Shared Access on Forest Roads; a protocol

Background

The forest industry in Great Britain faces challenges in connection with timber haulage from forest to mill which include:

- Access to remote forests along sub-standard, expensive to maintain, public roads
- Local public resistance to 44t lorries using minor public roads, especially through rural communities
- The fragile economics of timber haulage.

The Timber Transport Forum wishes to promote and encourage the sharing of forest roads and ancillary infrastructure (such as stacking areas or transfer points) in the public and private sectors as an alternative to using sensitive parts of the public road network.

Road management is least complicated where there is a single owner or user. Where more parties are involved formal mechanisms for management, communication, monitoring and maintenance are required. Where multiple harvesting operations may occur at the same time then the access agreement or servitude must compel all parties to a mechanism (e.g. an 'operating agreement' – see Section 6) for collaboration with clear roles and responsibilities. Details of such mechanisms must be made clear in sales particulars and communicated to new owners and agents.

Basis of Protocol

In order to reduce the pressures on the public road network there will be a presumption that all forest owners, whether in the public or private sector, will co-operate in granting access rights to other woodlands in accordance with this protocol.

Application

This protocol will be considered whenever significant amounts of timber are to be carried along public roads with restricted capacity for timber transport and where there are opportunities to reduce such use by utilising existing, or new, forest roads. It is accepted that alternatives to the use of public roads are not always available, or do not necessarily provide a cost-effective solution as compared to use of the public road network. Owners of forest roads should consider the benefit to the public and wider forest industry when setting charging levels.

Method

Each case will involve its own unique set of circumstances, however it is expected that where the access is to be used for a defined period of time, a short-term permission will be appropriate. Where a longer term arrangement is required to justify investment in future rotations there are two options;

- a servitude, granting permanent access
- an access lease providing a transferable security of access for a period of time.

Where the principal agreement does not confer rights for use of ancillary infrastructure these could be permitted by a short-term license.

Examples of the circumstances for each type of agreement, together with a summary of typical issues to be considered, including the basis of charging, are covered below.

Ratification of Draft Protocol
The protocol was originally developed and ratified by the Timber Transport Forum in 2006 and was updated in October 2014 to include the option of an access lease. Additional revisions were made in 2018.

Please note that legal advice should be taken by all parties making agreements based on this protocol.

Framework for shared access agreement

1. Type of agreement

1.1. Permissions

Used where one–off access is proposed, such as:

- To harvest an area to be replanted with broadleaves with no future harvesting requirements
- To harvest an area which will be served by some future road, not yet constructed
- To clear wind blow, or similar, in a short timescale where alternative roads cannot be constructed quickly
- If the forest owner is prepared to accept a one-off access, with no commitment to the future
- To allow for temporary use of ancillary infrastructure such as a stacking area.

1.2. Access Lease

Used to provide security of access over a sufficient period of time (e.g. 40 years) to allow harvest of a crop and the planting and realisation of a subsequent crop. An access lease would include a commitment not to unreasonably withhold consent to assign the lease to any future owner and to be extendable, subject to meeting the conditions of the lease.

An Access Lease for a period over twenty years must be recorded on the Land Register of Scotland, this ensures it will be transferable by the lessee and continues in force whoever is the owner of the solum of the road. Leases under twenty years are not recordable in the Land Register of Scotland.

As the Access Lease will not include occupation by the lessee of the entire road, it will be necessary to identify an area which can be leased and to which access rights will be related. This leased area will commonly consist of a few metres of the road adjacent to the third party property.

Access leases are seen as being more flexible and will avoid the up-front capital costs of servitudes. They are also expected to make it easier to manage the continuing responsibility to meet a landowner's duty of care to road users and to others who may be using the forest.

Access leases will be the preferred option for third party access over Forestry Commission Scotland roads. Servitudes will, however continue to be considered, particularly where a third party is exchanging a permanent, public road right of access for an in-forest route, largely for public benefit. It should be noted that Forestry Commission Scotland's Strategic Timber Transport Scheme cannot support future revenue costs of access leases. The Scheme can pay grant towards an upfront lump sum premium but not to any future payments.

1.3. Servitudes

Used where a permanent grant of access is proposed.

2. Background
Setting out the purpose and intent of the agreement and the mechanism for managing the agreement – see Section 6 Operating Agreement .

3. Parties involved
Setting out names of parties, including third parties with rights to use the road, and any restrictions on assignment.

4. Access requirements of each party
Stating area to be served, including any ancillary infrastructure;the purpose, for example, harvesting use only; any restrictions on vehicle types,size or configuration; whether the grant is exclusive and similar requirements; identification of sections of road involved and title of land, as referred to on a plan.

