



**COUNCIL EXECUTIVE**

**RIGHTS OF SERVITUDE AT WILLOWDEAN, BRIDGEND, BY LINLITHGOW  
EXTENSION OF LEASE OF LAND FOR PLAYING FIELDS AT BRIDGEND PRIMARY  
SCHOOL**

**REPORT BY HEAD OF FINANCE AND ESTATES**

**A. PURPOSE OF REPORT**

To seek Council Executive approval to clarify the existing servitude rights in favour of Rosebery Estates across council owned land at Willowdean, Bridgend and approve provisional terms for a new lease to the council of land for playing field use adjacent to Bridgend Primary School.

**B. RECOMMENDATION**

It is recommended that Council Executive

1. Approves the clarification of the existing servitude right of access in favour of Rosebery Estates at Willowdean, Bridgend to allow development of adjoining land in their ownership for residential development,
2. Approves provisional terms outlined below in respect of a new lease to the council by Rosebery Estates of 4.98 acres (2.01 Ha) for a period of 50 years at an initial rent of £334 per annum, and,
3. Grants delegated powers to officers to enter into the agreements as outlined in this report.

**C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs Making best use of our resources Working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.

<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	The council currently pay an annual rent of £334 in respect of the playing fields and this will continue subject to five yearly rent reviews during the term of the lease.
<b>VII</b>	<b>Consideration at PDSP</b>	Not applicable.
<b>VIII</b>	<b>Other consultations</b>	The local elected members for the ward have been provided with a copy of the report for information.

## **D. TERMS OF REPORT**

### Background

In 1994 and 1995 West Lothian District Council entered into negotiations with Rosebery Estates with regards to securing land to facilitate the creation of Bridgend Golf Club. As part of the negotiations the District Council agreed to grant servitude rights of access and egress over land which it owned at Willowdean, Bridgend, to allow Rosebery Estates to service a plot of derelict land in their ownership. These rights were subsequently granted through a formal Deed of Servitude. At the time the servitude rights were granted, the Willowdean site had been allocated in the Local Plan for residential development, although no planning application has ever been made.

### Current Position

Rosebery Estates now wish to sell the derelict site at Willowdean for residential development and on behalf of the proposed purchasers of the site have asked for clarity regarding the terms of the original deed of servitude.

Legal Services have advised that, in their opinion, the servitude does not explicitly allow access and egress for the proposed development. This opinion has been strongly disputed by Rosebery Estates to the extent that they are considering legal action. Whilst council officers have carried out extensive research into the background to the transaction, these have proved inconclusive. Additionally, the current Factor at Rosebery Estates was also the Factor at the time of the negotiations whilst there is no-one still employed at the council who was similarly involved.

Coincidentally, the council's lease of the playing fields adjacent to Bridgend Primary School from Rosebery Estates is currently running on year to year basis. Whilst the pitch is well used, particularly by the local amateur football team, it is presently sub-standard in that it has a pronounced slope and has poor drainage. NETS and Land currently have plans to level, drain and re-lay the pitch, together with an allocated capital budget of £175,000 to carry out the works. However, it would not be prudent to invest these funds and carry out the proposed works without having reasonable security of tenure on the land.

In order to avoid both a potential legal action and allow the upgrading of a much used sporting facility, provisional terms have been agreed in principle with Roseberry Estates on both the clarification of the existing servitude rights, and also heads of terms for a new lease of the land for the playing fields. The terms include for Roseberry Estates having the right to resume part of the land to create access to the adjoining fields. This would be conditional on the Council's retaining access over the resumed land but not having exclusive use of it. The main terms of the proposed agreement are as follows:-

Proposed clarification of existing servitude rights of access and egress

1. The area covered by the servitude will be the same as that included in the existing deed of servitude, as shown on the attached plan.
2. The current servitude will be clarified to include all necessary vehicular and pedestrian rights of access and egress required to facilitate development of the adjoining land owned by Roseberry Estates.
3. Each party will be responsible for payment of their own legal fees and outlays in connection with the transaction, with Roseberry Estates responsible for payment of any recording dues involved.

Proposed heads of terms for lease of land for playing fields

Landlord - Roseberry Estates

Tenant - West Lothian Council

Subjects - 4.98 acres or thereby, as shown hatched on the attached plan

Rent - £334 per annum

Term - 50 years from date of entry

Rent reviews - every five years, to the higher of market value or retail price index

Right of Resumption – right of resumption in part in favour of Roseberry Estates.

Legal expenses - each party to bear their own. WLC to be responsible for recording dues

**E. CONCLUSION**

It is considered that it would be in the best interests of the council to clarify the existing servitude rights in favour of Roseberry Estates and to obtain a long term lease of the ground used as playing fields on the terms outlined above.

**F. BACKGROUND REFERENCES**

None.

Appendices/Attachments: Location Plan Attached

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**Donald Forest, Head of Finance and Estates**

Date of meeting: 10 February 2015