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17 FEB 2014  
YEARLY RUNNING No.

## Deed of Servitude

by

**The Scottish Borders Council**

in favour of

**The Scottish Ministers**

Ref: JANF/LL/301484/SHI

FAS: 2889

17 FEB 2014  
YEARLY RUNNING No.

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**REGISTERS OF SCOTLAND  
GENERAL REGISTER OF SASINES  
COUNTY OF PEEBLES**

YEAR 2014      27  
YEARLY RUNNING NUMBER  
PRESENTED AND RECORDED ON

17 FEB 2014

## DEED OF SERVITUDE

by

**THE SCOTTISH BORDERS COUNCIL** constituted under the Local Government etc (Scotland) Act 1994 and having their Council Headquarters at Newtown Saint Boswells, Melrose

in favour of

**THE SCOTTISH MINISTERS**

We, the Scottish Borders Council, proprietors of the Property, and The Scottish Ministers, proprietor of the FC Properties, hereby provide as follows:-

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Deed:-

**"Commission"** means the Scottish Ministers and their successors in title to the FC Properties;

**"Conditions"** means the conditions under which the Servitude Rights are to be exercised as set out in Part 4 of the Schedule;

**"Council"** means the said The Scottish Borders Council and their successors in title to the Property;

**"Execution Date"** means the last date of signing of this Deed;

**"Existing Gate"** means the gate shown at a point to the north of the Salt Bin with the wording denoted with the wording "existing gate" on the Plan;

**"Extraordinary Damage"** means structural damage to the Route requiring urgent or immediate repairs;

**"FC Properties"** means ALL and WHOLE the subjects specified in Part 1 of the Schedule;

**"New Road"** means the road forming part of the Route to be constructed by the Council through the Property along the Route between the points marked A and B on Plan 1 in accordance with the Specification declaring however that in the event of any discrepancy between the route as shown on Plan 1 and the road as constructed the expression "the New Road" shall mean the said road as constructed and the servitude rights herein granted shall be over the road as constructed;

**"Plan"** means the plan marked "Plan 1" annexed and signed as relative to this Deed;

**"Property"** means ALL and WHOLE the subjects specified in Part 2 of the Schedule;

**"Route"** means the route through the Property including the New Road along the route shown coloured yellow on the Plan;

**"Schedule"** means the Schedule annexed and signed as relative to this Deed of Servitude;

**"Servitude Rights"** means the servitude rights set out in Part 3 of the Schedule;

**"Specification"** means the specification of the New Road forming Part 6 of the Schedule;

**"Timber Stacking Area"** means that area to be formed by the Council with dimensions of 25 metres by 5 metres at the location coloured blue and marked "Stacking Area" on the Plan;

**"Works"** means the maintenance, repair, reinstatement, renewal and replacement of the Route.

## 1.2 Interpretation

Save to the extent that the context or the express provisions of this Deed otherwise requires, in this Deed:-

1.2.1 Words importing any gender include all other genders;

1.2.2 Words importing the singular number only include the plural number and vice versa;

1.2.3 Words importing individuals include legal persons and vice versa;

1.2.4 References to this Deed or to any other document are to be construed as reference to this Deed or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;

1.2.5 Any references to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or Part of the Schedule of or to this Deed;

1.2.6 Any rights granted to the Commission are exercisable by the agents, employees, workmen contractors and the tenants of the FC Properties the purchasers of standing trees grown on the FC Properties and their agents, employees, workmen and contractors who require access over the Route to fell such trees on the FC Properties and to extract timber over the Route from such felled trees;

## 1.3 Headings

The headings in this Deed are included for convenience only and are to be ignored in construing this Deed.

## 1.4 Schedule

The Schedule forms part of this Deed.

**2 Grant of Servitude**

The Council as proprietor of the Property grants the Servitude Rights in favour of the FC Properties but subject always to the Conditions.

**3 Date of Commencement of Servitude**

The Servitude Rights granted by this Deed will be exercisable with effect from the First day of October Two thousand eleven notwithstanding the dates of this Deed.

**4 Imposition of Real Burdens**

The real burdens narrated in Part 5 of the Schedule ("the Real Burdens") are imposed on the Property in favour of FC Properties.

**5 Warrandice**

The Council grants warrandice in relation to the Servitude Rights and the Real Burdens.

**6 No Lands Tribunal Applications**

No application may be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) of the Title Conditions (Scotland) Act 2003 in respect of the servitudes and real burdens set out in this Deed for a period of five years after the recording of this Deed in the General Register of Sasines.