5. Basis of charging for access rights

In all types of agreement, consideration will be given to;

- the element of charge being made for the rights to allow a woodland owner to extract timber over a neighbouring owner's property and
- the charge to be made in respect of practical improvements and repair of the road.

5.1 Permissions

The agreement will provide for

Charges connected with the right to allow use of the route.

The basis for charging is to be agreed dependent upon the circumstances involved in the particular case and with reference to market rates, but matters to be considered should include:

- The potential for road improvements being carried out by the forest owner, for the benefit of the road owner
- The economic viability or "affordability" of the specific harvesting operation
- The cost of alternative access routes available to the forest owner
- The potential for saving damage to public road infrastructure
- The method of dealing with repairs/maintenance to the road
- The strength of the road and potential for damage to the basic foundation not covered by maintenance
- Any difficulties/costs which may arise out of shared use, such as, management time in dealing with the impact on recreation
- The period of agreement and any options for extension, although it will be exceptional for a permission to be used for longer than two years.
- Ancillary infrastructure provided by one party and used on a temporary basis by another.

The method of charging will consider:

- A flat rate for the total job
- Rate per week/month of the period for which access is granted
- Rate linked to tonnage of timber (irrespective of the length of the road).

Charges for Improvement/Maintenance

These will consider:

- A regime for specifying, undertaking and sharing costs connected with capital improvements to be agreed according to site specifics
- Sharing actual costs involved in maintaining/repairing the route according to user
- A standard charge linked to the length of the route and tonnage of timber extracted
- A mechanism to deal with extraordinary damage.

5.2 Access Leases

The agreement will provide for

Charges connected with the right to allow use of the route.

The basis for charging is to be agreed dependent upon the circumstances involved in the particular case and with reference to market rates, but matters to be considered should include:

- The capital benefit to the forest owner arising from any increase in solum value of the land due to the presence of long term access rights.
- The terms of the rights being granted, *e.g.*, for all forest uses, or only harvesting.
- The provision of ancillary infrastructure to accommodate timber movement.
- The potential for road improvements being carried out by the forest owner, for the benefit of the road owner.
- The potential for third parties to join the road share, with further contributions to the road owner.
- The economic viability or “affordability” of the specific route. In some cases an open book approach is used to ensure an ‘appropriate level’ of the access value is captured. On longer hauls, maintenance charges may have a bearing on overall affordability.
- The cost of alternative access routes available to the forest owner.
- The potential for saving damage to public road infrastructure.
- The method of dealing with repairs/maintenance to the road.
- The strength of the road and potential for damage to the basic foundation not covered by maintenance.
- Any difficulties/costs which may arise out of shared use, such as, management time in dealing with the impact on recreation.
- The period of agreement and any provisions for extension.

The method of charging will consider:

- A minimum payment at the time of entering into the agreement.

- A minimum annual payment for administration to maintain the lease.
- Payment linked to the actual amount of timber extracted (irrespective of the length of the road), payable at the time of use with such payment being index linked.

Charges for Improvement/Maintenance

These will consider:

- A regime for specifying, undertaking and sharing costs connected with capital improvements to be agreed according to site specifics
- Sharing actual costs involved in maintaining/repairing the route according to user
- A standard charge linked to the length of the route and tonnage of timber extracted
- A mechanism to deal with extraordinary damage.

5.3 Servitudes

Charges connected with the right to allow use of the route.

The basis for charging is to be agreed dependent upon circumstances involved in the particular case and with reference to market rates, but matters to be considered should include all issues identified under Permissions above, together with:

- The capital benefit to the forest owner arising from any increase in solum value of the land due to the presence of long term access rights
- Terms of the servitude grant, e.g., for all forest uses, or only harvesting
- The economic viability or "affordability" of the specific route
- Past investment in construction cost of the road to be used by the forest owner;
- Area of forest (in both ownerships) to be served, hence proportion of use to be made by the forest owner
- Depreciating effect on the value of the road owner's property by allowing additional users
- Any elements of benefit which the forest owner can grant to the road owner in exchange
- The potential for third parties to join the road share, with further contributions to the road owner.
- The cost of alternative access routes available to the forest owner
- The potential for saving damage to public road infrastructure
- The method of dealing with repairs/maintenance to the road
- The strength of the road and potential for damage to the basic foundation not covered by maintenance
- Any difficulties/costs which may arise out of shared use, such as, management time in dealing with the impact on recreation.

The method of charging will be either;

- An up-front capital sum, the normal and preferred method, payable at time of servitude grant; or
- An annual payment at a set figure.

