



Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Customer Services
Executive Director: Douglas Hendry

Kilmory, Lochgilphead, PA31 8RT
Tel: 01546 602127 Fax: 01546 604435
DX 599700 LOCHGILPHEAD
12 November 2019

NOTICE OF MEETING

A meeting of the **DUCHESS WOOD LOCAL NATURE RESERVE COMMITTEE** will be held in the **LOMOND SCHOOL, HELENSBURGH** on **TUESDAY, 19 NOVEMBER 2019** at **10:30 AM**, which you are requested to attend.

Douglas Hendry
Executive Director of Customer Services

BUSINESS

- 1. WELCOME AND APOLOGIES**
- 2. MINUTES**
 - (a) Minute of the Previous Meeting of the Duchess Wood Local Nature Reserve Committee Held on Tuesday, 20 August 2019 (Pages 3 - 6)
- 3. DISCUSSION ON CURRENT CLOSURE OF THE WOOD**
 - (a) Duchess Woods Report - Response from Partners (Pages 7 - 12)
- 4. ARGYLL AND BUTE COUNCIL MAINTENANCE UPDATE**

Update by Tom Murphy, Amenity Services
- 5. FRIENDS OF DUCHESS WOODS ACTIVITY UPDATE**

Update by Friends of Duchess Woods
- 6. UPDATE ON WIAT FUNDING** (Pages 13 - 16)
- 7. ANY OTHER COMPETENT BUSINESS**
- 8. DATE OF NEXT MEETING**

DUCHESS WOOD LOCAL NATURE RESERVE COMMITTEE

Councillor Lorna Douglas (Chair)

Contact: Iona Campbell, Senior Committee Assistant; 01436 658801

**MINUTES of MEETING of DUCHESS WOOD LOCAL NATURE RESERVE COMMITTEE held
in the HELENSBURGH AND LOMOND CIVIC CENTRE
on TUESDAY, 20 AUGUST 2019**

Present: Councillor Lorna Douglas (Chair)

Attending: Stewart Campbell, Friends of Duchess Woods
Morag Bain, Friends of Duchess Woods
Andy Galloway, Local Democracy Reporter, Helensburgh Advertiser
Simon Stuart, Royal Scottish Forestry Society
Mhairi Gardiner, Development Officer, Argyll & Bute Council
Shona Barton, Area Committee Manager, Argyll & Bute Council
Ailsa Cunningham, Team Leader, Argyll & Bute Council
Marina Curran-Colthart, Biodiversity Officer, Argyll & Bute Council
Keith Robertson, Estate Manager, Lomond School

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from:-

Johann Urquhart, Principal Teacher of Lomond School
Martin Grafton, Secretary, Friends of Duchess Woods
Matt Offord, Chair, Friends of Duchess Woods
Sean McCay, Luss Estates

The Chair welcomed everyone to the meeting and introductions were made around the table.

2. MINUTE OF THE PREVIOUS MEETING OF DUCHESS WOOD LOCAL NATURE RESERVE HELD ON 30 APRIL 2019

The Minute of the previous meeting held on 30 April 2019 was approved as a correct record subject to the correction of spelling of Stewart Campbell's name throughout the minutes.

3. DISCUSSION ON CURRENT CLOSURE OF THE WOOD

A number of questions had been submitted by the Friends of Duchess Wood and these formed the basis of the discussion which took place on this item. These questions were as follows:-

- Why the DWLNRC hasn't been consulted and been given sight of the report
- Reason why the Council have shut the Wood and whether this was really necessary
- When remedial work is going to start/complete
- Ongoing access by members of the public to the wood if the wood is really deemed to be unsafe
- Role of the DWLNRC given that the Council have by-passed it in its decision making process

The Committee heard from Ailsa Cunningham who advised that the Council is in a position that we don't want to be in as the Wood is an asset to the town. After the survey was undertaken by TD Trees, the results of the survey were of surprise but the feedback from the survey was that there were a number of dangerous trees in the Wood and the recommendation from the report was that the Wood should be closed on the grounds of public safety. There was no alternative and the Wood will remain closed until such times as these trees are made safe. The survey highlighted dangerous trees and this work will be carried out by qualified contractors meaning that the Wood will be safer and fit for purpose again. The Council has made application for WIAT funding to carry out the necessary work, but any ad hoc work carried out could jeopardise the future funding. It was noted that a copy of the report has been submitted as part of the funding application. Notices have been put up in the Wood to advise of the closure, and if the public ignore these warnings then the Council is not accountable.

