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Bridgend County Borough Council



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Cyfarwyddiaeth y Prif Weithredwr / Chief Executive's Directorate

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Gofynnwch am / Ask for: Democratic Services

Ein cyf / Our ref:

Eich cyf / Your ref:

Dyddiad/Date: Tuesday, 16 August 2022

Dear Councillor,

RIGHTS OF WAY SUB-COMMITTEE

A meeting of the Rights of Way Sub-Committee will be held remotely - via Microsoft Teams on **Monday, 22 August 2022 at 10:00.**

AGENDA

1. Apologies for Absence
To receive apologies for absence from Members.
2. Declarations of Interest
To receive declarations of personal and prejudicial interest (if any) from Members/Officers in accordance with the provisions of the Members Code of Conduct adopted by Council from 1 September 2008.
3. Approval of Minutes 3 - 6
To receive for approval the Minutes of the Rights of Way Sub-Committee of 17/03/2022
4. Proposed Diversion Of Footpath 16 And 17, Ynysawdre And Proposed Part Extinguishment Of Footpath 16, Ynysawdre and Proposed Diversion Of Footpath 12, 16 And 17 Newcastle Higher 7 - 20
5. Proposed Diversion Of Footpath 19, Coychuch Lower And Proposed Part Extinguishment Of Footpath 18, Coychurch Lower 21 - 40
6. Urgent Items
To consider any other item(s) of business in respect of which notice has been given in accordance with Rule 4 of the Council Procedure Rules and which the person presiding at the meeting is of the opinion should by reason of special circumstances be transacted at the meeting as a matter of urgency.

Note: Please note: Due to the current health and safety requirements this meeting will not be held at its usual location. This will be a virtual meeting and Members and Officers will be attending remotely. The meeting will be recorded for subsequent transmission via the Council's internet site which will be available as soon as practicable after the meeting. If you have any queries regarding this, please contact cabinet_committee@bridgend.gov.uk or tel. 01656 643147 / 643148.

By receiving this Agenda Pack electronically you will save the Authority approx. £0.80 in printing costs

Yours faithfully

K Watson

Chief Officer, Legal and Regulatory Services, HR and Corporate Policy

Councillors:

C L C Davies

RM Granville

Councillors

H Griffiths

S J Griffiths

Councillors

D T Harrison

M R John

Invitees:

Leslie Meachin – Bridgend Ramblers

Gordon Wheeler – British Horse Society

Stuart Bain – Open Spaces Society

Present

Councillor G Thomas – Chairperson

DK Edwards

RM Granville

JC Radcliffe

Apologies for Absence

CA Webster

Officers:

Jane Dessent

Solicitor

Andrew Mason

Rights of Way Manager

Kevin Mulcahy

Group Manager - Highways Services

Matthew Palmer

Rights of Way and Access Land Officer

Andrew Rees

Democratic Services Officer – Committees

14. DECLARATIONS OF INTEREST

None.

15. APPROVAL OF MINUTES

RESOLVED: That the minutes of the meeting of the Rights of Way Sub-Committee of 5 October 2021 be approved as a true and accurate record.

16. PROPOSED DIVERSION OF FOOTPATH 12, PORTHCAWL

The Rights of Way Manager sought authorisation for the making of an Order pursuant to Section 257 (diversion) of the Town & Country Planning Act 1990, on land at Moor Lane Porthcawl.

He reported that the implementation of planning consents P/16/497/FUL and P/17/554/RLX will require a section of Footpath 12, Porthcawl to be diverted. To enable its diversion, an additional section of Footpath 12 Porthcawl, not in the ownership of the applicant, would also require to be diverted. He informed the Sub-Committee that the plan submitted, showed the consent curtilage of the planning consent, while the section of Footpath 12 Porthcawl of the proposed diversion was shown between Points A-B on the plan.

The Rights of Way Manager reported that currently section of Footpath 12 to be diverted commenced at Point A (Grid Ref. SS 81657916), as shown on the plan in Appendix B, and proceeded in a north easterly direction for approximately 265 metres to its termination point at Point B (Grid Ref. SS 81827936). The current definitive width of the route is 1.2 metres and the footpath is of a natural surface. He stated that the current route was obstructed by a mature hedgerow at a point approximately 13 metres to the west of Point B (Grid Ref. SS 81827936). He informed the Sub-Committee of the proposed alternative route of Footpath 12, Porthcawl and stated that the approximate total length of the new route is 391 metres with a width of 5 metres (Points A-C-D) and 1.2 metres between Points D-E-B. The surface between Points A-C-D-E will be a natural surface and between Points E-B will be a hardcore surface. The 5 metre width

(Points A-C-D) was suggested by the applicant as minimum width for a landscape/ecology belt surrounding the development site as per planning application P/16/497/FUL. A kissing gate will be provided at Point X (Grid Ref. SS 81817937).

The Rights of Way Manager reported that during the pre-order consultation process, it was noted that for the proposed diversion to be successful this would leave Footpath 12, Porthcawl as a route with an anomaly, in that the definitive alignment is currently obstructed by a mature hedgerow. A request was made in writing to the applicant's agent as to whether they would agree to include an additional section of Footpath 12, Porthcawl, not in the applicants' ownership, to resolve the anomaly. The agent had confirmed the amendments were acceptable to them, and written confirmation from the adjoining landowner, the Grove Golf Club had been received agreeing to the diversion of the additional section of Footpath 12, Porthcawl, subject to the views of other consultees. He stated that no objections were received arising from the consultation process.

The Rights of Way Manager reported that to facilitate the development and variation of condition 2 of P/16/497/FUL relating to occupancy of chalets at land at Moor Lane Porthcawl CF36 3EJ a section of Footpath 12, Porthcawl will need to be diverted. He outlined the Guidance of the Welsh Government which applies in making an Order, and the following which should be taken into account: the interests of the general public; the potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway and any potential financial loss to members of the public. The Rights of Way Manager informed the Sub-Committee that in respect of the three considerations outlined, the Council is aware that the new route will be 126 metres longer than the existing route. In the long term the proposed diversion enables the Rights of Way network to be protected from obstruction for the enjoyment of the public. It also enables the network to be accurately recorded and maintained and will allow for the footpath to remain as a continuous off-road walking route for members of the public between Moor Lane and the A4229. It was considered that the proposal is in the interests of the public and the test can be said to be satisfied. There did not appear to be any additional effects of the Order on any adjoining properties. The Council is unaware of any potential financial loss to members of the public. The developer will be responsible for any works that are required to provide the diversion and the provision of the new routes.

The Rights of Way Manager displayed for the benefit of the Sub-Committee photographs and aerial views of the site.

A member of the Sub-Committee asked what the significance was of diverting the footpath from the centre of the field to its edge. The Rights of Way Manager informed the Sub-Committee that the developer is building lodges and it would not be possible to walk down the centre of the field.

- RESOLVED:**
- (1) That authorisation be given for the Chief Officer Legal and Regulatory Services, HR and Corporate Policy to make the necessary Order to seek to divert Footpath 12, Porthcawl as shown on the plan in Appendix B to the report, and to confirm the Order provided no objections or representations are made within the prescribed period, or if any so made are withdrawn;
 - (2) That the Chief Officer Legal and Regulatory Services, HR and Corporate Policy be authorised to forward the Order(s) to the Welsh Government for determination, if any objections received are not withdrawn.

(3) That the Order(s) exclude any section of the diversion, which utilises highways which are maintainable by Bridgend County Borough Council, as public rights already exist over them.

17. **URGENT ITEMS**

There were no urgent items.

The meeting closed at 11:20

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BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO RIGHTS OF WAY SUB COMMITTEE

22 AUGUST 2022

REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

PROPOSED DIVERSION OF FOOTPATH 16 AND 17, YNYSAWDRE AND PROPOSED PART EXTINGUISHMENT OF FOOTPATH 16, YNYSAWDRE AND PROPOSED DIVERSION OF FOOTPATH 12, 16 AND 17 NEWCASTLE HIGHER

1. Purpose of report

- 1.1 The purpose of this report is to request authorisation for the making of two Orders pursuant to Section 257 of the Town & Country Planning Act 1990, on land west of Maesteg Road, Tondu, CF32 9DF.

2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-

1. **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
2. **Helping people and communities to be more healthy and resilient** - taking steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services. Supporting individuals and communities to build resilience, and enable them to develop solutions to have active, healthy and independent lives.

3. Background

- 3.1 The implementation of the following planning consents will require sections of Footpaths 16 and 17 Ynysawdre and Footpaths 12, 16 and 17 Newcastle Higher to be diverted as well as the part extinguishment of Footpath 16, Ynysawdre. They are:

- P/16/366/OUT - outline planning application for the development of 450 dwellings, 1000sq.m class B1 use, highway works, public open space, which received conditional consent (outline) on the 13th December 2018.
- P/19/915/RES – reserved matters applications to P/16/366/OUT for 405 residential units, link road and temporary car park, granted conditional consent (reserved matters) on the 17th September 2020.

3.2 The plan in **Appendix A** to the report shows the consent curtilage of the planning consent. The sections of footpaths which are proposed to be diverted are shown by solid black lines running between the following points on the plan in **Appendix B** to the report.

- Footpath 17 Ynysawdre – Points A-B
- Footpath 16 Ynysawdre – Points I-J
- Footpath 12 Newcastle Higher – Points M-N
- Footpath 16 Newcastle Higher – Points W-X
- Footpath 17 Newcastle Higher – Points I-A1-B1

3.3 The section of Footpath 16, Ynysawdre which is proposed to be extinguished is also shown by a solid black line running between Points C-A-H on the plan in **Appendix B** to the report.

3.4 This plan also shows the proposed alternative routes for the footpaths as dashed black lines running between the following points.