**7 Registration**

The parties hereto consent to the registration of these presents for preservation and execution:

IN WITNESS WHEREOF these presents consisting of this and the preceding two pages together with the Schedule and Plan annexed are executed as follows:

EXECUTED for and on behalf of the SCOTTISH BORDERS COUNCIL

at NEWTOWN ST BOSWELL

on the THIRD day of FEBRUARY TWO THOUSAND AND FOURTEEN

..... Authorised Signatory

..... JANE WEAVER ..... Full Name

Before this witness:

.. ..  
Witness ANDREW WISLEY KINSLAY..

CL-COUNCIL HQ ..... Address of Witness

Full Name  
NEWTOWN ST BOSWELL

**This is the Schedule referred to in the foregoing Deed of Servitude by The Scottish Borders Council in favour of The Scottish Ministers**

**Schedule**

**Part 1**

**FC Properties**

ALL and WHOLE the subjects at Eshiels, Peebles, more particularly described in the Notice of Title by the Scottish Ministers dated Thirteenth and recorded in the Division of the General Register of Sasines applicable to the County of Peebles on Fourteenth, both days of November Two thousand and Seven; under exception of all parts thereof disposed by The Commission or their predecessors in title, prior to the date hereof.

*aw*

## Part 2

### The Property

(First) ALL and WHOLE those subjects at Eshiels, Peebles more particularly described in the Notice of Title by The Scottish Borders Council dated fourteenth and recorded in the Division of the General Register of Sasines applicable to the County of Peebles on fifteenth, both days of November Two thousand and (Second) ALL and WHOLE that plot or area of land lying on the south side of the main road leading from Peebles to Innerleithen and in the Burgh and County of Peebles extending to four acres and fifteen decimal or one hundredth parts of an acre or thereby imperial measure as delineated and outlined in red and tinted pink on the plan annexed and signed as relative to Disposition by the Scottish Gas Board in favour of the Provost, Magistrates and Councillors of the Royal Burgh of Peebles dated Tenth and recorded in the Division of the General Register of Sasines for the County of Peebles on Nineteenth both days of March Nineteen hundred and Sixty Five; BUT excepting therefrom all those parts and portions which have been conveyed, transferred or disposed by the Council or their predecessors in title, prior to the date hereof;

or

### **Part 3**

#### **The Servitude Rights**

The following servitude rights are imposed on the Property in favour of the FC Properties

1. Anon exclusive heritable and irredeemable servitude right of access and egress at all times for pedestrians and vehicles (including Heavy Goods Vehicles) over the Route for all purposes including those in connection with timber extraction.
2. A heritable and irredeemable servitude right of access to and over those parts of the Property adjacent to the Route for the purpose of maintenance, repair and reinstatement of the Route.
3. A heritable and irredeemable servitude right to use the Timber Stacking Area for the loading and unloading and stacking of timber.
4. During periods of forest operations a heritable and irredeemable right to install and thereafter maintain speed limit signs at locations to be agreed with the Council in writing (such consent not to be unreasonably withheld or delayed) informing motorists of the speed limit of 15 miles per hour imposed on the Route by the Council.



## Part 4

### The Conditions

The Servitude Rights are subject to the following conditions:

1. The party causing Extraordinary Damage to the Route by the exercise of the rights afforded by this Deed will be responsible for reinstatement or repair of the Route at their sole expense within seven days or as soon as reasonably practicable thereafter.
2. The Commission acknowledge that the Route will also be used as a general access and cycle path which use shall not adversely affect the access rights narrated in Part 3 of this Schedule.
3. Subject to the provisions of the Land Reform (Scotland) Act 2003 the Commission reserve the right to close that section of the Route which runs between the points marked A and B on the Plan temporarily for operational or safety reasons. If the Commission chooses to do so it shall give the Council not less than one months prior written notice to that effect and after consultation with the Council, endeavour to provide an alternative route for access which is to a similar standard as the Route or to as good a standard as possible having regard to the available alternatives and either:-
  - 3.1. give written notice to the Council that it has made reasonable endeavours to find a suitable alternative route but is unable to do so, and
  - 3.2. be responsible for the erection and maintenance of signage to indicate the closure of the relevant part of the Route at the nearest junctions with access routes used by the public, or
  - 3.3. provide such an alternative route and notify the Council of the details thereof, and
  - 3.4. be responsible for:-
    - 3.4.1. erecting and maintaining directional signage for the alternative route; and
    - 3.4.2. timeous removal of said directional signage at the termination of the temporary closure of the Route.
  - 3.5. The Commission shall indemnify the Council in respect of all claims, demands, expenses, liabilities, actions or others arising in consequence of the exercise of the Servitude Rights.
  - 3.6. The Commission shall procure that the Servitude Rights are exercised so as to cause the minimum disturbance, nuisance or annoyance reasonably practicable to the Council and their tenants or occupiers and all other adjoining or neighbouring proprietors, tenants or occupiers. For the avoidance of doubt should the Commission require to exercise the Servitude Rights between the hours of 6pm and 6am for whatever reason this shall not be deemed as constituting a nuisance.



