

EAST AYRSHIRE COUNCIL

COUNCIL – 12 MAY 2011

LICENSING OF STREET TRADERS IN THE VICINITY OF EAST AYRSHIRE SCHOOLS

Report by the Executive Director of Finance and Corporate Support

1. PURPOSE OF REPORT

- 1.1 To invite Council to agree the terms of a proposed resolution for public consultation which will take effect on a date nine months after its formal adoption and which will seek to create an exclusion zone preventing street traders operating within a set distance of the centre of all East Ayrshire Schools.

2. BACKGROUND

- 2.1 East Ayrshire Council is committed to promoting the benefits of healthy eating and healthy lifestyles for all children and young people within its schools.
- 2.2 The Hungry for Success Initiative, introduced to schools by the Scottish Government in 2004, aimed to improve the nutritional content and balance of food offered in schools and also to influence the eating habits of children and improve their understanding of the benefits of a healthy balanced diet. Building on this, the Schools (Health Promotion and Nutrition)(Scotland) Act 2007 was fully introduced to all East Ayrshire schools during 2008 and 2009 in order to ensure that schools continued to promote healthy eating. This Act required the Council to comply with nutritional requirements set out by the Scottish Ministers and promote school meals and enhance school meal uptake, both paid and free, protecting at the same time the identity of pupils eligible for free school meals, and the ability to provide pupils with healthy snacks and drinks, either at cost or free of charge. In addition, the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008 placed health promotion at the heart of schools' activities and ensured that food and drink served in schools met specific nutritional requirements.
- 2.3 A great deal of work has already taken place in East Ayrshire to make school food more appealing and tasty to children. Improving eating habits requires a supportive environment and a combined effort from everyone involved. East Ayrshire's school meal service has made significant changes over the past five years. Organic and local suppliers are used to buy food for use in primary schools offering innovative menu options. In secondary schools, the nutritional and food standards don't allow confectionary, chocolate and fizzy drinks thus changing the focus to healthier fruit, home baking and the introduction of a simplified range with water, milk and fruit juice based drinks.

- 2.4 However, a significant challenge to the promotion of healthy eating within schools is competition from out with the school environment, offering young people less healthy alternatives to school meals.
- 2.5 The Schools (Health Promotion and Nutrition)(Scotland) Act 2007 confined its scope to what happens on school premises and did not pursue the possibility of controlling the sale of less healthy food as an alternative to the school lunch menu by the introduction of a specific prohibition on the sale of such foods outside school premises. Instead it was recommended that Councils use existing licensing powers to deal with the issue.
- 2.6 One of the ways that the Council can use its existing licensing powers is in the regulation of street traders who operate from burger and ice-cream vans or stalls in close proximity to school premises before, during and after the school day in any academic year in terms of the Civic Government (Scotland) Act 1982 by imposing an additional condition on a street traders' licence that is both reasonable and proportionate.

3. POLICIES ADOPTED BY OTHER COUNCILS

- 3.1 The use of Civic Government licensing controls have been considered by other Council's who have introduced policies as follows:

Inverclyde

Street Traders are not allowed to trade within 500metres of any school premises at any time when the premises are open for use as an educational establishment.

Renfrewshire Council

Street Traders are not allowed to trade within 500 metres of the entrance to any school at any time between 8.00 a.m. to 9.00 a.m., 12 noon to 2.00 p.m. and from 3.00 p.m. to 5.00 p.m. Mondays to Fridays inclusive during the school term.

East Renfrewshire Council

Street Traders are not allowed to trade within a 500 metre exclusion zone around educational establishments during term time between the hours of 12 noon to 2.00p.m. and 3.00p.m. to 5.00p.m.

West Dunbartonshire Council

A presumption against granting a new Street Traders Licence for mobile food traders trading within 250 metres of a school but only where the business operates within school hours and is seen to be targeting school pupils.