The Chair advised that the Committee had agreed for the survey to be undertaken at the meeting in January as part of the WIAT funding process. She highlighted her concerns over the lack of communication in regard to the closure and in terms of timelines for any reopening of the Wood. She noted that there are a number of activities which take place in the Wood and that it is used extensively by Lomond School and other groups. It was noted that if there had been the opportunity to meet to discuss the report this may have alleviated some of the current issues.

It was noted that the decision to close the Wood was taken by senior officers in Amenity Services following review of the report by the contractors.

Stewart Campbell advised that the Friends of Duchess Wood were aware that there are a number of trees which require work and that this had been relayed to the Council. He highlighted that since no one has been able to have sight of the report, there was no opportunity to provide feedback on the survey as to whether it was realistic and accurate. It was noted that the Friends of Duchess Wood were in disagreement that there couldn't have been consultation with the Committee prior to the closure decision being taken.

The Chair advised on correspondence from Luss Estates who were unable to attend the meeting but had expressed concern over the lack of consultation and communication, their expectation of being able to see a clear timeline, concerns that the responsibility for upholding access to the Wood is not being met and that in terms of the management agreement the full liability for personal injury with people accessing the woods lies with Argyll and Bute Council.

Simon Stuart advised that when the Council are given a report which says that the Wood is unsafe and has to be closed they would have no option but to act immediately.

Keith Robertson from Lomond School advised that there were a number of signs up and red tape put in place and questioned if the Wood was so unsafe how these had been put up. He asked if there could be the opportunity for suitably qualified personnel from the school to have access to the Wood. He noted that the School is currently faced with a legal and insurance conundrum as they cannot instruct employees to have access to the Wood. Currently there is no rugby or cross country being offered in the School and the forest schools programme cannot take place. Information is key and with co-operation there could be a suitable compromise agreed. At the moment the School is in breach of its lease with Luss Estates due to not being able to have access through the Wood.

In regard to the Terms of Reference it was noted that the Council can act without decision from the Committee if the matter relates to safety.

The Committee noted that the priority should be to get access made available for the School. All were in agreement that the way forward is to ensure that the Committee is kept up to date with all information.

Decision

The Committee agreed:-

1. That a request would be made on behalf of the Committee to the Council for a copy of the report from TD Trees to be made available and circulated;
2. That if the report is available then a meeting is arranged and attendees should include the Chair, Luss Estates, Friends of Duchess Wood and Lomond School, with an update on this meeting to be provided to the next meeting of the Committee; and
3. Once a decision is received in regard to the WIAT application that a timeline for work to be carried out is drafted and circulated to the Committee.

4. ARGYLL AND BUTE COUNCIL MAINTENANCE UPDATE

Ailsa Cunningham advised that once the remedial works are completed to make the woods safe that Amenity Services will undertake any other repairs as necessary. It was noted that it would be good to have an update on the bridge position for the next meeting and that the recent vandalism in the park will require work to repair.

Decision

The Committee noted the update provided and agreed that an update on the bridge would be provided at the next meeting.

(Ref: Verbal update by Amenity Services, Team Leader)

5. FRIENDS OF DUCHESS WOODS ACTIVITY UPDATE

The Committee considered a report which provided an update from Friends of Duchess Wood on their activities since the last meeting took place.

Stewart Campbell highlighted the award of £350 from the Waitrose Green Token Scheme, and advised that a decision was still to be made on how this funding would be utilised. Stewart also advised that he was still working to source footfall counters for the Wood, with Ailsa Cunningham advising on contact details for the Hermitage Park staff.

The report also referenced the recent difficulties with Persimmon Homes dumping spoil in the Wood. The Council's Biodiversity Officer, Marina Curran-Colthart was in attendance and provided an update on the current position. It was noted that Persimmon Homes have removed the spoil from the site and it had been agreed to leave the ground for the moment to see if it would regenerate. Marina advised that when the spoil had been removed the ground had been turned over with a number of bluebell bulbs being noted. In response to a question regarding possible community contribution as a result of this incident, Marina advised that Persimmon Homes were open to discussions around what

this could entail and advised the Friends of Duchess Woods to make contact with them to discuss.