## Part 5

### Real Burdens affecting the Property

1. The Council will be responsible for (1) the construction of the New Road in accordance with the Specification and (2) for the formation of the Timber Stacking Area both at its sole cost.
2. The Council will be responsible for initiating, organising and carrying out the initial Works to the Route and will be responsible for the ongoing maintenance, repair and renewal of the Route with the costs thereafter apportioned according to usage save where Extraordinary Damage is caused to the Route.
3. Notwithstanding the foregoing the party causing Extraordinary Damage to the Route will be responsible at its sole expense within seven days or as soon as reasonably practicable thereafter for making good such damage.
4. Save for the Existing Gate the Council will not obstruct the Route and will not erect any gate fence, barrier or any other structure across or over the Route either permanently or temporarily unless they have procured the prior approval of the Commission (which approval shall not be unreasonably withheld or delayed). Where access is required via the Existing Gate the Commission shall contact the Council's Depot Manager/Foreman on 01721 720153 or 07801793364, or such other telephone number as may be advised by the Council, in order to arrange access. Where access is required in an emergency the Commission shall contact the Police on 01721 720637.
5. The Timber Stacking Area will be left clear and unobstructed by the Council at all times.
6. The Council shall procure that their agents, employees, workmen, contractors and others authorised by them adhere to and do not exceed a speed limit of 15 miles per hour on the Route during timber extraction periods.



**Part 6**

**New Road Specification**



# Forestry Commission

## **FORESTRY COMMISSION ROAD SPECIFICATION WITH REFERENCE TO THE DfT DESIGN MANUAL FOR ROADS AND BRIDGES (DMRB)**

This specification is the standard for forest roads built by outside parties on FC land. Any reduction in this standard is to have the FC Engineer's written approval before construction starts. Road survey and design should also have taken place before felling takes place.

Design speed	25 km/h.
Design loading	Full C&U (currently 44 tonnes).
Road Width	3.4 m running width (+/- 200 mm) - widened on inside of bends to suit radius (see table page 3).
Road alignment	Roads shall fit into the landscape and be constructed to a uniform horizontal and longitudinal profile. They shall avoid unstable ground and any features that require preserving.
Felled width	25 m average recommended.
Max gradient	<8% in general to be preferred, but gradients up to 10% acceptable. Small lengths (<200m) up to 12.5% <u>may</u> be permitted provided that they are contained within an overall gradient of 10%. For restrictions on gradient on bends, see table.
Min gradient	2% except over short sections on crests and sags. (This is an important requirement.)
Passing places	20m long and at least 3m wide with 10m splays. Spaced to be inter-visible with a maximum spacing to be agreed.
Bridge approaches	Minimum approach straight is 20m.
Turning places	Turning "T's" to be 26m in overall length (i.e. from far edge of road to end of 'T'), 4m wide with 11m radii.
Harvesting facilities	Ramps and stacking areas supplied as required. For guidance: ramps provided every 40m; stacking areas 30m by 3m provided every 200m. Surfaced where there is a risk of erosion.
Earthworks	Earthworks will be undertaken in accordance with Clauses 601 & 602 of the DMRB. Unsuitable materials to be stripped and removed. The formation shall be shaped to keep it free of standing water.
Cuttings	Cutting slopes must be stable and free of overhangs and loose rock. The maximum slope to be 30% for slopes up to 2m high. For slopes more than 2 m high, the maximum slope to be 1 in 2 (50%) for fine grained soils, 1 in 1½ (67%) for other soils, and 1 in 1 for rock slopes.
Embankments	Unless agreed beforehand, the fill material to be free draining and non-cohesive, placed in layers and effectively compacted in accordance with Clause 612 of the DMRB. Slopes as for cuttings.
Roadside drains & ditches	A roadside ditch shall be provided on the uphill side of a road and on both sides where the road formation is at or below the