Charges for Improvement/Maintenance

These will consider:

- A regime for specifying, undertaking and sharing costs connected with capital improvements to be agreed according to site specifics
- Sharing actual costs involved in maintaining/repairing the route according to user
- A standard charge linked to the length of the route and tonnage of timber extracted
- A mechanism to deal with extraordinary damage

6. Operating Agreement

In order to co-ordinate the parties interests, a written operating agreement should be entered into,embedded in the specific agreement for use of the road. This will include reference to the following:

- Parties should meet at an agreed interval (annual meetings are recommended) to review the application of the agreement, assess the maintenance charges and set the charges according to user for the next period.
- A map that clearly identifies the extent of each party's ownership of the road and any ancillary infrastructure over which rights are being granted
- If new link roads or ancillary infrastructure needs to be constructed the agreement should stipulate the minimum standards to be complied with, the responsibility for planning, funding, constructing and maintaining the work, the compensation terms for any trees felled in connection with the improvements and any restrictions on permitted use.
- The standard of road agreed at the outset can be changed by agreement with all parties and any costs shared between parties. Otherwise the party requiring the change will bear the cost.
- Where a third party access agreement or other permission exists, establish effective traffic or activity management plan, incorporating any additional infrastructure requirements.
- Arrangements for any necessary road closures or diversions. Owners will normally give a minimum of seven days' notice for any planned closure of their part of the route. Closures due to blockage or lifting frost will be more immediate. No compensation will be payable in either circumstance.
- The agreement should consider what additional rights an owner can or cannot grant to third parties that may affect shared use – such as the holding of a large equestrian or sporting event.All parties should be given notice (three months minimum is recommended) of intended use by one of the parties. Other parties will then provide information on any other users, hazards or constraints for the duration of use.
- All parties to maintain and share a common dataset of road and ancillary infrastructure constraints and hazard information.
- Establish site rules for management, operation and use of the road and ancillary infrastructure including signage
- Clarify roles and responsibilities with regard to health and safety and signage.
- Procedures for reporting and recording accidents and near miss incidents on the sahred access route or ancillary infrastructure

- No vehicles or materials should be left on another party's land without their express permission. Broken down vehicles should be removed.
- All parties will be responsible for instructing their users to adhere to a specified speed limit.
- All parties will comply with all relevant legislation and with codes of practice which have been endorsed by the trade.
- The location of gates/barriers should be identified with any requirements to close/lock and the ability to erect new.

7. Maintenance arrangements

- Any party to an agreement can upgrade a road belonging to another party at their own cost and to a standard approved by the owner.
- At the commencement of the agreement, or when the roads have been upgraded to the satisfaction of all parties, it is recommended that a written and video and/or ground penetrating radar record is made and signed by all parties. This will be used as a record of the standard to which owners will be expected to maintain their roads.
- Each owner should be responsible for maintaining his roads, but can negotiate with other owners to do the work for them on normal commercial terms.
- Each party will undertake to use the agreed Defect Reporting System. If defects are not put right within 10 working days the user will have the right to undertake the repair and charge the owner.
- Parties causing exceptional damage to another owner's road will be responsible for paying for repairs to a standard agreed with the owner.
- Parties should agree how and where stone for road maintenance will be sourced. If stone is to be imported from outwith the road owner's land the agreement should set out the responsibilities for paying taxes or levies or any arrangements for moving material across ownership boundaries.
- There is a presumption that harvesting machines will not travel on the shared access route unless there is no reasonable alternative. Where this is the case, the landowner responsible will be responsible for the maintenance on the section during the operation and for reinstatement thereafter.

8. Charges for maintenance

- Charges are shared by the parties in accordance with user. This applies to routine road and bridge maintenance. Other charges relating to replacing bridges and culverts, dealing with storm damage and similar will be borne by the owner.
- It is recommended that charges are based on tonnage using the road, but with the possible improvement of charging per tonne-km.
- Each party is responsible for keeping and sharing accurate information on the level of use of the road and the tonnage transported.
- The apportionment of charges will be agreed at the annual meeting, which can include a surcharge for using the road in winter months.
- It is the responsibility of the solum owners to keep accurate records of repair costs. These will be audited at the annual meeting.

9. Liabilities

- Each party will indemnify the owners of the solum against all liability, claims and costs arising from the use of the shared route.
- Further indemnification will be required if the agreement allows for a party to construct a link road on another owner's property.
- Owners have a duty to advise users of any hazards, including any conflicting uses of the road, but each user will be responsible for carrying out their own risk assessment.
- Health and safety responsibilities will accord with industry good practice.
- The agreement will set the level of insurance that users must hold against third party liability.

10. Disputes

The agreement will identify the method of dealing with disputes, arbitration or mediation and will state circumstances when termination may apply and the implications.

11. Other Conditions

Setting out other terms as the parties and their legal representatives shall agree. These could include:

- requirements to improve access onto public roads;
- agreements for use of roads by rallies and the maintenance terms which apply;
- availability of repair stone from private quarries and the basis of charging
- particular requirements relating to CROW or Land Reform Scotland Act 2003.

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