Decision

The Committee agreed to endorse the contents of the submitted report.

(Ref: Report by Friends of Duchess Woods Secretary, Martin Grafton)

6. UPDATE ON WIAT FUNDING

Mhairi Gardiner, Development Officer gave a brief verbal update on the position with the current applications. As noted previously an application has been submitted to assist with the costs of the remedial works required in the Wood. Mhairi advised that the Council has also submitted an application for Sustainable Management of Forest Funding and that this was an annual payment of £1119.90 covering the period from 2010 to 2024. It was noted that funding awards were retrospective.

Decision

The Committee noted the update and that updates would be provided to future meetings.

(Ref: Verbal Update from Economic Development Officer)

7. ANY OTHER COMPETENT BUSINESS

Stewart Campbell advised of a request from Network Rail to put some of the tree cuttings from work around the West Highland Line across in the Duchess Wood. It was noted that the Council was happy with the proposed action.

Simon Stuart provide the Committee with a brief overview of the work carried out by the Royal Scottish Forestry Society. He advised of an ongoing project whereby they hoped to have a network of around 150 areas of wood across different areas to enable good practice to be shared around different types of woodland models. He noted that there were many different types of models with woodlands across the country. The Society would come to visit woods and have a discussion around the management arrangements and the type of woodland. It would be the intention to then revisit the woods after a period of 5 or 10 years to see how the management plans are working. The aim is to spread knowledge across Scotland.

It was agreed to invite Simon to a future meeting once the Wood has been reopened.

8. DATE OF NEXT MEETING

It was agreed that the next meeting of the DWLNRC would take place on 19th November 2019 at 10.30am within either the Lomond School or Helensburgh & Lomond Civic Centre.

Dear Pippa

It was agreed at the last Duchess Wood Local Nature Reserve Joint Committee in August that a sub group consisting of representatives of Luss Estates, Friends of Duchess Wood, Lomond School and myself, would meet to discuss the report by TD Trees as well as matters around the ongoing closure of the wood and the impact this is having with partners and the wider community.

The meeting took place at 10.30am on 25th September at the Lomond Arms Hotel. In attendance, apart from myself was, Stewart Campbell, Martin Grafton and David Lewin from FoDW, Keith Robertson – Estate Manager of Lomond School and Patrick Colquhoun – director of Luss Estates and Sean McCay Land Agent for Luss Estates.

Below are the main issues raised by Luss Estates and the FoDW. Lomond School have been unable to access the grounds for maintenance work all summer and are now unable to carry out full outdoor curricular activities (Luss Estates - points 7-8 below). Discussion around the possible opening of the woods in relation to the points recapped by Luss Estates (points 2-3) and FoDW (points 3-6) were discussed at length. Discussion focused around the fact that people in the community are still using the wood and that there is no signage indicating closure or risk/hazard.

There was also a lot of positive discussion in the report regarding the overall information we now have on the wood that will be valuable for future maintenance and management.

As Chair of the committee I ask that the severity of the risk/hazard be revisited in light of the points below so that the wood can be opened, and certain areas accessed asap.

Yours Sincerely



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Lorna Douglas

Chair of the DWCT

Luss Estates - point of view regarding closure of Duchess Wood

1. We are not entirely unsympathetic to the Council's position here. We undertake regular tree surveys and if we had found an area with a high level of access was unsafe we would have closed access off while remedial works were undertaken. We also recognise that the cost of dealing with that many defective trees and the Council's procurement rules mean that immediate action would not have been feasible – however we are very disappointed that over 3 months on, apart from the WIG grant there has been no action taken to resolve this.

2. FoDW's research suggests that the Council have been somewhat overzealous in their approach. The Council are ultimately responsible for the health and safety of users of the wood under the terms of the management agreement, so we recognise that they have to manage the risk appropriately. They do however also have a responsibility under the Land Reform (Scotland) Act 2003 to uphold access rights and they

need to balance these two interests, which is not being done at present – the latter seems to be being ignored completely.

3. Given that many members of the public are outright ignoring the closure of the woods, FoDW's suggestion of signage informing visitors of the risks, urging people not to use the woods at high risk times such as in high winds etc. sounds like a pragmatic solution.