- Footpath 17 Ynysawdre – Points C-D-E-F-G
- Footpath 16 Ynysawdre – Points J-K-L
- Footpath 12 Newcastle Higher – Points O-P-Q-R-S-T-U-V-N
- Footpath 16 Newcastle Higher – Points W-Y-Z
- Footpath 17 Newcastle Higher – Points I-C1-D1-E1-F1-B1

3.5 An additional section of footpath is also being shown as part of the alternative route of Footpath 12 Newcastle Higher and this is shown by dashed black lines between Points P – G1. This is being created to link the main proposed alternative route for Footpath 12 Newcastle Higher with an estate road that is proposed to be constructed nearby.

3.6 The section of footpath to be created is shown as a dashed black line on the same plan running between Points P-G1.

4. Current situation/proposal

Current Routes and Proposed Diversions, Proposed (Part) Extinguishment and Proposed Creation

4.1 Currently Footpath 17, Ynysawdre, commences at Point A (Grid Reference SS 89028444), as shown on the plan in **Appendix B**, and proceeds in a generally north westerly direction for approximately 72 metres to link onto Derllwyn Road at Point B (Grid Reference SS 88988449). The footpath has a part natural and part tarmac surface. The approximate length of the footpath to be diverted is 72 metres with a width of 2 metres.

- 4.2 The proposed alternative route of Footpath 17, Ynysawdre, runs from Point C (Grid Reference SS 89088442) on the plan (**Appendix B**), and proceeds in a general westerly direction for approximately 56 metres to Point D (Grid Reference SS 89028442), it then continues in a north westerly direction for approximately 62 metres to Point E (Grid Reference SS 88988446). The route then proceeds in a general north north-easterly direction for approximately 47 metres to Point F (Grid Reference SS 89008450) before continuing in a north westerly direction for approximately 12 metres to its termination point on Derllwyn Road at Point G (Grid Reference SS 88998450). The approximate length of the new route is 177 metres with a width of 2 metres. The surface between Points C-D-E-F-G will be tarmacadam.
- 4.3 Currently Footpath 16, Ynysawdre, commences from the maintainable highway at Maesteg Road at Point I (Grid Reference SS 89298419), as shown on the plan in **Appendix B**, and proceeds in a general north westerly and north north-westerly direction for approximately 111 metres to Point J (Grid Reference SS 89218427). The approximate length of the footpath to be diverted is 111 metres with a width of 2 metres. The footpath has a part natural and part tarmacadam surface.
- 4.4 The proposed alternative route of Footpath 16, Ynysawdre, runs from Point J (Grid Reference SS 89218427) on the plan (**Appendix B**), and proceeds in a general south westerly direction for approximately 33 metres to Point K (Grid Reference SS 89198424) where it continues in a general westerly direction for approximately 35 metres to its junction with the proposed diverted route of Footpath 17 Newcastle Higher at Point L (Grid Reference SS 89158424). The approximate length of the new route is 68 metres with a width of 2 metres. The surface between Points J-K-L will be tarmacadam.
- 4.5 Currently Footpath 12, Newcastle Higher, commences at Point M (Grid Reference SS 88728412), as shown on the plan in **Appendix B**, and proceeds in a general west south-westerly and westerly direction for approximately 454 metres to Point N (Grid Reference SS 88728412). The approximate length of the footpath to be diverted is 454 metres with a width 0.9 metres. The footpath has a natural surface.
- 4.6 The proposed alternative route of Footpath 12, Newcastle Higher, runs from Point O (Grid Reference SS 89058428) on the plan (**Appendix B**), and proceeds in a south westerly direction for approximately 88 metres to Point P (Grid Reference SS 89008421) where it turns and runs in a general west south westerly and south westerly direction for approximately 128 metres to Point Q (Grid Reference SS 88908414) before continuing in a north westerly direction for approximately 14 metres to Point R (Grid Reference SS 88898415), it then continues in a south westerly direction for approximately 17 metres to Point S (Grid Reference SS 88888414). The route then continues in a general north westerly direction for approximately 24 metres to Point T (Grid Reference SS 88868415), where it then proceeds in a general south westerly direction for approximately 41 metres to Point U (Grid Reference SS 88828413), it then proceeds in a general westerly direction for approximately 96 metres to Point V (Grid Reference SS 88738411), it then continues in a general northerly direction for approximately 20 metres to Point N (Grid Reference SS 88728412). The approximate length of the new route is 428 metres with a width of 2 metres. The surface between Points O-P-Q-R-S-T-U-V-N will be tarmacadam.

- 4.7 Currently Footpath 16, Newcastle Higher, commences from Point W (Grid Reference SS 88988391), as shown on the plan in **Appendix B**, and proceeds in a general westerly direction for approximately 121 metres to Point X (Grid Reference SS 88868389). The approximate length of the footpath to be diverted is 121 metres with a width 1.5 metres. The path has a natural surface.
- 4.8 The proposed alternative route of Footpath 16, Newcastle Higher, runs from Point W (Grid Reference SS 88988391) on the plan (**Appendix B**), and proceeds in a general southerly direction for approximately 66 metres to Point Y (Grid Reference SS 88998384) before continuing in a general westerly direction for approximately 187 metres to its termination point at Point Z (Grid Reference SS 88818382). The approximate length of the new route is 253 metres with a width of 2 metres. The surface between Points W-Y-Z will be a natural surface.
- 4.9 Currently Footpath 17, Newcastle Higher, commences from its junction with the maintainable highway known as Maesteg Road at Point I (Grid Reference SS 89298419), as shown on the plan in **Appendix B**, and proceeds in a general westerly direction for approximately 26 metres to Point A1 (Grid Reference SS 89278419), it then continues for approximately 514 metres in a general north westerly direction to Point B1 (Grid Reference SS 88798438). The approximate length of the footpath to be diverted is 537 metres with a width of 0.9 metres.
- 4.10 The proposed alternative route of Footpath 17, Newcastle Higher, runs from the maintainable highway known as Maesteg Road at Point I (Grid Reference SS 89298419) on the plan (**Appendix B**), and proceeds in a north north-westerly direction for approximately 34 metres to Point C1 (Grid Reference SS 89278422) before continuing in a south westerly direction for approximately 47 metres to Point D1 (Grid Reference SS 89238420), the route then continues in a general north westerly direction for approximately 381 metres to Point E1 (Grid Reference SS 88888435) before continuing in a general southerly direction for approximately 3 metres to Point F1 (Grid Reference SS 88888435) before proceeding in a general north westerly direction for approximately 101 metres to Point B1 (Grid Reference SS 88798438). The approximate length of the new route is 566 metres with a width of 2 metres. The surface between Points I-C1-D1-E1-F1-B1 will be tarmacadam.
- 4.11 The section of Footpath 16, Ynysawdre, to be extinguished commences from Point C (Grid Reference SS 89088442), as shown on the plan in **Appendix B**, and proceeds in a general westerly and north westerly direction for approximately 52 metres to Point A (Grid Reference SS 89028444) before continuing in a general west north-westerly direction for approximately 75 metres to its junction with Derllwyn Road at Point H (Grid Reference SS 88958445). The approximate length of the footpath to be extinguished is 127 metres with a width of 2 metres.
- 4.12 The additional section of footpath to be created commences at its junction with the proposed new route of Footpath 12, Newcastle Higher at Point P (Grid Reference SS 89008421), on the plan (**Appendix B**), and proceeds in a general south south-westerly direction for approximately 37 metres to its junction with the estate carriageway at Point G1 (Grid Reference SS 88998417). The approximate length of the new route is 110 metres with a width of 2 metres. The surface between Points P-G1 will be tarmacadam.

- 4.13 The diversion of the footpaths was originally discussed in February 2020 when the landowner and agent for the applicant sought advice from the Rights of Way Section for the possible diversion of the footpaths following comments made by the Rights of Way Section in regards to planning application P/16/366/OUT. As a result of those discussions the agent submitted a proposal for the diversion of the footpath.
- 4.14 During those discussions, the Rights of Way Section noted that if the proposed diversions were to be successful this would leave Footpath 16, Ynysawdre as a route with an anomaly. This anomaly relates to that section of Footpath 16, Ynysawdre which is currently obstructed by a building and compound between Point I and J as shown on the plan in **Appendix B**. At the time, Footpath 16, Ynysawdre was in the process of being registered as a public footpath having been the subject of an application for a Definitive Map Modification Order. The order had been made on the 25th March 2019 but had not yet been confirmed. The order was subsequently confirmed on the 26th March 2021.
- 4.15 Although the obstruction of the footpath is outside of the boundary of the development, the Rights of Way Section discussed with the applicant the possibility of including a small diversion of that section of the claimed footpath, at that time, as part of this application. The applicant then sought permission from the adjoining landowner in February and March 2021 asking to divert the claimed footpath onto their land. Subsequently, a phone call was received from the adjoining landowner on the 13th March 2021 confirming that they had no objection to the proposal.
- 4.16 The application to divert those section of footpaths in Ynysawdre and Newcastle Higher, as well as the part extinguishment of Footpath 16, Ynsawdre was submitted on the 16th March 2021. The application was received as a result of further comments made by the Rights of Way Section in relation to planning application P/19/915/RES.
- 4.17 In accordance with the Rights of Way Sections standard consultation process for Public Path Orders the local County Borough Council members, Ynysawdre Community Council, Newcastle Higher Community Council, the British Horse Society, Bridgend Ramblers Association, other user groups and interested bodies, South Wales Police and public utilities were consulted on the proposal in March/April 2022. During the consultation process numerous representations were received in relation to the proposed diversion. These are outlined below.
- 4.18 Bridgend Ramblers – No objection.
- 4.19 Wales & West Utilities – No objection.
- 4.20 South Wales Police Design out Crime Officer – No objection.
- 4.21 Ynysawdre Community Council – No reply received.
- 4.22 Newcastle Higher Community Council – No reply received.
- 4.23 Dwr Cymru Welsh Water (DCWW) – No reply received.