Stirling Council

Street Traders are not allowed to trade within 800 metres of any school between 8.00 a.m. and 5.00 p.m. on any school day if in the opinion of an authorised officer they propose to sell confectionery, crisps, carbonated drinks or any other similar food stuffs or drinks which would not be in the best nutritional interests of school children.

North Ayrshire Council

Street Traders are prevented from trading within 50 metres of the gates of any school and have a limit of 20 minutes serving time at any particular location. The exceptions to this are 2 Council owned vans from the Irvine Royal Academy Catering Service which promote healthy eating and offer an alternative to school canteens

4. STREET TRADERS' LICENCES

4.1 There are currently 110 Street Traders' (not including employees) who are due to have their licences renewed over the next 3 years. One additional Street Trader has a temporary licence and has submitted a full licence application which is currently pending. 8 of these licenses are for burger vans/stalls, 2 are for ice cream vans and 1 is for a mobile shop, all of which are currently situated within close proximity to 7 of the 9 secondary schools within East Ayrshire. However, no street traders' currently operate near to a primary school.

4.2 All Street Traders' Licenses currently have a condition that the trader does not engage in street trading within 50 metres of any establishment or premises which sells or offers for sale the same or similar goods or articles such as food. In this context establishments or premises would include a school. In view of this, analysis was carried out on 19 and 20 April 2011 to establish the location of the 11 street traders operating within a 250 and 250-500 metre radius from the centre of each secondary school. This analysis is set out on the plans attached as appendices 1 to 9 and can be summarised in the following manner.

School	Street Trader within 250 metres	Street Trader within 250-500 metres
Auchinleck Academy	None	None
Cumnock Academy	1 Burger Stall	None
Doon Academy	None	None

Grange Academy	2 Burger Vans 1 Ice-cream van	None
James Hamilton Academy	1 Mobile Shop* 1 Burger & Chip Van**	None
Kilmarnock Academy	1 Burger Van	None
Loudon Academy	None	1 Burger van
Stewarton Academy	1 Burger Stall 1 Ice-cream van	None
St. Joseph's Academy	1 Burger Van	1 Mobile shop* 1 Burger & Chip van**

* and ** denotes the same street trader

5. PROPOSED RESOLUTION

- 5.1 While the focus of the analysis at paragraphs 4.1 and 4.2 above has been on the activities of street traders' outside secondary schools it is suggested that the Council propose a resolution for public consultation that will extend the exclusion zone around all East Ayrshire schools thus preventing any opportunistic trading within a set distance of any school.
- 5.2 The Council has an obligation to consider the overall welfare of its young people. Any prohibition would support a move away from food of limited nutritional value and encourage a healthy diet for them in their early and formative years. The agreement of the Council to propose a resolution for public consultation would send a clear message to the communities that it serves that the Council is concerned and willing to engage in an issue to support healthier lifestyles.
- 5.3 A prohibition on street traders operating within a set distance of any school premises would improve the visual amenity at schools and could reduce the instances of littering and the likelihood of anti-social behaviour. It could also reduce the number of parked vehicles outside schools and reduce the danger of road accidents and improve road safety for pupils. Notwithstanding this, any exclusion zone could also result in pupils travelling further from school to purchase food from these traders given that they could seek to operate just outwith the exclusion zone in residential or other areas. Further, the proposed resolution would not prevent fixed retail or food outlets from selling similar food

within that zone resulting in a direct economic impact on those street traders who rely on trade from pupils and would see any resolution as an infringement of that right to trade.

- 5.4** In addition, pupils and those caring for them may feel that they are entitled to have a choice or an unalienable right to decide where and what they eat. And that any prohibition may be an infringement on those rights.
- 5.5** However, in order to minimise the impact that the proposed resolution will have it is recommended that the resolution will not come into force until the expiry of a nine month period following its adoption and even then, it would not affect current licences for the remainder of their 3 year term but would instead come into effect on the grant of a new licence or renewal of an existing licence.
- 5.6** As a consequence, having taken account of the above issues it is considered reasonable and proportionate that the Council agree to a proposed resolution for public consultation in the following terms.