4. That said, our view is that the Council still need to carry out the works identified in the tree survey at the earliest opportunity and certainly before the end of the management agreement next year. While the full closure of the wood may be disproportionate, the report has identified 97 hazardous trees that should not be left for longer than they have to be.

5. We have given consent to the Council's WIG application although this was held up by delays in the Council's legal department giving us assurances that we would be fully consulted on the terms of the WIG contract, which we will be bound by if it proceeds. We understand that this has been successful and look forward to receiving the contract to review in due course.

6. With regards to Lomond Schools' position – their lease of the playing fields grants them rights to use and access them. In our view Management Agreement does not take precedence over the lease and does not give the Council power to deny Lomond Schools use of their let ground. I have asked our solicitors to give an opinion on the matter.

7. Luss Estates' priorities are:

- Lomond Schools should have use of the ground that they rent from us
- That the closure of the woods to the general public should go on for no longer than is absolutely necessary
- That the hazardous trees should be dealt with by the Council at the earliest opportunity and certainly before the end of the management agreement.

FODW - point of view regarding closure of Duchess Wood and report by TD Trees

1. FODW recognises that there is a great deal of information in the hazard analysis section which will prove helpful now and in the future. As far as we can see the marking and identification of the trees is accurate and this is valuable data.

2. However we do not think that the report deals properly with the question of risk, nor do we believe that the substance of the report justifies the continuing closure of the Wood. The wood should be formally re-opened as soon as possible (see below).

3. FODW notes that the report quotes the Occupiers Liability (Scotland) Act 1960 and the HSW Act 1974 as the legal basis for their recommendations, but gives no detailed legal rationale for their recommendations. FODW notes that the Occupiers Liability (Scotland) Act 1960 allows access to areas of risk where the risk is understood by visitors to the premises. FODW has examined the guidance from the Health and Safety Executive, and the extensive guidance from the National Tree Safety Group (NTSG) (published by the Forestry Commission); none of this guidance is referenced in the TD Trees report, but we believe it should have been. The guidance states that *"Each year between 5 and 6 people in the UK are killed when trees or branches fall on them. Around 3 people are killed each year by trees in public spaces. Thus the risk of being struck and killed by a tree or branch falling is extremely low (in the order of one in 10 million for those trees in or adjacent to areas of high public use). However the low level of overall risk may not be perceived in this way by the public, particularly following an incident. The average risk is firmly in the "broadly acceptable" region of the tolerability of risk triangle published in HSE's "Reducing Risks Protecting People". However, "Reducing Risks, Protecting People" explicitly states that "broadly acceptable" is a general guide and*

not a definitive statement of what is reasonably practicable in law ... the law requires that where reasonably practicable measures are available, in individual cases, they should be taken." The extensive NTSG guidance emphasises that *"the evaluation of what is reasonable should be based upon a balance between benefit and risk. This evaluation can be undertaken only in a local context, since trees provide many different types of benefit in a range of different circumstances"*. It continues *"Safety is but one of the many goals to which we aspire; the mistake that is often made is to focus on safety as if it is the only goal"*. It is striking that given the importance of the local context that neither the Duchess Wood Local Nature Reserve Committee nor FODW were consulted during the preparation of the survey nor in the drafting of its conclusions, which ignores community knowledge and undermines the report's understanding of community concerns. As far as we can tell the Council's own occupational health and safety advisers were not consulted during the preparation or consideration of this report, and it would also be helpful to take their views into account.

4. The TD Trees report and therefore the recommendations are narrowly focused on hazard and appear to regard the wood as a "park". It is not a park, it is a natural woodland. The report recommends the removal of dead trees and deadwood, when it is well understood that the health of a woodland relies upon both standing and lying deadwood. Indeed one of the information boards in the wood produced as a result of the previous Forestry Commission grant over ten years ago emphasises the importance of deadwood in a living woodland. FODW is concerned that the recommendations in relation to some of the oldest trees in the wood will remove old and interesting trees from the wood when we should be trying to preserve and protect them.