4.24 In order to facilitate the reserved matters to P/16/336/OUT for 405 residential units, link road and temporary car park at land west of Maesteg Road, Tondu, CF32 9DF sections of the following footpaths will need to be diverted.

- Footpath 16, Ynysawdre
- Footpath 17, Ynysawdre
- Footpath 12, Newcastle Higher
- Footpath 16, Newcastle Higher
- Footpath 17, Newcastle Higher

4.25 In addition, part of Footpath 16, Ynysawdre will need to be extinguished. A short section of path linking one of the estate roads with the proposed diversion of Footpath 12 Newcastle Higher will also be created

4.26 The Welsh Governments Guidance for Local Authorities on Public Rights of Way – August 2016 states:

‘Before making an Order the Council must be satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission that has been granted.’

As Members are aware, it should not be assumed that an Order should be made simply because planning permission has been granted.

‘In determining whether an Order is ‘necessary’ the Council must examine the activities authorised by the planning permission to see whether they are, or are not, compatible with the retention of highway rights. An activity which would involve obstruction of a highway (for example, the erection of a structure across the line of a highway or introducing a use such as outdoor storage or long-term parking) would be incompatible with the highway and so make out a case of necessity.’

‘Even where a case of necessity is made out, an authority still has discretion whether to make an Order or not. However, having concluded that the planning permission should be granted, there must be good reasons for deciding that an Order, which would permit implementation of that permission, should not be made.’

‘In coming to a judgment as to whether to make an Order, the following should be taken into account:

- *The interests of the general public.*
- *The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway.*
- *Any potential financial loss to members of the public.’*

4.27 In regard to the three considerations outlined above Members are advised as follows:

- The Council is aware that the overall length of the network in this area as a result of the proposed diversions, part extinguishment and proposed creation of the routes as indicated in paragraphs 4.1 to 4.12 of the report is approximately 175 metres more than what is currently shown on the Definitive Map and in the recent Definitive Map Modification Order. However, a large

proportion of the routes are currently unusable by members of the public due to the current nature of the site. In the long term the proposed diversions, part extinguishment and creation enables the Rights of Way network in this area to be enjoyed by the public and protected from obstruction. It also enables the network to be accurately recorded and maintained. For these reasons it is considered that the test that the proposal is in the interests of the public can be said to be satisfied.

- There does not appear to be any additional effects of the Order on any adjoining properties.
- The Council is unaware of any potential financial loss to members of the public. The developer will be responsible for any works that are required to provide the diversions and the provision of the new routes.

5. Effect upon policy framework and procedure rules

5.1 It is considered that there is no effect upon policy framework and procedure rules.

6. Equality Act 2010 implications

6.1 An initial Equality Impact Assessment (EIA) screening has identified that there would be no negative impact on those with one or more of the protected characteristics, on socio-economic disadvantage or the use of the Welsh Language. It is therefore not necessary to carry out a full EIA on this policy or proposal.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The Well-being of Future Generations (Wales) Act 2015 Assessment Template has been completed and a summary of the implications from the assessment relating to the five ways of working is outlined below in respect of the proposal:

- **Long-term**
The diversions, part extinguishment and creation of the various routes will enable the Rights of Way network to be protected from obstruction for the enjoyment of the public. It also enables the network to be accurately recorded and maintained.
- **Prevention**
If the proposals are not implemented those footpaths would become obstructed and the Council would then have to take action to remove those obstructions. This would have significant resource implications. As the applicant will be carrying out all works involved, this will mean that the routes will not become obstructed and the Council will not have to take any action.
- **Integration**
With agreed construction methods, as well as time frames, the diversion of footpaths to enable development to be implemented allows for an attractive and diverse economy that will encourage more people to use the route during their daily routine.

- **Collaboration**

The developer must provide a suitable alternative to users of the existing footpaths. The Order will be open to objection and cannot be implemented until all objections are withdrawn or, where objections do remain the Order is confirmed by the Planning Inspectorate.

- **Involvement**

Consultations were carried out with statutory consultees, local members and community councils to gather their views before the decision to make the order is made.

8. Financial implications

- 8.1 Any financial implications arising from the above procedures are expected to be minimal as the developer will be meeting the cost of the diversion and extinguishment order process and the implementation of any works required by the Council.

9. Recommendations

- 9.1 That authorisation be given for the Chief Officer Legal and Regulatory Services, HR and Corporate Policy to make the necessary Order to seek to divert Footpaths 16 and 17 Ynysawdre and Footpaths 12, 16 and 17 Newcastle Higher and to create an additional link footpath as shown on the plan in **Appendix B** to the report, and to confirm the Order provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.
- 9.2 That authorisation be given for the Chief Officer Legal and Regulatory Services, HR and Corporate Policy to make the necessary Order to seek to part extinguish Footpath 16 Ynysawdre as shown on the plan in **Appendix B** to the report, and to confirm the Order provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.
- 9.3 That the Chief Officer Legal and Regulatory Services, HR and Corporate Policy be authorised to forward the Order(s) to the Welsh Government for determination, if any objections received are not withdrawn.
- 9.4 That the Order(s) excludes any section of the diversion, which utilises highways which are maintainable by Bridgend County Borough Council, as public rights already exist over them.

Janine Nightingale
CORPORATE DIRECTOR COMMUNITIES
11 August 2022

Contact officer: Mr Mathew Palmer
Rights of Way and Access Land Officer

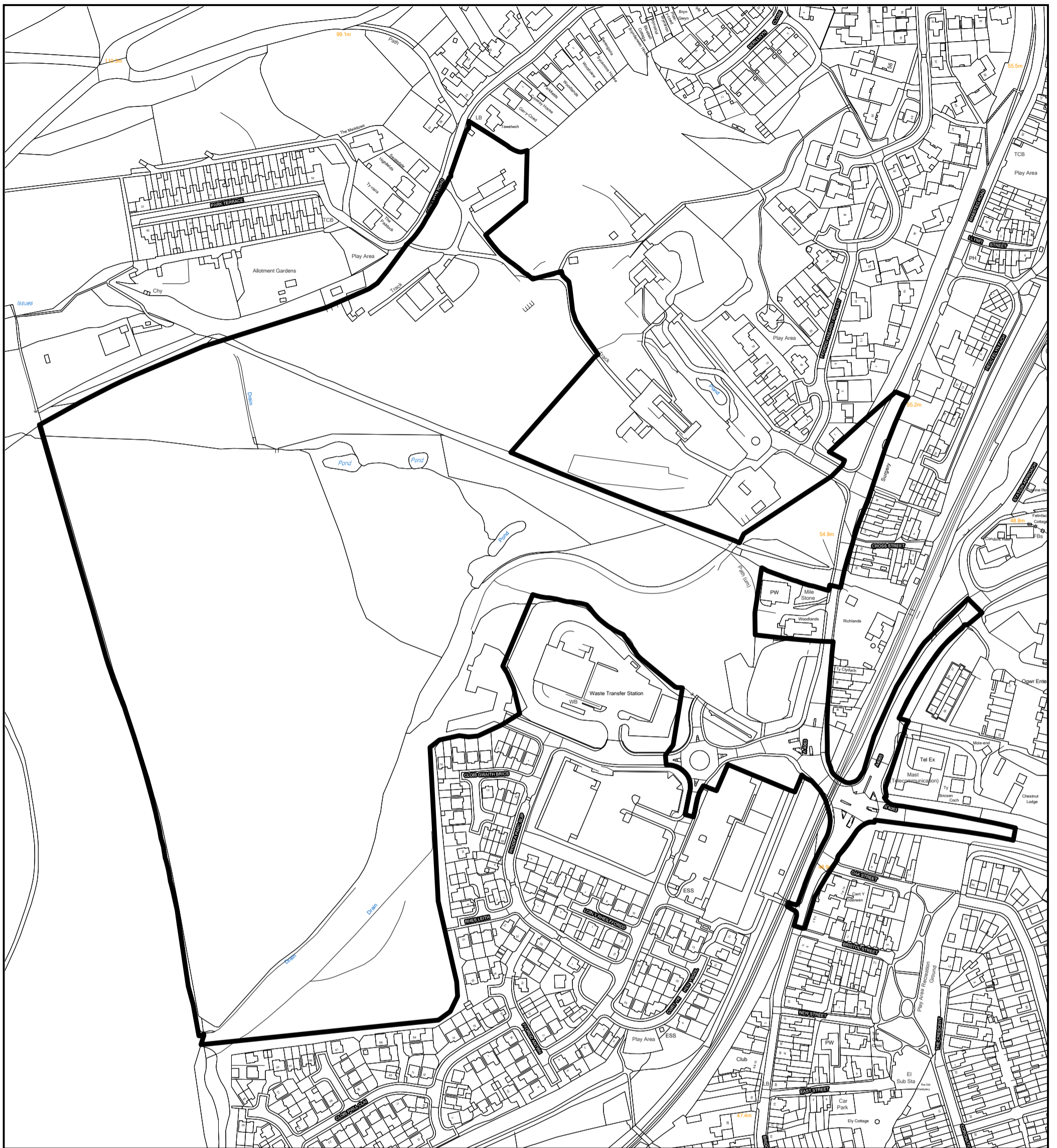
Telephone: (01656) 642595

Email: mathew.palmer@bridgend.gov.uk

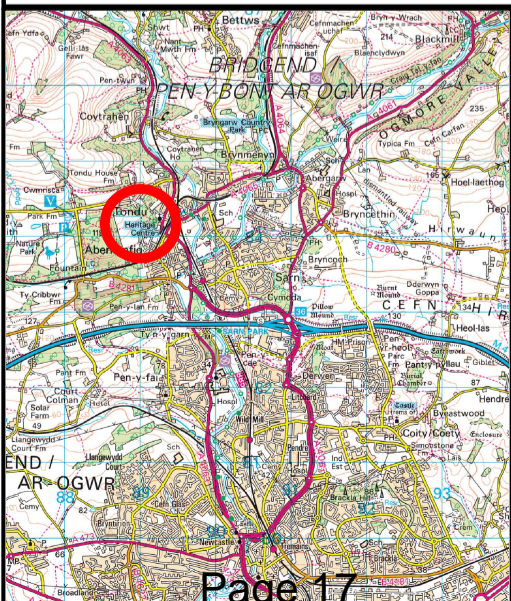
Postal address: Rights of Way
Communities Directorate
Bridgend County Borough Council
Waterton Depot
Waterton Lane
Waterton
Bridgend
CF31 3YW

