access and maintenance.

BACKGROUND AND REPORT

3. Scottish Water (SW) are a critical stakeholder in the City Deal Aurs Road Re-alignment project.
4. Project deliverables:
 - Road improvements
 - two sections of new road to provide improved alignment
 - a new bridge to replace an existing weak road bridge
 - a narrowing of Aurs Road to one lane and associated traffic signal control as it passes beneath the railway bridge
 - the installation of new roundabout
 - the resurfacing of the full stretch of road
 - The release of land to enable the construction of Country Park Visitor Facilities and associated off road parking provision. Site layouts and park provision will be determined separately as part of the Visitor Facilities Business Case
 - Pedestrian and Active Travel provision
 - a new Promenade on dam face of Balgray Reservoir providing pedestrian and cycle connectivity

- a new 2 km active travel link between Barrhead and Newton Mearns
 - a new foot bridge over Brock Burn to serve the Active Travel route
 - the partial alteration of the existing walkway bridge to Scottish Water's drawdown tower
- Works to Balgray Reservoir structure
 - the installation of replacement culvert between Balgray Reservoir and Brock Burn by undertaking deep cut through the existing dam structure (on behalf of Scottish Water);
 - the removal and infill of the existing Brock Burn overflow weir which enables footpath improvements.
5. Scottish Water are participating on the basis of working collaboratively on the use of part of their land and infrastructure assets to construct the project at Balgraystone Reservoir on the proviso that Scottish Water will not incur any additional obligations, whole-life cycle costs or maintenance impact on their existing assets. Scottish Water's obligations under the various Reservoir Acts and its role as reservoir manager must not be fettered and the Council accepts unlimited liability for insurance risks arising from the City Deal Project.
 6. The Scottish Water assets affected are the face of the reservoir dam wall and embankment structures along with draw-down apparatus and water channels. The current Aurs Road runs on the top of the one of the reservoir embankment structures which were constructed in the late 1800's.
 7. The Council considered a report related to the design of the project at its meeting of 3rd June 2021, which provides further information. The project construction tender award is imminent.

Lease with Scottish Water

8. Council is requested to approve entering into a Lease with Scottish Water to become a tenant for a duration of 120 years, along with seven Servitudes. The design life of the Promenade is estimated at 125 years hence the duration length of the lease.
9. The servitudes and lease agreements have been negotiated with the Council's Legal and Estates Services in-conjunction with the City Deal Project team and lead external legal Advisor, CMS. CMS are a major UK legal practice with substantial experience in infrastructure legal documents and were appointed via the Council's legal consultancy framework to advise on all building contract, lease and servitude documentation for the project.
10. The lease terms are;-
 - A lease for 120 years with a tenant break clause on the fifteenth anniversary of the date of entry.
 - A yearly rent of £1 will be payable to Scottish Water.
 - The date of entry will depend on approval by City Deal Cabinet and the award date of the building contract. Currently this is estimated to be early December 2023.

- The project will construct, maintain, repair the promenade as a public walkway accessible by the public by foot and cycle bikes created on the Reservoir Dam embankment and slope to a design and specification within the Procurement Agreement (minute of understanding) between the organisations entered into in June 2023 and the building contract.
- The lease use is as a public active travel Promenade for organised recreational and educational activities and ancillary uses. Scottish Water will share in any rental receipts that are generated after deduction of reasonable management costs.
- A break clause in favour of the Council has been secured at any time after the 15th year anniversary upon 12 month notice to allow ERC to terminate. This may be required should the obligations of the lease become uneconomic financially.
- The Council has a right to alter, repair and replace its original construction over the lease term and exercise its statutory functions as The Roads Authority. ERC have to notify Scottish Water promptly of any defect or disrepair issue. ERC has reserved air space rights (to aid construction and ongoing maintenance) and to install drainage and other features as per the original building contract. Amendments after completion require the prior approval of Scottish Water.
- The Council has no obligations under the lease in respect of Reservoir Safety or for Scottish Water role as Reservoir Manager.
- Scottish Water are obligated to comply with the statutory obligations as Reservoir Manager including the requisite inspection of the Reservoir and its infrastructure at least every 10 years as per statute.
- The Council is obliged to remove the promenade at the end of the 120 year lease (unless the parties agree otherwise).
- The Council and Scottish Water have agreed a repair and maintenance liability split. The Council will be responsible for the promenade surface and all apparatus on it and Scottish Water will be liable for the existing dam structure and inspection of the promenade wall. A revenue funding bid will be lodged to cover the costs of the Council's obligations in relation to maintenance costs.
- If Scottish Water require access to the dam core behind the promenade wall to carry out repairs, they will bear the costs of the repairs but ERC will be liable for the costs to open up the structure and re-instatement.
- Scottish Water reserve the right to step-in to do any of East Renfrewshire Council's obligations where Scottish Water reasonably consider that the repair prejudice's Reservoir Safety. Except in the case of emergency any dispute on the works and/or timetable the matter can be referred to an independent expert.
- Where Scottish Water require to break the surface of the promenade or to remove in part or whole of the promenade to access their apparatus then the cost is borne by ERC who have to reimburse the cost associated with the removal and reinstatement arising from Scottish Water works. The frequency and cost to ERC is unknown.