5. The report and recommendations do not appear to take into account issues such as the wood's biodiversity and the "right to roam", nor in general the practicalities of attempting to "close" what is a natural woodland with many access points. The Council's attempts to close the wood have not been successful, mainly it seems because visitors apply common sense to the risk of access and have concluded that it is at a level they are happy to tolerate, particularly when they see the conditions which are tolerated in other public access areas.

6. Although the list of dangerous trees in the report is extensive, and FODW agrees that they should be managed properly, FODW is concerned that many trees are omitted from the report which FODW's own work suggests need to be dealt with. These include some obviously precarious trees near paths, large trees within a short distance (ie within the fall distance) of housing boundaries, and many sycamore and ash trees near the east and north paths which are multi stemmed and showing signs of rot in their bases. The original WIAT application (which has now been "parked" in order to deal with the trees identified in the report) was aimed at dealing with all unwanted/hazardous trees in a managed way over a staged period of years followed by their replacement by more suitable trees to return the wood to a more native mix in line with the Management Plan for the wood. FODW has also carried out a trial exercise which demonstrated that the cost of at least some of this work could be defrayed by the commercial value of the timber.

7. FODW believes that the recommendations from the TD Trees survey should be reconsidered in the light of the HSE and NTSG guidance, and the wood formally re-opened to the public as soon as a relatively small number of trees and branches have been dealt with (see para10 below). An extended warning notice should be posted at each of the main entrances and delivered to all neighbouring households saying "The wood is a natural area, with fallen trees, steep banks, open edges, ponds and burns, mud and the occasional midgie; bear this in mind, especially when walking with children, but use the wood to build an understanding of natural play. Please do not visit the wood when gales are forecast as trees may shed branches or fall. A recent survey has identified a number of dead trees and dead branches which will be managed systematically in future."

8. FODW understands that the revised WIAT application has now been processed and that a grant of over £11,000 has been approved to support the work recommended in the TD Trees report. This is unlikely to be sufficient funding to complete the recommended work. FODW believes that a prioritised approach is essential, so that the main problem trees can be dealt with quickly and the wood re-opened while the other trees are dealt with in the medium term. At the same time it is

essential that the earlier WIAT application is revised and resubmitted so that the more extensive work foreseen in the DW Management Plan can be planned. When tree work is done it is essential that the contract is managed by someone with experience in this kind of work, that it takes into account the need to offset costs by managing felled timber for sale, and that arrangements are made to deal with the brash produced by tree management operations. We regard it as important that FODW are explicitly involved in the planning of any woodland management work.

9. In summary we believe that a more pragmatic approach should be taken to management of risk, taking in to account guidance provided by HSE and NTSG, and that a phased approach should be taken with those trees contributing the highest risk dealt with first so that access to the wood may be restored quickly.

10. In para 7 above we refer to a small number of trees and branches which needed to be dealt with before the wood is re-opened, and this is our suggested list, based on FODW experience. Most of these are in the TD Trees report, and most are trees which FODW has already raised concerns about, that is, from the common sense point of view of an informed visitor.

T4 – large beech with extensive damage, and crack in trunk – do not fell completely but manage to conserve as much as possible of the tree.

T5 – large beech - remove hanging failed branch and manage other deadwood, but do not fell completely.

T14 – dead sycamore, but do not fell completely – reduce to approx. 3m in height and remove lower branches.

T32, T33, T36 – goat willows – all need multi stemmed felling.

T55 another willow – fell, and close to it is another substantial dead tree close to path which could be trimmed of branches and reduced in height at the same time.

Unmarked rowan near bench at corner of ravine – fell.

T44 – can't see marker but presume this is the birch which has fallen over to about 30' (with another part tree lying beside).

T59 – goat willow needs felled.

T69, T73 – goat willows adjacent to garden of 22 Duchess Park – a variety of trees and branches have fallen into this garden in the last ten years, so a thorough tidy up of the boundaries would be helpful.

T84, T88 – and other smaller trees overhanging garages – council committed to this work some time ago but only a few were dealt with. FODW paid to have one dealt with.

T81 – dead sycamore in car park – fell

T96 – dead pine, on own – fell. Another dead pine at T95 is held up at present by another tree – could wait or could be done at same time. (couldn't identify a number of marked trees in this area).

Trees T5, T32, T44, T59, T81, T95 and T96 are graded 1 in the TD Trees report. The others are graded 2, or not identified.