**Background documents: File A763/1/FP 16+17 YNY & FP 12, 16 + 17 NEW & FP
Creation (18th March 2021 – present)**

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APPENDIX A



KEY

Planning Application P/19/915/RES

Scale: 1:3000

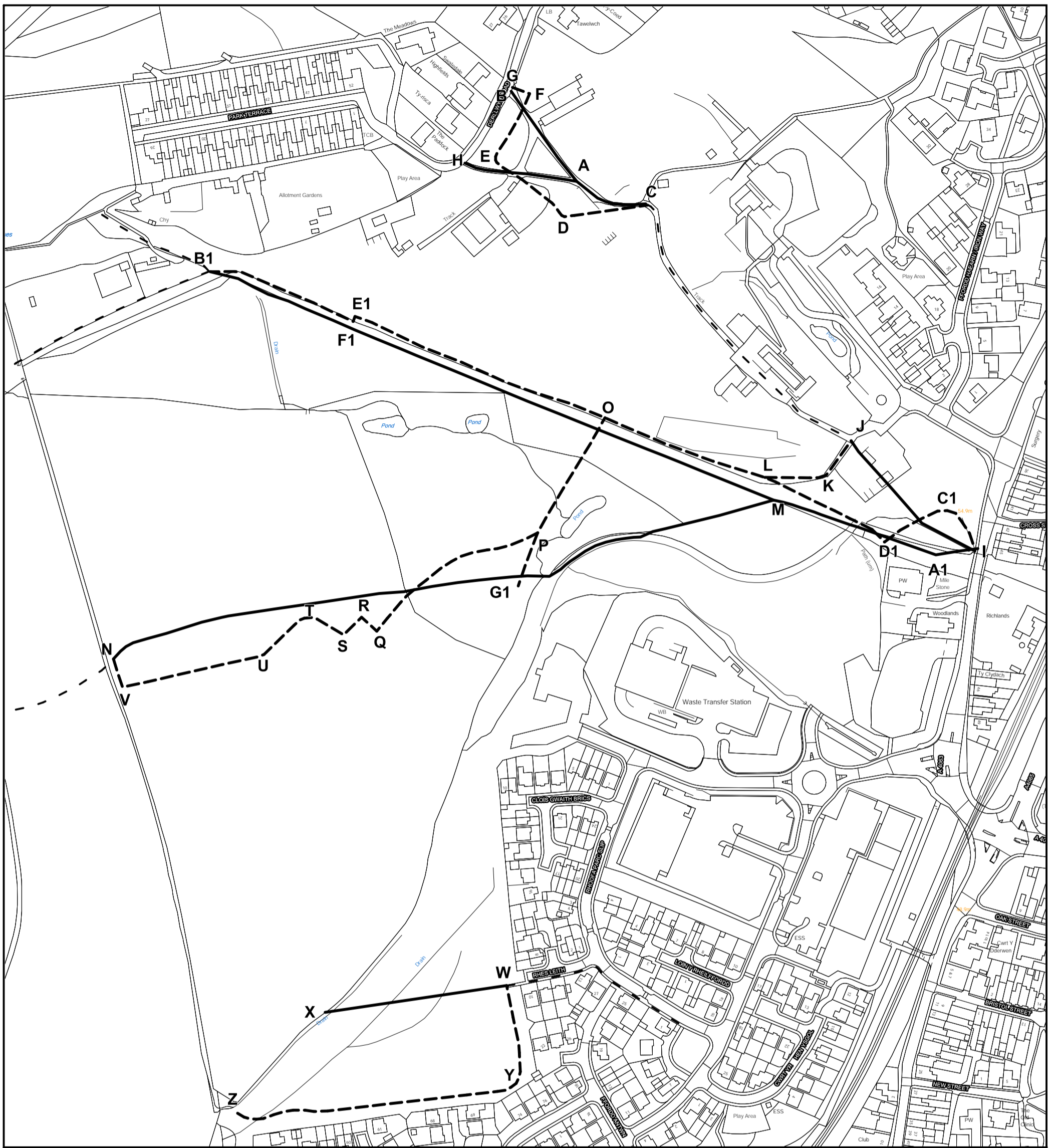


Janine Nightingale
Corporate Director - Communities
Communities Directorate

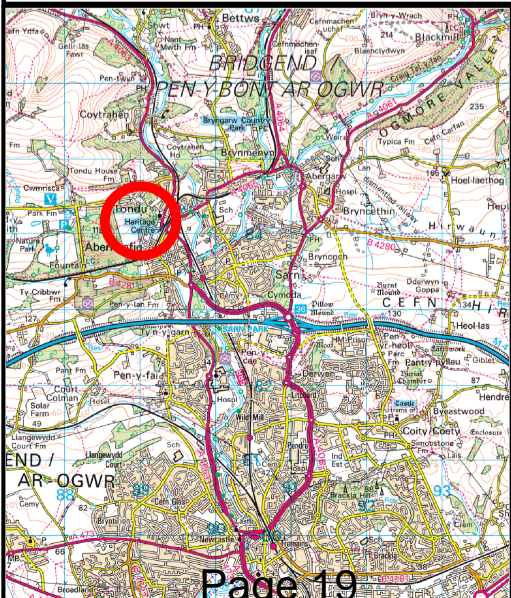
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**PROPOSED DIVERSION FOOTPATHS 16 & 17 YNYSAWDRE AND PROPOSED PART EXTINGUISHMENT FOOTPATH 16 YNYSAWDRE
AND
PROPOSED DIVERSION FOOTPATH 12, 16 & 17 NEWCASTLE HIGHER**



KEY

- Footpath 17 Ynysawdre to be diverted (A-B)
- Footpath 16 Ynysawdre to be Stopped Up (C-A-H)
- Footpath 16 Ynysawdre to be diverted (I-J)
- Footpath 12 Newcastle Higher to be diverted (M-N)
- Footpath 16 Newcastle Higher to be diverted (W-X)
- Footpath 17 Newcastle Higher to be diverted (I-A1-B1)

- Proposed new route Footpath 17 Ynysawdre (C-D-E-F-G)
- Proposed new route Footpath 16 Ynysawdre (J-K-L)
- Proposed new route Footpath 12 Newcastle Higher (O-P-Q-R-S-T-U-V-N)
- Proposed new route Footpath 16 Newcastle Higher (W-Y-Z)
- Proposed new route Footpath 17 Newcastle Higher (I-C1-D1-E1-F1-B1)
- Proposed new footpath to be created (P-G1)

Continuation of footpaths

Scale: 1:2500



Janine Nightingale
Corporate Director - Communities
Communities Directorate

Bridgend County Borough Council,
Civic Offices,
Angel Street,
Bridgend,
CF31 4WB

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BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO RIGHTS OF WAY SUB COMMITTEE

22 AUGUST 2022

REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

PROPOSED DIVERSION OF FOOTPATH 19, COYCHUCH LOWER AND PROPOSED PART EXTINGUISHMENT OF FOOTPATH 18, COYCHURCH LOWER

1. Purpose of report

- 1.1 The purpose of this report is to seek authorisation to revoke the original decision in regard to the proposed diversion of Footpath 19 Coychurch Lower and proposed part extinguishment of Footpath 18 Coychurch Lower made by the Rights of Way Sub-Committee on the 5th October 2021 and to request authorisation for the making of two Orders pursuant to Section 257 (diversion) and Section 258 (Extinguishment) of the Town & Country Planning Act 1990, on land east of the A48 (Crack Hill), Brocastle, Bridgend, CF31 5AU.

2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-
1. **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
 2. **Helping people and communities to be more healthy and resilient** - taking steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services. Supporting individuals and communities to build resilience, and enable them to develop solutions to have active, healthy and independent lives.

3. Background

- 3.1 The implementation of the following planning consents will require a section of Footpath 19, Coychurch Lower to be diverted. They are:
- P/16/549/OUT - outline planning application for the development of up to 71,441sq.m. of B1, B2 and B8 employment floor space, including access, car parking, diversion of public rights of way, site remediation, drainage, landscaping and associated engineering operations, which received conditional consent (outline) on the 7th July 2017.
 - P/17/1044/NMA - non-material amendment to Conditions 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23 & 24 of P/16/549/OUT to change the wording

of the conditions, granted Non-Material Amendment conditional consent on the 10th January 2018.

- P/18/492/RES - reserved matters to P/16/549/OUT for approval of landscaping within the development site, granted conditional consent (reserved matters) on the 25th February 2019 at land east of the A48 (Crack Hill), Brocastle, Bridgend, CF31 5AU.
- P/20/269/RLX – Variation of condition 1 of P/16/549/OUT to amend to illustrative masterplan and parameters, granted conditional consent (RLX) on the 30th June 2020 at land east of the A48 (Crack Hill), Brocastle, Bridgend, CF35 5AU.

