

EAST AYRSHIRE COUNCIL

CABINET – 22 OCTOBER 2008

EXCAMBION OF LAND ADJACENT TO DRONGAN CEMETERY

Report by Executive Head of Finance and Asset Management and Executive Director of Neighbourhood Services

1. PURPOSE OF THE REPORT

- 1.1** To declare surplus to requirements land extending to 2622 square metres or thereby as shown hatched on the attached plan, authorise the disposal of same to Kraigshield Homes Ltd and to authorise the acquisition of land extending to 1608 square metres or thereby shown crosshatched on the attached plan from Kraigshield Homes Ltd.

2. BACKGROUND

- 2.1** The County Council of Ayr acquired an area of ground extending to 2.624 acres of ground at Hannahston Farm, Drongan in 1961 for the formation of a cemetery. The County Council enclosed part of the ground acquired, being the current occupational extent of the existing cemetery, with the remainder of the ground remaining unenclosed.
- 2.2** Kraigshield Homes Limited purchased an area of ground extending to 22.4 acres being the residue of the farm and lands of Hannahston in 1986. The Disposition in favour of Kraigshield Homes Limited erroneously included the unenclosed portion of the Council's ground.
- 2.3** Kraigshield Homes Limited maintain that they have possessed the disputed ground, which extends to an area of 3925 square metres or thereby (hatched and dotted areas on the attached plan) for a period in excess of ten years openly, peaceably and without judicial interruption and have established a valid prescriptive title to the disputed land. That position is not accepted by the Council however, should the parties fail to reach agreement on ownership of the disputed land, the matter would fall to be determined by court action. Having evaluated the Council's position in relation to potential court action, it is considered that a negotiated position be reached between the parties.
- 2.4** The disputed area of ground is zoned for residential development in the current Local Plan.

3. PRESENT POSITION

- 3.1** Negotiations have been undertaken by the Executive Head of Finance and Asset Management on behalf of the Council and Kraigshield Homes Limited and an agreement has been reached that is acceptable to both parties.

3.2 The provisional agreement reached is that the Council disposes the area of ground extending to 2622 square metres or thereby (hatched on the attached plan) to Kraigshield Homes Ltd and acquires the area of ground extending to 1608 square metres or thereby (crosshatched on the attached plan) from Kraigshield Homes Limited. Additionally, Kraigshield Homes Limited has agreed to relinquish any interest they may have in the area of ground extending to 1303 square metres or thereby (shown dotted on the attached plan), being the remainder of the disputed area.

3.3 The Local Members have been consulted and no adverse comments have been received.

4. FINANCIAL IMPLICATIONS

4.1 Should matters proceed to court action and the case is determined in favour of Kraigshield Homes Limited, the Council would require to acquire ground at current residential development value to provide sufficient capacity to extend the existing cemetery,

4.2 Irrespective of the outcome of court action, the Council would incur costs in defending their position and may, additionally, be subject to an award of expenses in respect of the pursuer's costs.

4.3 The proposed negotiated position would ensure that the Council own sufficient ground suitable for a cemetery extension, at no capital cost. There would be no financial transfer in this transaction.

4.4 Given the foregoing, the negotiated position represents the Best Value option to the Council.

5. LEGAL IMPLICATIONS

5.1 The Solicitor to the Council has given consideration to the basis of the Excambion in accordance with the Scheme of Delegation, and has recommended that the transaction proceed, on the terms and conditions detailed in section 8 of this report.

6. POLICY AND COMMUNITY PLANNING IMPLICATIONS

6.1 The proposed transaction will enable the Council to comply with its statutory obligations in terms of the Burial Grounds (Scotland) Act 1855.

6.2 There are no Community Planning implications arising directly from this report.

7. ASSET MANAGEMENT IMPLICATIONS

7.1 The proposed transaction meets the Council's policy objectives in respect of Asset Management.

8. PROPOSED TERMS AND CONDITIONS OF THE CONTRACT OF EXCAMBION

8.1 As outlined in Section 4.3 above there shall be no financial transfer involved in this transaction.

- 8.2** The foregoing transaction is subject to Kraigshield Homes Limited relinquishing any interest they may have in an area of ground extending to 1303 square metres or thereby shown dotted on the plan.
- 8.3** The date of entry to be agreed between the parties.
- 8.4** Kraigshield Homes Limited shall be responsible for the erection of the boundary fencing to a mutually agreed specification. Thereafter, responsibility for maintenance will be shared equally between the parties.
- 8.5** Each party shall be responsible for their own Legal fees and outlays in relation to the transaction.
- 8.6** The Solicitor to the Council shall include any other terms and conditions as deemed necessary in order to protect the interests of East Ayrshire Council.

9. RECOMMENDATION

9.1 It is recommended that Cabinet:-

- (i) Declare surplus to requirements land extending to 2622 square metres or thereby as shown hatched on the attached plan and authorise the disposal of same to Kraigshield Homes Ltd
- (ii) Authorise the acquisition of land extending to 1608 square metres or thereby shown crosshatched on the attached plan from Kraigshield Homes Ltd.
- (iii) Authorise the Solicitor to the Council to conclude the transaction.