Kind Regards

Lorna Douglas
Councillor Helensburgh Central
Tel: 07824607318

Hi Lorna

Thank you for your email.

I've spoken to Tom Murphy about revisiting the severity of the hazards and risks at Duchess Wood. Tom will work with our Health and Safety Team to consider if access could be allowed on a managed basis, either to certain areas of the wood or during appropriate weather conditions.

Tom is also working to arrange for work to be undertaken as soon as possible now that funding has been granted. We've taken note of the desire to allow access for Lomond School and work that allows this to happen will be prioritised.

The more detailed comments on the report and the work to be undertaken will be considered in conjunction with our team and the contractor who will be involved. We'll take on board as much of this as we can as we move forward.

Tom has offered to send appropriate member(s) of his team to the next meeting of the FODW to provide an update. If you think this would be helpful, I'd ask Shona to get in touch with Tom directly to agree their attendance.

I've also copied in Lorna, from the Economic Development team so that the actions in terms of the WIG funding can be picked up.

I hope this provides some reassurance to the group that we will do our best to respond positively to the comments that they have provided.

Best regards
Pippa

Pippa Milne
Executive Director

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ARGYLL AND BUTE COUNCIL

**Duchess Wood Local Nature Reserve
Committee**

**DEVELOPMENT AND ECONOMIC
GROWTH**

19th November 2019

Duchess Wood WIAT Application Update

1.0 INTRODUCTION

- 1.1 The purpose of this report is to provide an update to members on the status of two funding applications made to Scottish Forestry: the Woodlands In and Around Town – Woodland Improvement Grant and Woodlands In and Around Town – Sustainable Management of Forests

2.0 RECOMMENDATIONS

- 2.1 It is recommended that members:
- a) agree to the withdrawal of the Woodlands In and Around Town – Sustainable Management of Forests application; and
 - b) note the award of £11,100 of Woodland Improvement Grant funding and the content of this report.

3.0 DETAIL

- 3.1 Two funding applications have been submitted to Scottish Forestry: the Woodlands In and Around Town – Woodland Improvement Grant and Woodlands In and Around Town – Sustainable Management of Forests.
- 3.2 An application was considered by Scottish Forestry under the Woodlands In and Around Town – Woodland Improvement Grant stream on 25-Sept-2019 in request for funding to assist with remedial tree works.
- 3.3 A notice of success was received on 8-Oct-2019 offering £11,100 of funding support towards remedial tree works. Appendix 1 illustrates the breakdown of this funding. Subsequently, a contract has been received which is currently under review by Legal Services. Works cannot start until the contract is signed and returned and Scottish Forestry advise that work can commence.

3.4 A further application under the Woodlands In and Around Town – Sustainable Management of Forests funding stream was submitted in May 2019. This application is for annual funding for routine maintenance works. Due to the legal complexities arising from the forthcoming expiry of the Management Agreement, it is recommended this application is now withdrawn. If the landowner wishes to access this funding at a later date, a new application can be submitted.

4.0 CONCLUSION

4.1 Two funding applications have been submitted to Scottish Forestry. The Woodlands In and Around Town – Woodland Improvement Grant has been successful with a contribution secured to assist with remedial trees works. The Woodlands In and Around Town – Sustainable Management of Forests provides an annual payment towards routine maintenance works. It is recommended this application is withdrawn.

5.0 IMPLICATIONS

5.1 Policy Duchess Wood is designated as a Local Nature Reserve in the Local Development Plan.

5.2 Financial £11,100 has been awarded by Scottish Forestry for remedial tree works, however this is unlikely to cover the full cost of required works.

5.3 Legal Note the award of the Woodland Improvement Grant is subject to agreement by Luss Estates

5.4 HR None

5.5 Fairer Scotland Duty: None

5.5.1 Equalities (protected characteristics)

5.5.2 Socio-economic Duty

5.5.3 Islands

5.6 Risk Note the award of the Woodland Improvement Grant is subject to agreement by Luss Estates.

5.7 Customer Service Working with local people.

**Executive Director with responsibility for Development and Economic Growth
– Pippa Milne**

Policy Lead - Councillor Alastair Redman

15th October 2019

For further information contact:

Lorna Pearce, Senior Development Officer
Transformation Projects & Regeneration Team
Tel: 01700 501 374

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