# Forestry Commission

Roadside drains & ditches (Cont.)	adjacent ground. Drains shall have a depth of not less than 150 mm below the formation edge and a longitudinal gradient of not less than 2%. Ditches and drains shall not lead directly into watercourses. Catchpits, settlement ponds and filters will be provided in and adjacent to the drains and culverts to avoid pollution and sedimentation of watercourses										
Culverts	<p>All pipes shall be to Clause 501 of the DMRB - excavated in accordance with Clause 502; bedded, laid and surrounded in accordance with Clause 503; and backfilled in accordance with Clause 505. Laid in natural ground or on bed of original watercourse where applicable. Minimum size 300 mm although 450 mm preferred. Inlets to be provided with erosion protection. Outfalls should be so constructed as to eliminate possible erosion.</p> <p>Ditch relief culverts should be spaced as required with a maximum spacing of 200m.</p> <p>Where appropriate, culverts to be designed for 1 in 50 year storm. Where the diameter is greater than 1.5 m, the culvert to be designed for 1 in 100 year storm.</p>										
Geotextiles	Used as necessary over silty clay and peat formations.										
Road construction	<p>Capping layer of durable rock or road base to Clause 613 of DMRB to improve subgrade CBR to a minimum of 5%.</p> <p>Road metal Granular Sub-base Type 1 to Clause 803 and laid in accordance with Clause 801 of DMRB. Material for the running surface shall have a minimum Magnesium Sulphate Soundness Value of 85. Principal or arterial forest roads shall have a minimum compacted surfacing thickness of 100mm of aggregate complying with the "Surfacing Specification for Principal Forest Roads".</p>										
Road metal thickness	<table><thead><tr><th><u>Subgrade</u></th><th><u>Min. Road Construction Depth</u></th></tr></thead><tbody><tr><td>5% CBR</td><td>450 mm</td></tr><tr><td>7% CBR</td><td>325 mm</td></tr><tr><td>10% CBR</td><td>250 mm</td></tr><tr><td>&gt;10% CBR</td><td>To be agreed by FCE Engineer, but 100 mm minimum.</td></tr></tbody></table>	<u>Subgrade</u>	<u>Min. Road Construction Depth</u>	5% CBR	450 mm	7% CBR	325 mm	10% CBR	250 mm	>10% CBR	To be agreed by FCE Engineer, but 100 mm minimum.
<u>Subgrade</u>	<u>Min. Road Construction Depth</u>										
5% CBR	450 mm										
7% CBR	325 mm										
10% CBR	250 mm										
>10% CBR	To be agreed by FCE Engineer, but 100 mm minimum.										
Cross slope (camber or crossfall)	The surface shall be cambered with 5% falls from the crown, or with a 5% crossfall sloping inwards on steep side slopes.										
Water Guidelines	Forests and Water Guidelines, 4th Edition. Account must also be taken of any special requirements of EA/SEPA.										
Fuel spillage	A written procedure to be in place prior to work start.										
Signs	The site to be adequately signed.										
Blasting	Excavation of rock by blasting shall only be undertaken by suitably qualified personnel appointed in writing.										
Quarrying	The method of working (and re-instatement where applicable) of borrow pits and quarries must be in accordance with the <i>Quarries Regulations 1999</i> , and approved by the Forestry Commission.										