- ERC are also responsible for any repair costs within the lease which are required from the Reservoir Acts regular inspection regime.
- The parties will agree a property asset management plan during the 3rd to 5th years post Practical Completion date to identify and establish a coordinated regular planned maintenance schedule to reduce unnecessary costs/duplication.
- The Council has to maintain and exhibit a minimum of £10m Public Liability insurance which Scottish Water can require to be increased to be commensurate with insurance industry standards. Scottish Water have not agreed to any cap on the level of Public Liability level during the lease duration.

Licence to Occupy Scottish Water Land outwith the Lease During Construction Phase

11. During the construction phase access to Scottish Water land out with the lease is required for accommodation, storage and pre install fabrication, which will require a Licence to Occupy (LTO).

Servitudes

12. The project also requires 7 servitudes which provide rights via title burdens in perpetuity to parts of Scottish Water land to allow the construction and maintenance of crash barriers, earthworks, retaining walls, structures, bridges, vehicle restraint barriers, landscaping, drainage and maintenance access rights. The table below lists the servitudes required.

1	Balgray Active Travel
2	Aurs Road Active Travel
3	Coalhill
4	Aurs Road Verge (South)
5	Aurs Road Verge (North)
6	Brock Burn Road Bridge (East)
7	Brock Burn Active Travel & Brock Burn Road Bridge

Risk Management

13. Risk Registers were prepared at the project outset. These are dynamic documents and are updated and reviewed regularly. Project teams share risk registers and work together to review and update these documents until the end of the construction phase.
14. The Council undertook a number of risk workshop sessions lead by an independent consultant specialising in hydrology. These workshops concluded with identifying the following risks.
 - Promenade or road defect or failure causing damage to dam structure (e.g. water ingress to core) – This risk was not considered credible by a dam engineer. Any increased loadings on dam due to road or promenade has been taken into account in the design.
 - Loss of life or serious injury due to promenade failure, falls from promenade and drowning due to illegal access from the promenade. Risks are consider low or no greater already than existing risk. Risks will be further mitigated by signage and education.

- Vandalism to dam causing failure to dam. – Risk was considered low and twice weekly walk over visits undertaken by Scottish Water Engineers will identify vandalism and instruct remedial action.

FINANCE AND EFFICIENCY

15. The acquisition will be funded from the City Deal provision contained within the approved Capital Plan. The known maintenance costs are subject to a revenue bid and further requests will be made in future years once the promenade is open and the Planned Preventive Asset Management Plan is developed based upon operational experience.

CONSULTATION

16. There has been consultation with the Council's Development Management, City Deal, Legal Services, Roads, Local Development Plan and Estates Teams.

PARTNERSHIP WORKING

17. The proposed agreement will require co-operation between various Council Services and contractual agreements with the current site owners.

IMPLICATIONS OF THE PROPOSAL

18. There are no staffing, state aid, property, legal, ICT, equalities or sustainability implications directly associated with this report.

CONCLUSIONS

19. The re-alignment of Aurs Road and construction of a Promenade is a substantial civil engineering build with many complex and challenging elements. The proposed acquisition will enable the tender to construct to be progressed and a site start made after seven years of design and enabling works for the upgrade of Aurs Road. The project will provide better connectivity between Barrhead and Newton Mearns, enhance the road network through better and safer design whilst increasing the attractiveness and accessibility to the Barrhead South, the Development Opportunity Area and to The Dams Country Park from across the city region. –The project will deliver an exemplar 'active travel' corridor with associated health and community benefits.

RECOMMENDATIONS

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- c) approve entering into the 7 Servitudes required for the use of land in Scottish Water ownership for future access and maintenance.

Director of Environment

Further information can be obtained from Gillian McCarney-Head of Place,
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September 2023