- 3.2 To enable Footpath 19 Coychurch Lower to be diverted as proposed by the applicant it will also be necessary to extinguish a section of Footpath 18 Coychurch Lower. This will maintain the integrity of the rights of way network by avoiding the creation of a cul-de-sac route. Additionally, the opportunity has also been taken during discussions with the applicant to create two link paths from Footpath 19 Coychurch Lower to link into an estate footway and an estate link path. The two new paths will be created either by Agreement or Order using the Council's separate powers under the Highways Act 1980. The plan in **Appendix A** to the report shows the consent curtilage of the planning consent. The section of Footpath 19 Coychurch Lower which is proposed to be diverted is shown by solid black lines between Points A-B on the plan in **Appendix D** to the report. The section of Footpath 18 Coychurch Lower which is proposed to be extinguished is shown by solid black lines between Points J-W on the plan in **Appendix D** to the report; and, for completeness, the two new links to be created are shown by dashed black lines between Points A-M-N-O-P-Q and R-S-T-U-V on the plan in **Appendix D** to the report.
- 3.3 This matter was previously reported to the Rights of Way Sub-Committee on the 5th October 2021. On the basis of the information contained in the 2021 report authorisation was obtained for the making of the two orders as outlined in paragraph 1.1 above. At that time the proposed alternative routes for Footpath 19 Coychurch Lower were shown as per the dashed black lines between Points A-C-D-E-F-G-H-I & J-K-L on the plan in **Appendix B**.
- 3.4 Prior to making the Orders authorised by the Sub-Committee the Council's Rights of Way section were made aware that some slight alterations had been made to two sections of the proposed new diverted route of Footpath 19 Coychurch Lower. A gate that was due to be installed at the previous Point E had actually been installed 17 metres to the west. In addition the original alignment of the alternative route between Points G-H had been shown as running through the new enhanced landscape planting. Due to these alterations it is necessary for the matter to come before the Sub-Committee for consideration. The proposed new routes at these two locations are shown by the dashed red lines on the plan in **Appendix C**. An amended plan, which will become the basis for the Order plan, and which incorporates the changes outlined earlier in this paragraph is attached as **Appendix D**.

4. Current situation/proposal

Current Route and Proposed Diversion

- 4.1 Currently Footpath 19, Coychurch Lower commences at Point A (Grid Ref. SS 92857765), as shown on the plan in **Appendix D**, and proceeds in a general east north-easterly direction for approximately 615 metres to its termination point at the Brocastle Brook (County Borough Boundary) at Point B (Grid Ref. SS 93407790). The definitive width of the route is undefined. The footpath has a natural surface.
- 4.2 The proposed alternative route of Footpath 19, Coychurch Lower, runs from Point A (Grid Ref. SS 92867765) on the plan (**Appendix D**), and proceeds in a north westerly direction for 124 metres to Point C (Grid Ref. SS 92767773) before continuing in a north north-easterly direction for 12 metres to Point D (Grid Ref. SS 92777775). It then continues in an east north-easterly direction for approximately 161 metres to Point E (Grid Ref. SS 92927777), where it turns and runs in a north north-westerly direction for approximately 28 metres to Point X (Grid Reference SS 9291794). It then continues in a northerly direction for 65 metres to Point F (Grid Ref. SS 92927786), before continuing in a north easterly direction for approximately 19 metres to Point G (Grid Reference SS 92937787). It then continues in an east north-easterly direction for 138 metres to Point H (Grid Ref. SS 93077789), before finally running in a north easterly direction for 180 metres to its junction with Footpath 18 Coychurch Lower at Point J (Grid Ref. SS 93237797).
- 4.3 The additional alternative route of Footpath 19 Coychurch Lower commences from its junction with Footpath 18 Coychurch Lower at Point J (Grid Ref. SS 93327789), and continues in a general easterly direction for 58 metres to Point K (Grid Ref. SS 93387789), before turning and running in a north easterly direction for 18 metres to its termination point at the Brocastle Brook at Point L (Grid Ref. SS 93397790).
- 4.4 The approximate total length of the new routes will be 803 metres with a width of 2 metres. The footpath will have a natural surface throughout its entire length.
- 4.5 The section of Footpath 18, Coychurch Lower which is to be extinguished currently commences at Point J (Grid Ref. SS93327789), as shown on the plan in **Appendix D**, and proceeds in a south easterly direction for approximately 7 metres to Point W (Grid Ref. SS 93337789).
- 4.6 Members should note that a small section of Footpath 19 Coychurch Lower (approximately 8 metres) will not be affected by the proposed diversion. The section of route not affected by the diversion is shown between Points A and X on the plan in **Appendix D**. Retaining this link will provide access to the A48 and the existing rights of way network in the Vale of Glamorgan via the public footpath directly opposite.
- 4.7 The diversion of this section of Footpath 19, Coychurch Lower was originally discussed in April 2018 when the agent for the applicant sought advice from the Rights of Way Section for the possible diversion of the footpath. As a result of those discussions the agent submitted a proposal for the diversion of the footpath. However the Rights of Way Section were not happy with the original proposal as this showed most of the proposed diverted route of Footpath 19 Coychurch Lower using estate

footways. Discussions then continued between both parties until the currently proposed alternative route was agreed in principal by the Rights of Way Section. During those early discussions, the applicant informed the Rights of Way Section that they wished to create two additional link paths within the development site. As a result, the Rights of Way Manager agreed in principal to create the two additional link paths as public footpaths.

- 4.8 The application to divert this section of Footpath 19, Coychurch Lower as well as creating two additional link paths was submitted on the 18th June 2018. The application was received as a result of comments made by the Rights of Way Section in regards to planning application P/16/549/OUT.
- 4.9 Whilst preparing the documents to carry out a consultation in line with the Council's standard pre-order consultation process in 2018, the Rights of Way Section noted that if the proposed diversion were to be successful this would leave Footpath 18 Coychurch Lower as a cul-de-sac route. The Council wrote to the applicant's agent asking if they would be willing to agree to include the extinguishment of a short section of Footpath 18 Coychurch Lower in their application so that this potential anomaly could be resolved. The agent confirmed that the amendments to the application were acceptable to them and the applicants.
- 4.10 In accordance with the Rights of Way Section's standard consultation process for Public Path Orders the local County Borough Council member, Coychurch Lower Community Council, the British Horse Society, Bridgend Ramblers Association, other user groups and interested bodies, South Wales Police and public utilities, were all consulted on the proposal in September 2018. During the consultation process numerous representations were received in relation to the proposed diversion. These are outlined below.
- 4.11 Bridgend Ramblers – No objection
- 4.12 Wales & West Utilities – No objection
- 4.13 Coychurch Lower Community Council – No objection
- 4.14 South Wales Police Design out Crime Officer – No objection
- 4.15 Dwr Cymru Welsh Water (DCWW) – objected as they have apparatus in the area that is affected by the proposal. This objection was forwarded onto the agent acting on behalf of the applicant as all works that DCWW were concerned about would be carried out by a contractor appointed by the agent/applicant. Further discussions took place between the agent and DCWW and a final email was sent stating that as a result of those discussions DCWW would be withdrawing their objection.
- 4.16 Due to proposed changes to the planning consent (P/16/549/OUT) which had previously been granted, a request was made to the Rights of Way Section asking to postpone the application to divert the footpaths until such time as a decision was made with regards to planning application P/20/269/RLX.
- 4.17 The diversion application process was paused until the outcome of the proposed changes to the planning application was granted consent. Once consent had been

granted amended proposals for the diversion of Footpath 19 Coychurch Lower were submitted.

- 4.18 In accordance with the Rights of Way Section's standard consultation process for Public Path Orders the local County Borough Council member, Coychurch Lower Community Council, the British Horse Society, Bridgend Ramblers Association, other user groups and interested bodies, South Wales Police and public utilities, were all consulted on the new proposals in July 2020. During the second consultation process further representations were received in relation to the proposed diversion. These are outlined below.
- 4.19 Wales & West Utilities – No objection
- 4.20 Bridgend Ramblers – No objection
- 4.21 Cllr Elaine Venables – Although no formal objection was received Cllr Venables was concerned that the proposed diversion of Footpath 19 Coychurch Lower would be very close to the current alignment of Footpath 18 Coychurch Lower.
- 4.22 Natural Resources Wales – No objection
- 4.23 South Wales Police Design out Crime Officer – No objection
- 4.24 Openreach – No objection
- 4.25 Dwr Cymru Welsh Water - objected for the same reasons as outlined in paragraph 4.15. The objection was forwarded to the applicant's agent and following further discussions between the agent and DCWW the Council received an email advising that DCWW would be withdrawing their objection.
- 4.26 During the preparation of this report the Rights of Way section was made aware that as part of the planning process a number of areas within the development site were earmarked for new enhanced landscape planting. Further discussions then took place with the agent acting on behalf of the applicant/landowner which resulted in the Rights of Way section being advised that one area would affect the proposed diversion of Footpaths 19 Coychurch Lower whilst another would affect that section of Footpath 18 Coychurch Lower which runs through the site and which is not going to be diverted.
- 4.27 A further site visit was carried out between the Rights of Way Section, the agent acting on behalf of the landowner and the contractor carrying out the works on site in February 2021 to discuss the issue of the requirements for the enhanced landscaping areas. In order to protect the saplings in the new enhanced landscape planting areas, the applicant/landowner decided to fence off the areas with rabbit proof fencing whilst they matured over a period of 5 years. The alternative would have been to use individual tree guards but it was deemed more appropriate to use the fencing due to the size of the areas, the number of new saplings requiring protection and the ease of ongoing maintenance. During that meeting, the Rights of Way Section were advised that the rabbit proof fencing would need to fully enclose the areas concerned, and that stiles were the preferred option to gain access to the areas as any other furniture used, such as pedestrian gates or kissing gates would cause a break in the

fencing which could potentially allow rabbits to squeeze through, no matter how small the gap.