“The Council proposes to resolve that on a date nine months after the formal adoption of the resolution it will create an exclusion zone preventing street traders operating within a distance of 250 metres from the centre of all East Ayrshire Council Schools during term time between 8.00a.m. and 5.00p.m. on any school day.”

- 5.7** This will ensure that the policies promoted by the Scottish Government and pursued by the Council as Education Authority as stated in Section 2 of this Report continue to be implemented.

6. FINANCIAL IMPLICATIONS

- 6.1** There are no financial implications arising directly from this report.

7 LEGAL IMPLICATIONS

- 7.1** The proposed resolution is being advanced in terms of Section 9 of the Civic Government (Scotland) Act 1982. It will require to be the subject of a 28 day period of public consultation before consideration is given to the adoption of a formal resolution by the Council. In the event that the resolution is adopted the Civic Government Licensing Panel will be asked to impose a suitable condition within a licence for a Street Trader on either renewal or fresh grant of a licence at any time 9 months after the adoption of the resolution.
- 7.2** Further, the proposed resolution requires to balance the action taken by the Council to implement policies promoted by the Scottish Government as stated in Section 2 of this Report against the rights of Street Traders' who may rely upon trade from school pupils on the one hand and pupils and those caring for them who may feel that they have an unalienable right to decide where and what they eat. In this context, it is considered that the approach adopted in

paragraphs 5.5, 5.6 and 5.7 above is reasonable and proportionate and will minimise any potential challenge.

8. COMMUNITY PLANNING IMPLICATIONS

- 8.1 In terms of the Community Plan, the Council is committed to the principles of improving the health and well-being of the people of East Ayrshire by helping people of all ages make healthy lifestyle choices. The proposals contained within this report are therefore fully in accordance with the Community Plan.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are risk management implications arising from this report. Any exclusion zone could result in pupils travelling further from school to purchase food from street traders given that they could seek to operate just outwith the exclusion zone in residential or other areas. This could result in an increase in road accidents and road safety concerns for pupils as well as an increase in instances of littering and anti-social behaviour within residential or other areas. However by limiting the proposed exclusion zone to 250 metres such risks can be minimised.

10. EQUALITY IMPACT ASSESSMENT IMPLICATIONS

- 10.1 An Equality Impact Assessment is not required for Council to consider the terms of the proposed resolution for public consultation. However, prior to the formal adoption of the resolution an Equality Impact Assessment will be carried out.

11. RECOMMENDATIONS

- 11.1 It is recommended that Council:-

- (i) Agree the terms of the proposed resolution as stated in paragraph 5.6 above;
- (ii) authorise the Executive Director of Finance and Corporate Support to engage in a public consultation on the terms of the proposed resolution;
- (iii) remit to the Executive Director of Finance and Corporate Support to undertake the necessary statutory public notification and consultation in terms of Section 9(6) of the Civic Government (Scotland) Act 1982; and
- (iv) otherwise note the contents of this report.

Alex McPhee
Executive Director of Finance and Corporate Support

27th April 2011
DM/CY

LIST OF BACKGROUND PAPERS

Nil

Any person wishing further information on this report should telephone David Mitchell, Head of Legal, Procurement and Regulatory Services on telephone number 01563 576161 or e-mail david.mitchell@east-ayrshire.gov.uk

Implementation Officer: David Mitchell, Head of Legal, Procurement and Regulatory Services



- Key:
- Within 250m zone
 - None
- Within 500m zone
(Filled rolls, crisps, confectionary, soft drinks + oriental style cuisine)
- (C) Garage Shop, Mauchline Road
 - (D) Corner Shop, Sorn Road
 - (F) Convenience Store, Kebab Shop, GPD Shop, Main St/ Well Road
 - (F) Co-Op Convenience Shop & Chinese Take Away, Church Street, Well Road
 - (G) Auchinleck Indoor Bowls, Well Road
 - (H) Chinese takeaway, Well Road