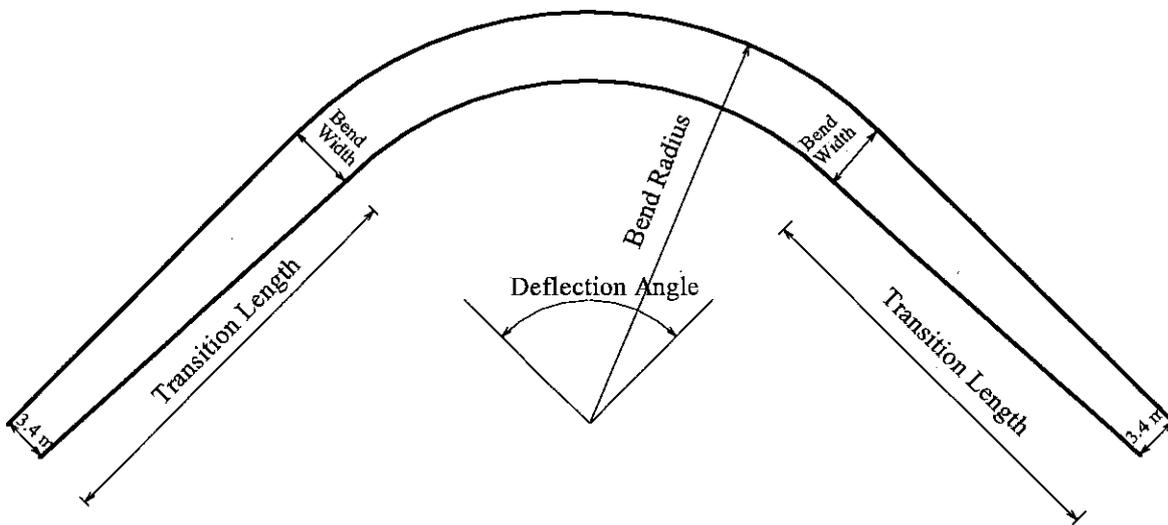


## HORIZONTAL BEND RECOMMENDED WIDTHS AND GRADIENTS

Outside Radius	Minimum Widths For Maximum Angle of Deflection (°)				Transition Straight Length	Maximum Gradient on Outside Radius
	15	45	90	180		
	Running surface width					
m	m	m	m	m	m	%
90	3.8	3.8	3.8	3.8	-	10
60	4.0	4.0	4.0	4.1	20	8
45	4.0	4.2	4.5	4.5	20	7
30*	4.0	4.7	5.0	5.1	25	6.5
25		4.8	5.1	5.3	30	5
20		5.0	5.6	5.9	30	4.5
15			6.3	7.0	40	4
10**				10.0	40	5 on diagonal

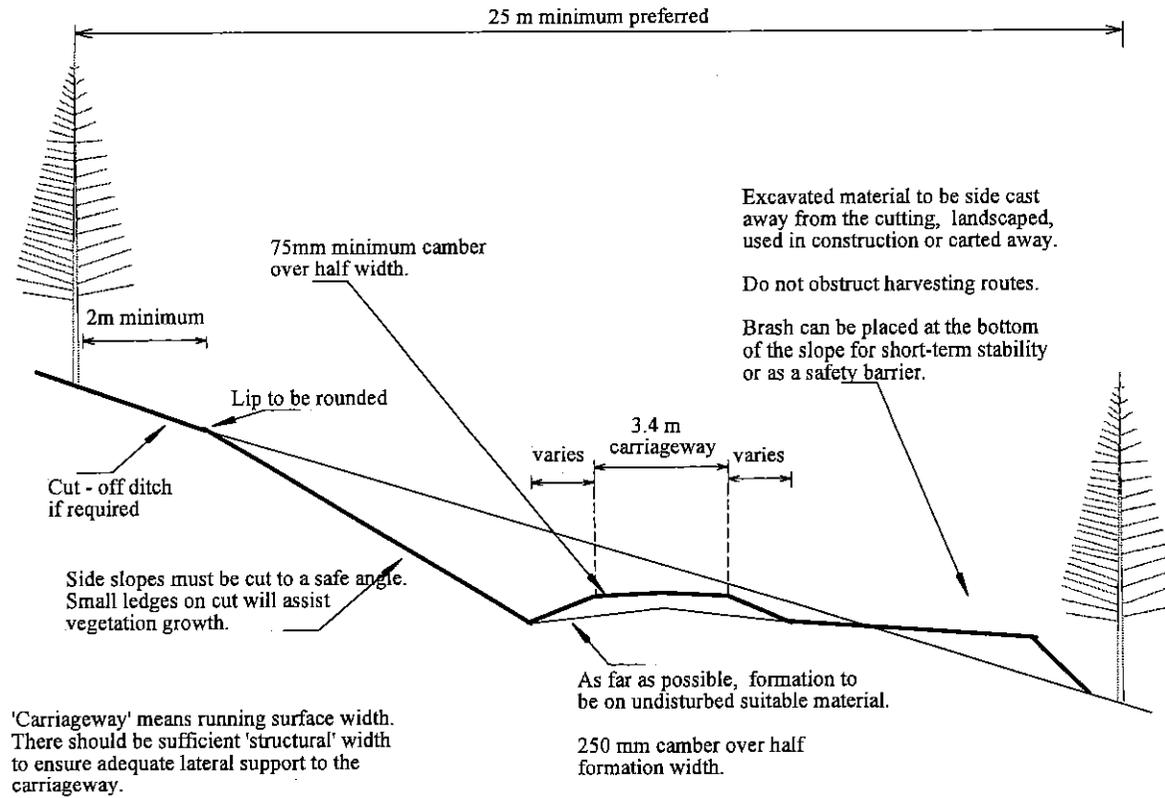
\* Preferred minimum radius

\*\* Absolute minimum hairpin



**Bend Widening**

### Typical Road Cross - Sectional Details



'Carriageway' means running surface width. There should be sufficient 'structural' width to ensure adequate lateral support to the carriageway.

Cross Fall up to 20 Degrees