4.28 As part of the planning approval the Council agreed that they would allow the fencing to be erected and remain in place for a maximum of 5 years at both sites provided the applicant/landowner agreed to:

- Physically create two alternative permissive paths around the enhanced landscape planting areas each with a minimum width of 2 metres for those not wishing or able to climb over the stiles which will be erected on the proposed diverted route of Footpath 19 Coychurch Lower and the existing route of Footpath 18 Coychurch Lower. The routes would be maintained by the landowner for the duration of the fencing being in place up to a maximum of 5 years.
- The applicant/landowner would install and maintain stiles in the fences at the points where the proposed route of Footpath 19 Coychurch Lower and the existing route of Footpath 18 Coychurch Lower passed through the enhanced landscape planting areas to enable those wishing to use the Definitive alignments of the public footpath. The locations of the proposed stiles are indicated by four 'X's on the plan in **Appendix E**. The two stiles on the proposed diverted route of Footpath 19 Coychurch Lower would be shown as a limitation in the Order.
- The applicant/landowner would remove the stiles at the end of the 5 year period when the fences would also be removed.

4.29 The Council has received written confirmation from the applicant/landowner agreeing to the conditions.

4.30 With regards to the surface of the permissive routes, the Council can confirm that they are of the same physical characteristics as the remainder of Footpaths 18 and 19 Coychurch Lower, and as such, would not have a long term detrimental effect on users of the footpaths.

4.31 No additional consultation has been carried out in respect of the slight amendments to the proposed alternative route as identified in paragraph 3.4 as these only are very minor and relate only to moving the proposed diverted route a matter of metres.

4.32 In order to facilitate the development of up to 71,441sq.m. of B1, B2 and B8 employment floor space, including access, car parking, diversion of public rights of way, site remediation, drainage, landscaping and associated engineering operations as per planning consent P/16/549/OUT at land east of the A48 (Crack Hill), Brocastle, Bridgend, CF31 5AU a section of Footpath 19, Coychurch Lower will need to be diverted. In addition part of Footpath 18 Coychurch Lower will need to be extinguished and two link paths will be created.

4.33 The Welsh Governments Guidance for Local Authorities on Public Rights of Way – August 2016 states:

'Before making an Order the Council must be satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission that has been granted.'

As Members are aware, it should not be assumed that an Order should be made simply because planning permission has been granted.

'In determining whether an Order is 'necessary' the Council must examine the activities authorised by the planning permission to see whether they are, or are not, compatible with the retention of highway rights. An activity which would involve obstruction of a highway (for example, the erection of a structure across the line of a highway or introducing a use such as outdoor storage or long-term parking) would be incompatible with the highway and so make out a case of necessity.'

'Even where a case of necessity is made out, an authority still has discretion whether to make an Order or not. However, having concluded that the planning permission should be granted, there must be good reasons for deciding that an Order, which would permit implementation of that permission, should not be made.'

'In coming to a judgment as to whether to make an Order, the following should be taken into account:

- The interests of the general public.*
- The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway.*
- Any potential financial loss to members of the public.'*

4.34 In regard to the three considerations outlined above Members are advised as follows:

- The Council is aware that the new route will be 248 metres longer than the existing route and that for the first 5 years four stiles will be installed on the route. However, the stiles will be removed after 5 years and during the time they are in situ a separate alternative path without any structures will be made available. Consideration was given to diverting the path closer to the development but this was not possible on the northern side of any potential building. And, if the diversion was taken to the south of any potential building the alternative route would have had to utilise the estate footways. As has already been indicated in paragraph 4.7 this was deemed to be unacceptable as the proposal would not have met current guidelines for the diversion of footpaths. In the long term the proposed diversion enables the Rights of Way network to be protected from obstruction for the enjoyment of the public. It also enables the network to be accurately recorded and maintained and will allow for the footpath to remain as a continuous off-road walking route for members of the public between the A48 and the County Borough Boundary. For these reasons it is considered that the test that the proposal is in the interests of the public can be said to be satisfied.
- There does not appear to be any additional effects of the Order on any adjoining properties.

- The Council is unaware of any potential financial loss to members of the public. The developer will be responsible for any works that are required to provide the diversion and the provision of the new routes.

5. Effect upon policy framework and procedure rules

5.1 It is considered that there is no effect upon policy framework and procedure rules.

6. Equality Act 2010 implications

6.1 An initial Equality Impact Assessment (EIA) screening has identified that there would be no negative impact on those with one or more of the protected characteristics, on socio-economic disadvantage or the use of the Welsh Language. It is therefore not necessary to carry out a full EIA on this policy or proposal.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The Well-being of Future Generations (Wales) Act 2015 Assessment Template has been completed and a summary of the implications from the assessment relating to the five ways of working is outlined below in respect of the proposal:

- **Long-term**

The diversion, part extinguishment and creation of two link paths routes will enable the Rights of Way network to be protected from obstruction for the enjoyment of the public. It also enables the network to be accurately recorded and maintained.

- **Prevention**

If the proposals are not implemented Footpath 19 Coychurch Lower would become obstructed and the Council would then have to take action to remove those obstructions. This would have significant resource implications. As the applicant will be carrying out all works involved, this will mean that the route will not become obstructed and the Council will not have to take any action.

- **Integration**

With agreed construction methods, as well as time frames, the diversion of footpaths to enable development to be implemented allows for an attractive and diverse economy that will encourage more people to use the route during their daily routine.

- **Collaboration**

The Council works closely with the applicant/developer to implement the proposed works so that the likelihood of objections is minimal.

- **Involvement**

Consultations were carried out with statutory consultees, local members and community councils to gather their views before the decision to make the order is made.

8. Financial implications

8.1 Any financial implications arising from the above procedures are expected to be minimal as the developer will be meeting the cost of the diversion and extinguishment order process and the implementation of any works required by the Council.

9. Recommendations

9.1 To seek authorisation to revoke the original decision in regard to the proposed diversion of Footpath 19 Coychurch Lower and part extinguishment of Footpath 18 Coychurch Lower as shown on the plan in **Appendix B** to the report, that was made by the Rights of Way Sub-Committee on the 5th October 2021.

9.2 That authorisation be given for the Chief Officer - Legal, HR and Regulatory Services to make the necessary Orders to seek to divert Footpath 19 Coychurch Lower and to part extinguish Footpath 18 Coychurch Lower as shown on the plan in **Appendix D** to the report, and to confirm the Orders provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.

9.3 That the Chief Officer - Legal, HR and Regulatory Services be authorised to forward the Order(s) to the Welsh Government for determination, if any objections received are not withdrawn.

9.3 That the Order(s) excludes any section of the diversion, which utilises highways which are maintainable by Bridgend County Borough Council, as public rights already exist over them.

Janine Nightingale
CORPORATE DIRECTOR COMMUNITIES
August 2022

Contact officer: Mr Mathew Palmer
Rights of Way and Access Land Officer

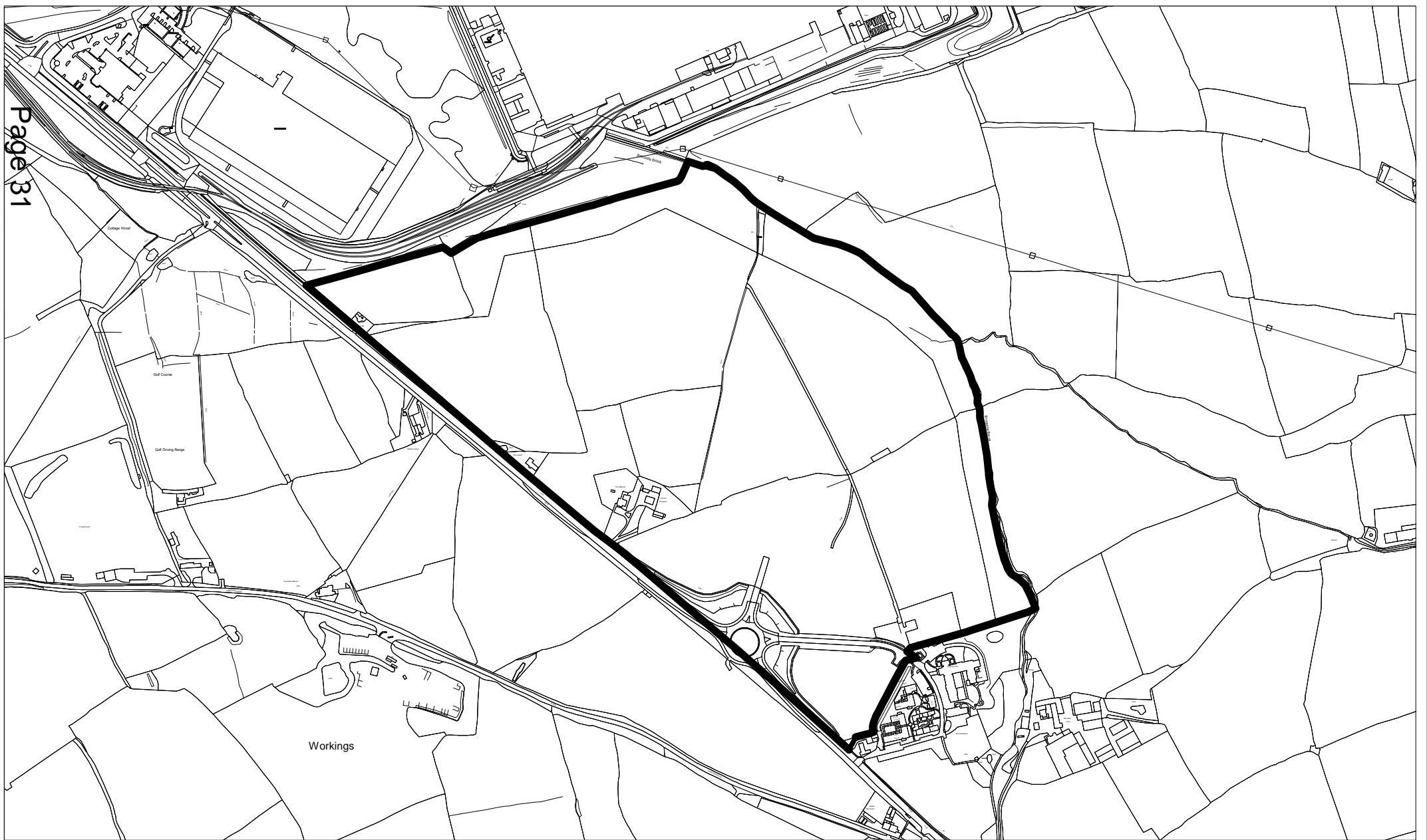
Telephone: (01656) 642595

Email: mathew.palmer@bridgend.gov.uk

Postal address: Rights of Way
Communities Directorate
Bridgend County Borough Council
Waterton Depot
Waterton Lane
Waterton
Bridgend
CF31 3YW