Rev.	Date	Revisions	Check Date	Appv. Date

EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
John Bryson BSc CEng MICE
 Design Office :
Greenholm St., Kilmarnock, KA1 4DJ
 Title :
Auchinleck Academy

Scale : 1:2500 @ A1 Date : March 2011
 Prepared By : M.M Checked By :
 Traced By : ACAD Approved By :
 Drawing No :

DRAWING STATUS	
Preliminary	Contract
Tender	Record

Rev.	File No :





- Key:
- Within 250m potential exclusion zone
 - There are no longer burger vans servicing Cumnock Academy
 - (A) Avr Road Hospital Cafe, Hot & cold food
 - (B) Tanyard Inn hot & cold snacks crisps/ confectionary & soft drinks
 - Within 500m potential exclusion zone
 - 1 Lugan Street
 - Cafe
 - Kebab shop
 - (D) The Square Kebab shop & Cafe
 - (E) Townerd Street Coffee shop
 - (F) Lugan Street Kebab shop
 - Chinese carry out
 - (G) Princt
 - Bakers and coffee shops
 - (H) Heath Rice
 - Min store crisps/ confectionary etc
 - (I) Avr Road Indian restaurants carry out
 - Cafe

Rev.	Date	Revisions	Check Date	Appv. Date

EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
 John Bryson BSc CEng MICE
 Design office :
 Greenholm St., Kilmarnock, KA1 4DJ
 Title :
CumnockAcademy

Scale : 1:2500 @ A1 Date : March 2009
 Prepared By : M.M Checked By :
 Traced By : ACAID Approved By :
 Drawing No :
 Rev. L
 File No :
 DRAWING STATUS
 Approved
 In Progress
 Not Started

East Ayrshire Council
 Drawing No : 812/09 (A1)



Key:

- Within 250m potential exclusion zone
- (A) Ayr Road garage shop and burger bar, hot & cold snacks confectionery, soft drinks
- (B) Main Street Bakers Cafe, hot & cold snacks and drinks, hot market confectionery, crisps, soft drinks
- (C) High Main Street Finesse cafe, hot & cold snacks and drinks, crisps, soft drinks
- Hot market confectionery/ soft drinks & crisps
- Free school dinners
- No burger stalls etc as on reliably informed planning application, majority of pupils qualify for free school dinners
- Within 500m potential exclusion zone
- Nil

Rev. No.	Date	Revisions	Check Date	Appv. Date

EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
 John Bryson BSc CEng MICE
 Design Office :
 Greenholm St., Kilmarnock, KA1 4DJ
 Title :
Doon Academy

Scale : 1:2500 @ A1 Date : March 2009
 Prepared By : M.M Checked By :
 Traced By : ACAD Approved By :
 Drawing No :

DRAWING STATUS	
Preliminary	<input type="checkbox"/>
Contract	<input type="checkbox"/>
Record	<input type="checkbox"/>

Rev. L
 File No :
 Drawing No :
East Ayrshire Council
 Drawing No : 812/09 (A1)



Key:

Within 250m potential exclusion zone

(A) Beech Ave
Burger stall EAST477 W Kelly hot filled rolls

(B) Beech Ave
Ice cream van EAST365 D Kelly ice cream/confectionary/crisps& drinks

(C) Portland Road
Burger van EAST 445 C Connell Hot filled rolls (burgers)

(E) Irvine Road
Garage shop hot & cold food + confectionary/ soft drinks

(J) Stevenson Street
Mini store confectionary/ soft drinks hot & cold filled rolls

Within 500m potential exclusion zone

(F) Inkernan Place
Burger stall EAST 506 J Mc Whirter hot filled rolls (burgers)

(G) Bonnyton Road
Cafe fish and chips etc

(H) Bonnyton Road
Mini market crisps/ confectionary and soft drinks etc

(K) South Hamilton Street
burger stall EAST 506 J Mc Whirter

Note:

(F) & (K) both on licence of Mc Whirter who only has burger stall, South Hamilton Street is mainly for Football matches at Rugby park

Morrisons supermarket is well used by Grange Academy pupils at lunchtime even outwith 500m zone