Alex McPhee
Executive Head of Finance
and Asset Management

William Stafford
Director of Neighbourhood Services

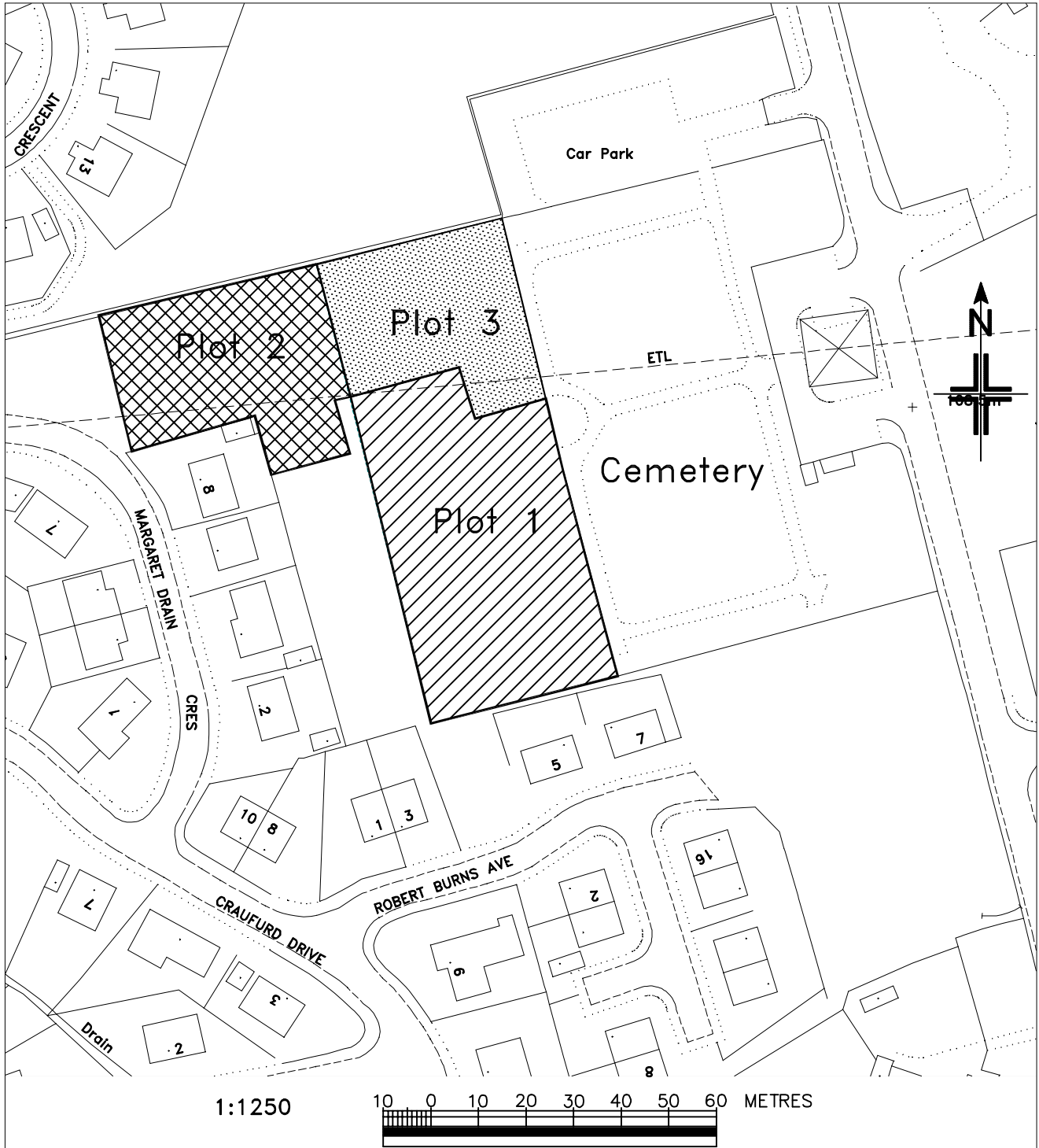
13 October 2008

BACKGROUND PAPERS – NIL

For further information, please contact - Sam McVie, Estates Management on 01563 576099 or Anna Gallagher, Legal Services on 01563 576170

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CABINET REPORT PLAN



- PLOT 1 – AREA HATCHED BLACK (2622SQ.M.)
- PLOT 2 – AREA CROSSHATCHED BLACK (1608 SQ.M.)
- PLOT 3 – AREA SHOWN DOTTED BLACK (1303 SQ.M.)

TITLE

EXCAMBION OF GROUND
(PART OF DRONGAN CEMETERY)
MARGARET DRAIN CRESCENT
DRONGAN



East Ayrshire
Council

LAND SURVEY

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