Background documents: File A763/1/FP 18 + 19 Coychurch Lower (8th August 2016 – present)

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Cyngor Bwrdeistref Sirol



BRIDGEND COUNTY BOROUGH COUNCIL

COMMUNITIES DIRECTORATE

*Corporate Director
Communities*

Civic Offices
Angel Street
Bridgend CF31 4WB
Telephone (01656) 643643

APPENDIX A



Planning Application P/16/549/OUT

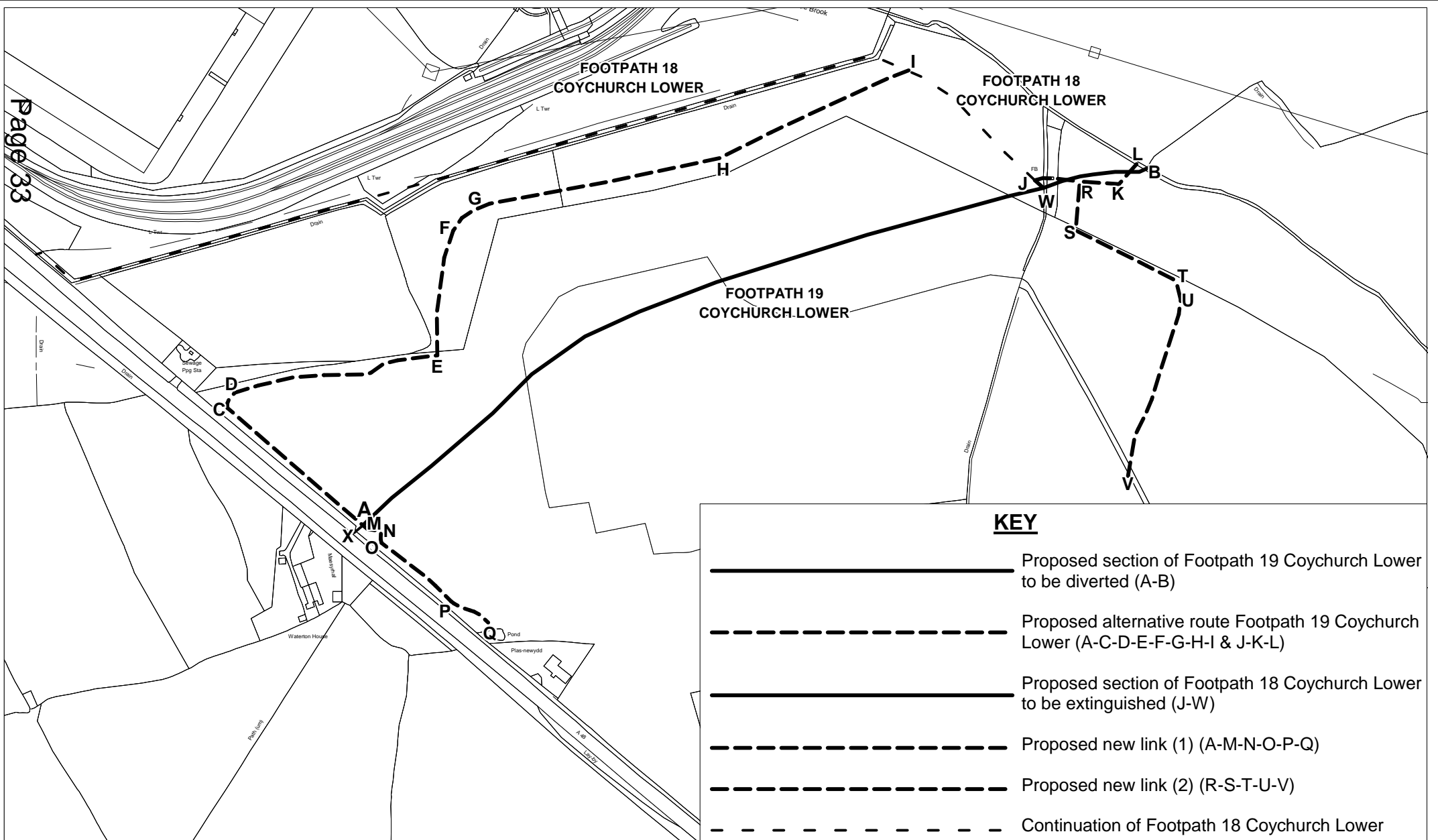


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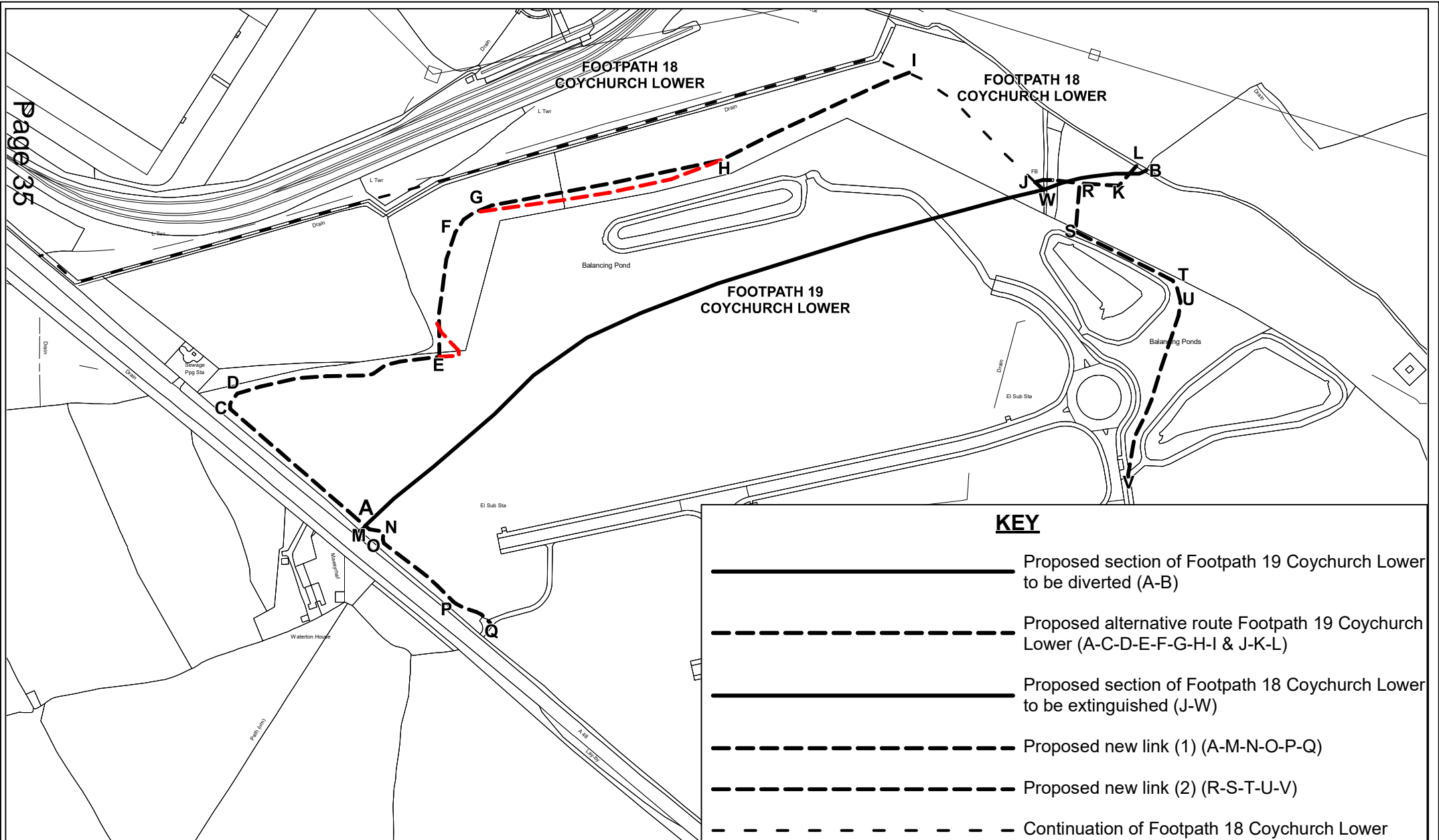
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KEY	
	Proposed section of Footpath 19 Coychurch Lower to be diverted (A-B)
	Proposed alternative route Footpath 19 Coychurch Lower (A-C-D-E-F-G-H-I & J-K-L)
	Proposed section of Footpath 18 Coychurch Lower to be extinguished (J-W)
	Proposed new link (1) (A-M-N-O-P-Q)
	Proposed new link (2) (R-S-T-U-V)
	Continuation of Footpath 18 Coychurch Lower