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EAST AYRSHIRE COUNCIL
ROADS DIVISION
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 Title :
Grange Academy

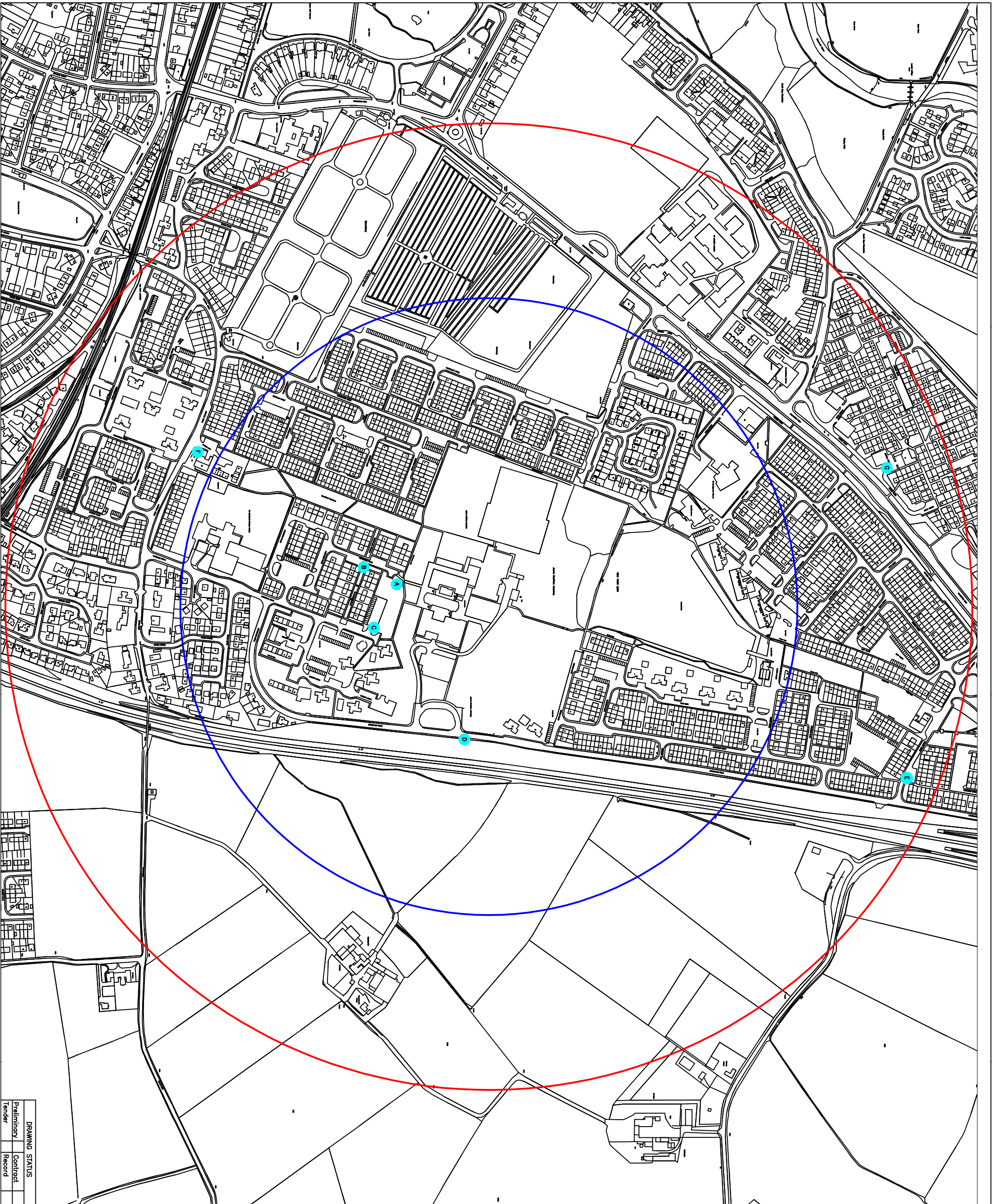
Scale : 1:2500 @ A1 Date : March 2009
 Prepared By : M.M Checked By :
 Traced By : ACAD Approved By :
 Drawing No :