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KEY

-  Proposed section of Footpath 19 Coychurch Lower to be diverted (A-B)
-  Proposed alternative route Footpath 19 Coychurch Lower (A-C-D-E-F-G-H-I & J-K-L)
-  Proposed section of Footpath 18 Coychurch Lower to be extinguished (J-W)
-  Proposed new link (1) (A-M-N-O-P-Q)
-  Proposed new link (2) (R-S-T-U-V)
-  Continuation of Footpath 18 Coychurch Lower

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COMMUNITIES DIRECTORATE

Corporate Director
Communities

Civic Offices
Angel Street
Bridgend CF31 4WB
Telephone (01656) 643643

**Proposed Diversion Footpath 19 Coychurch Lower,
Proposed Part Extinguishment Footpath 18
Coychurch Lower & Creation of 2 Link Paths**

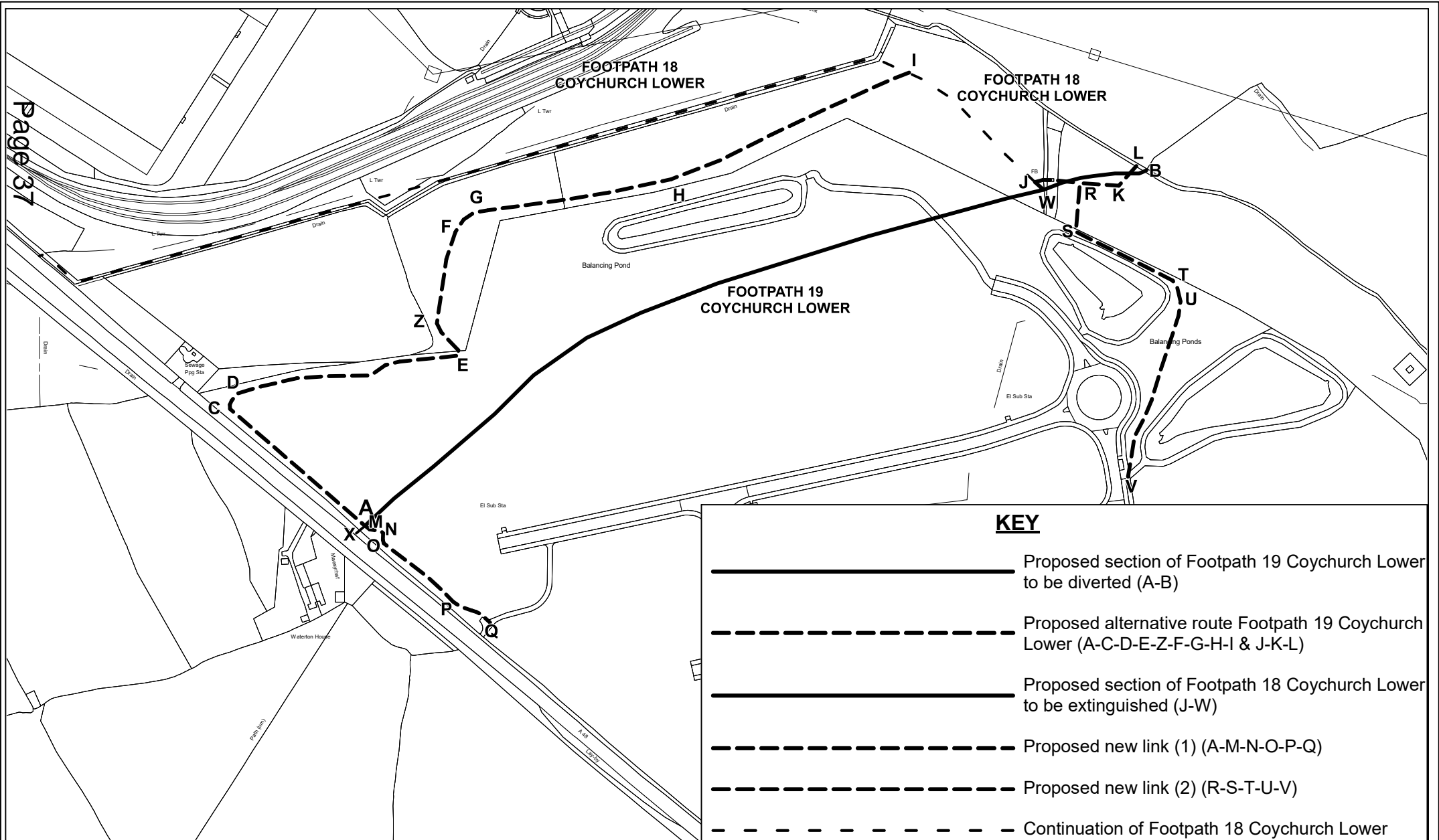


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KEY

-  Proposed section of Footpath 19 Coychurch Lower to be diverted (A-B)
-  Proposed alternative route Footpath 19 Coychurch Lower (A-C-D-E-Z-F-G-H-I & J-K-L)
-  Proposed section of Footpath 18 Coychurch Lower to be extinguished (J-W)
-  Proposed new link (1) (A-M-N-O-P-Q)
-  Proposed new link (2) (R-S-T-U-V)
-  Continuation of Footpath 18 Coychurch Lower

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BRIDGEND COUNTY BOROUGH COUNCIL

COMMUNITIES DIRECTORATE

*Corporate Director
Communities*

Civic Offices
Angel Street
Bridgend CF31 4WB
Telephone (01656) 643643

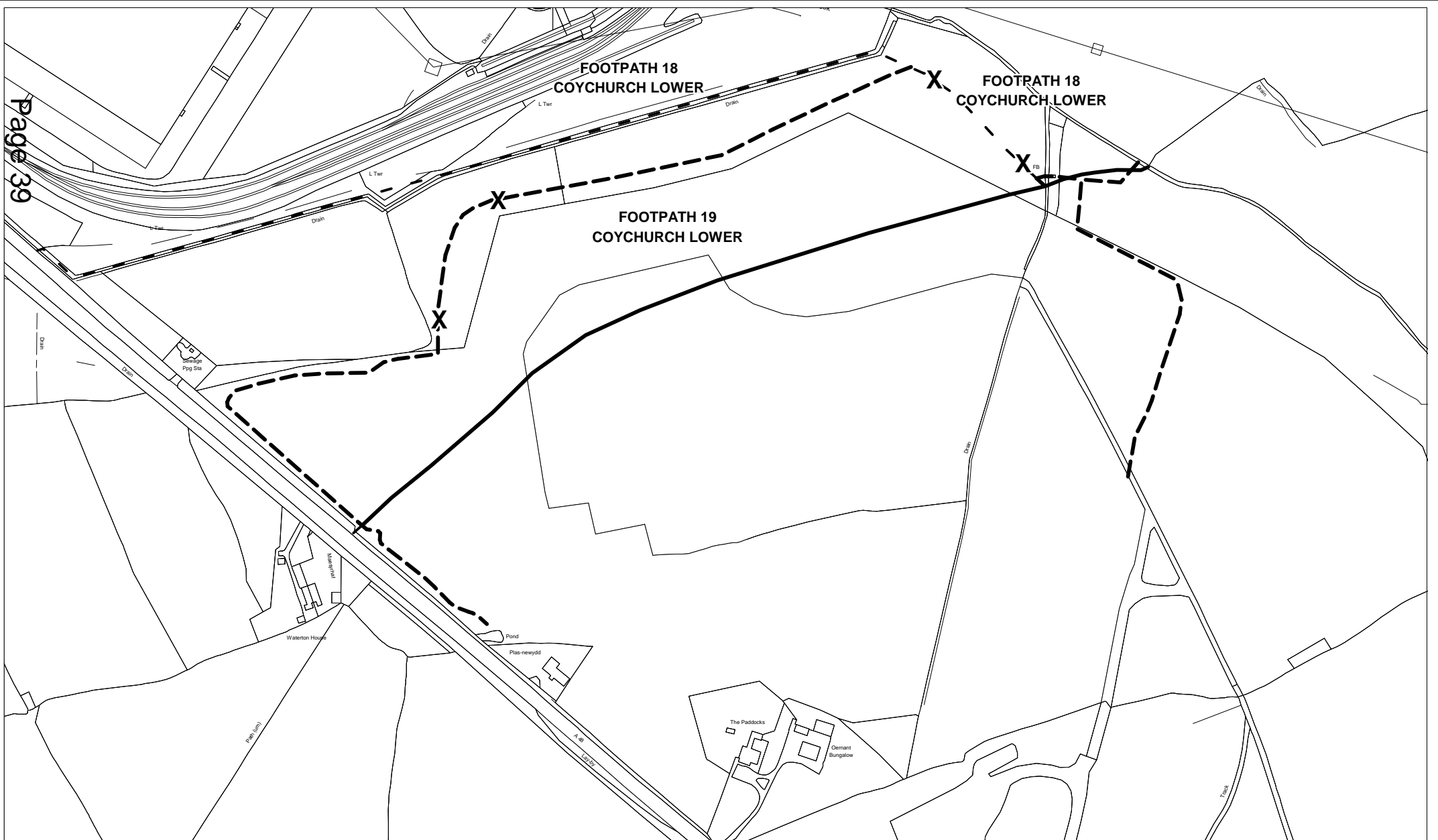


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BRIDGEND COUNTY BOROUGH COUNCIL

COMMUNITIES DIRECTORATE

*Corporate Director
Communities*

Civic Offices
Angel Street
Bridgend CF31 4WB
Telephone (01656) 643643

APPENDIX C



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