DRAWING STATUS:	
Preliminary	Contract
Final	Record

Rev. :
 File No :



East Ayrshire
COUNCIL



- Key:
- Within 250m potential exclusion zone
 - (A) Mobile Shop EA/ST 205 James Ross
 - (B) Cold rolls/confectionary/crisps & drinks
 - (C) Ice cream van EA/ST 452 Jacqueline Longrigg (Ice cream/crisps/confectionary & drinks)
 - (D) Burger van (Chevin the fat) EA/ST 421 Liz Hastings Burgers etc
 - (E) Burger stall EA/ST421 Liz Hastings Burgers etc (fastings normally users own site)
 - Within 500m potential exclusion zone
 - (F) Lindsay Drive convergence store cold snacks/confectionary, crisps& soft drinks
 - (G) Macphail Drive Mini Market as above
 - (H) Russell Court Mini Market as above

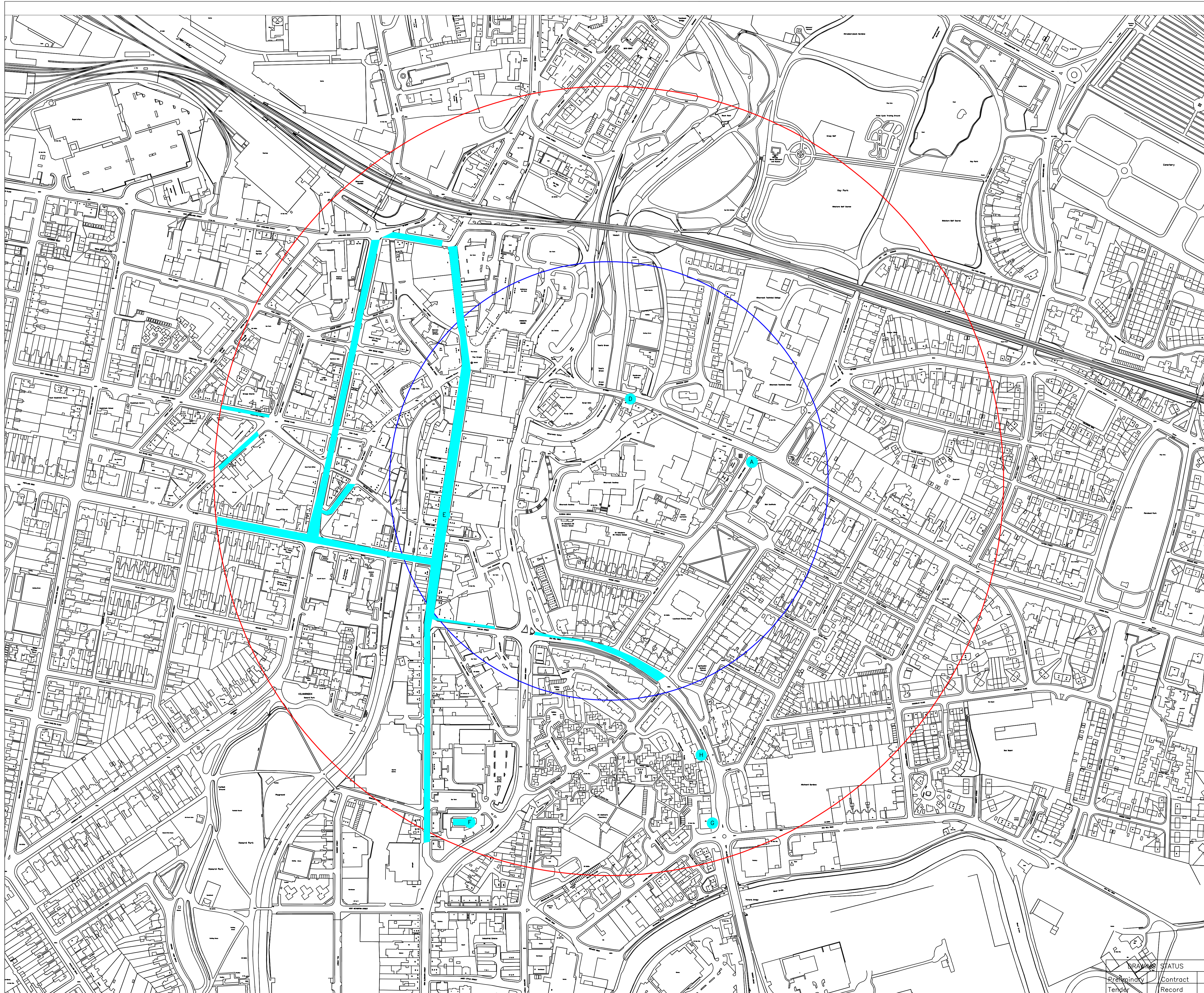
Rev. No.	Date	Revisions	Check Date	Appv. Date

EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
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 Design office :
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 Title :
James Hamilton Academy

Scale : 1:2500 @ A1 Date : March 2009
 Prepared By : M.M Checked By :
 Traced By : ACAID Approved By :
 Drawing No :

DRAWING STATUS	Rev. 1	Rev. 2	Rev. 3
Preliminary			
Contract			
Record			

East Ayrshire Council



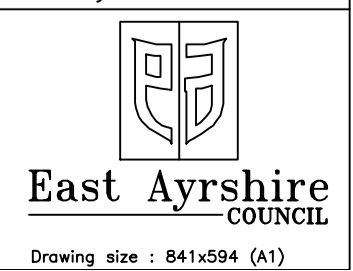
- Key:
- Within 250m zone
 - (A) Burger stall, Dick Road
 - Within 500m zone
 - (B) Rollshop, London Road
 - (E) Town centre area, numerous food outlets
 - (F) McDonalds
 - (G) Roll Shop+Pizza+FishnChip Shop, Wellbeck Street
 - (H) Convenience Store Loanhead St/ Old Mill Road

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EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
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 Title :
Kilmarnock Academy

Scale : 1:2500 @ A1 Date : March 2011
 Prepared By : M.M Checked By :
 Traced By : ACAD Approved By :
 Drawing No :

Rev.	File No	STATUS



Drawing size : 841x594 (A1)




- Key:
- Within 250m potential exclusion zone
 - Nil
 - Within 500m potential exclusion zone
 - (A) burger stall EA/ST 461 Steven Kelly
 - (B) Café in Co-op supermarket Hot/cold Food /snacks drinks
 - (C) Garage at Retail park per above Confectionary/crisps & soft drinks

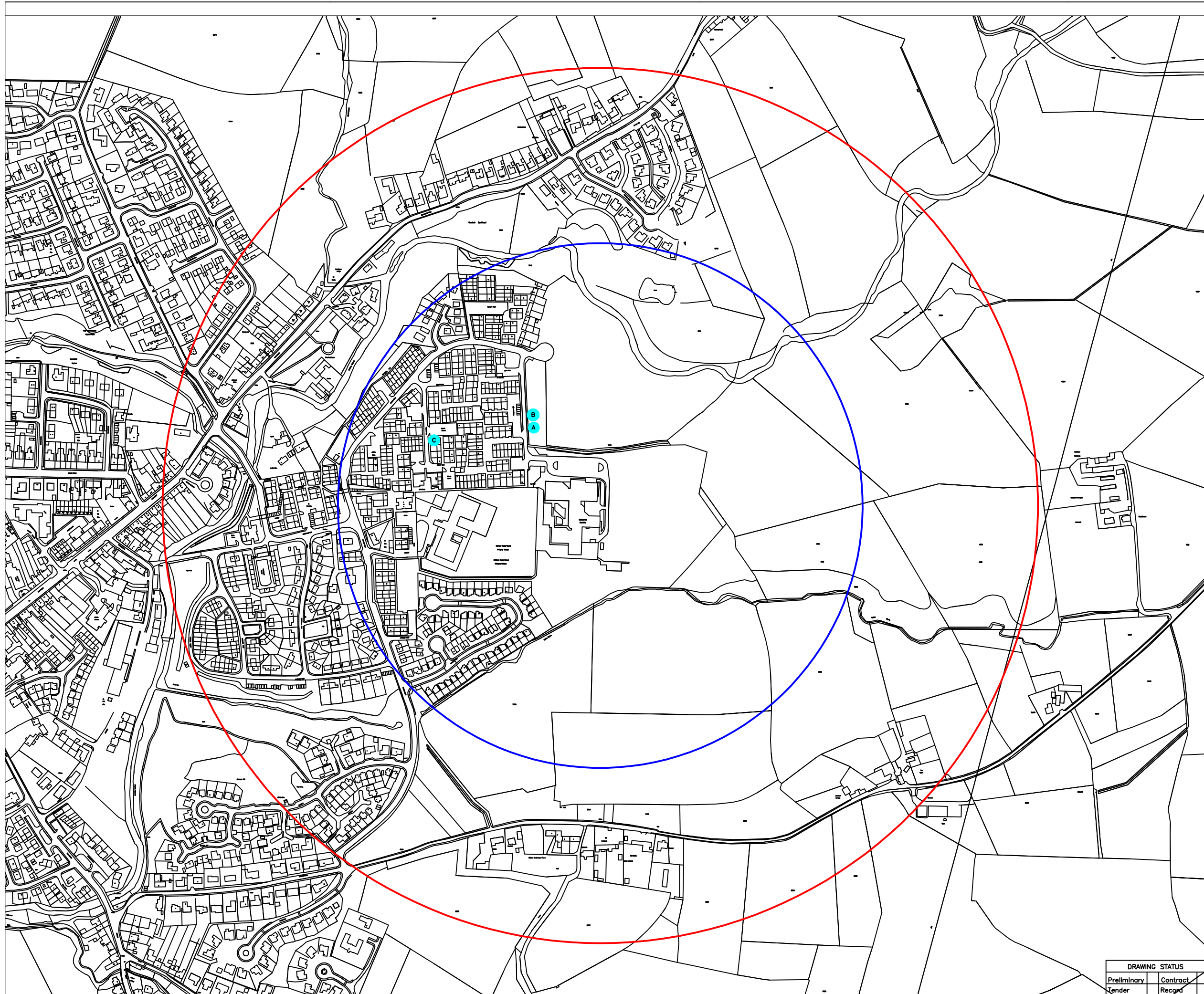
Rev.	Date	Revisions	Check Date	Appv. Date

EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
John Bryson BSc CEng MICE
 Design Office :
Greenholm St., Kilmarnock, KA1 4DJ
 Title :
Loudon Academy

Scale : 1:2500 @ A1 Date : March 2009
 Prepared By : M.M Checked By :
 Traced By : ACAD Approved By :
 Drawing No :

DRAWING STATUS	
Preliminary	Contract
Tender	Record

Rev. Date Appv. Date
 File No :




Key:

Within 250m potential exclusion zone

(A) Burger Stall EA/ST 174 Isabel Woods
Hot & Cold Food/ crisps/ confectionary & soft drinks.

(B) Ice Cream Van EA/ST 476 Archie Anderson
Ice cream/crisps/confectionary & soft drinks

(C) Mini supermarket at Albert Place Stewarton all Food products.

Within 500m potential exclusion zone

Nil

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EAST AYRSHIRE COUNCIL
ROADS DIVISION
 Head of Roads and Transportation :
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 Design Office :
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 Title :
Stewarton Academy

Scale : 1:2500 @ A1 Date : March 2009
 Prepared By : M.M Checked By :
 Traced By : ACAD Approved By :
 Drawing No :

DRAWING STATUS	
Preliminary	Contract
Tender	Record

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 File No :



