

EAST AYRSHIRE COUNCIL

COMMUNITY SERVICES COMMITTEE: 5TH FEBRUARY 2003

PROPOSED NEW RIGHTS OF WAY

Report by the Head of Administrative & Legal Services / Solicitor to the Council

1. PURPOSE OF REPORT

- 1.1 To advise Committee of the results of the public consultation exercise undertaken in respect of the routes aftermentioned and have Committee determine whether the routes be added to the Council's rights of way register.

2. BACKGROUND

- 2.1 As a result of enquiries from members of the public, local and national groups, a public consultation exercise has been carried out to ascertain the extent of usage of those routes indicated on the plans annexed to this report. The routes are as follows: -
- 2.2 Route 1. Victoria Bridge, Queen's Drive, Kilmarnock - the route is from Victoria Bridge, Queen's Drive, Kilmarnock it follows the River Irvine to the far end of the playingfields and returns to Queen's Drive. The Community Council supports route 1 and has submitted evidence that local people have used the route for the prescriptive period (20 years). In addition to the advertisement in the local paper, the owners of the route were notified that the route appeared to satisfy the rights of way criteria detailed in paragraph 4.1 of this report. No representations have been received from the owners. It should be noted that part of the route concerned crosses Council owned land at Queen's Drive.
- 2.3 Route 2. "The Doctor's Road", Ochiltree - links the A70 with High Street, Ochiltree. Route 2 has been promoted by Scotways (The Scottish Rights of Way and Access Society). The Society indicates that it is well used by people going to and from the church, war memorial and between streets and that it has been used for well beyond the prescriptive period.
- 2.4 Route 3. Barony Road to Park Road, Auchinleck – link road between the roads mentioned. Route 3 has also been promoted by Scot Ways. Evidence of the usage of the route has indicated that pedestrian access has existed for the prescriptive period.
- 2.5 Public notice that consideration was being given to adding the routes to the Council's register of rights of way was undertaken through advertisement in the local press - Route 1 was advertised in the Kilmarnock Standard and routes 2 and 3 were advertised in the Cumnock Chronicle.

3. RESULTS OF PUBLIC CONSULTATION EXERCISE

- 3.1** No letters of objection or representation were received in respect of either route 1 or 3.
- 3.2** One letter was received in response to the public advertisement of route 2. This letter was submitted on behalf of the owners of Blackbush Kennels, Ochiltree indicating that the road to the south of the war memorial entrance has never been used as a right of way and access is only to the A70 Ayr / Cumnock road. Said owners have been proprietors of the property for some 30 years and have confirmed that the southern portion of the road has never been used as an access.

4. LEGAL IMPLICATIONS

- 4.1** In order to be recognised as a right of way constituted by prescription, a route must satisfy the following criteria: -
- 4.2** The route: -
1. must be used by the public;
 2. openly, peaceably and without judicial interruption;
 3. beginning and ending at a public place and following a definite route;
 4. for a period of 20 years.
- 4.3** If a route meets these criteria it is constituted by prescription and the landowner, if known, should be informed. If the landowner disputes the status of the route the Council can raise legal proceedings for an action of declarator of the right of way.
- 4.4** The Land Reform (Scotland) Bill was passed by the Scottish Parliament on 23rd January 2003 and is expected to receive Royal Assent within 28 days. The Bill aims to secure public rights of access to land for recreational and other purposes and proposes to extend some of these provisions to rights of way. It will be the duty of a local authority to assert, protect and keep open and free from obstruction or encroachment any route or other means by which access rights may reasonably be exercised. This duty will encompass rights of way which shall be included in the core paths plan which each local authority will require to prepare within three years of the Land Reform (Scotland) Act coming into force.
- 4.5** The current legislative position is that local authorities are required to keep rights of way open and free from obstruction or encroachment. Although local authorities are entitled to maintain a right of way, they are not under an obligation to do so unless it falls within the duty to keep the right of way open.

5. FINANCIAL IMPLICATIONS

- 5.1** The cost of the advertisement, aftermentioned, will be met from existing budgets.
- 5.2** If the Committee decide to add the route(s) to the rights of way register and this action is subsequently challenged by a landowner, then legal proceedings

may be necessary to have the route declared a right of way, see paragraph 4.3 above.

- 5.3** As stated in paragraph 4.5 above a local authority is under a duty to keep rights of way open. In doing so this is likely to result in a future financial implication for the Council.

6. POLICY IMPLICATIONS

- 6.1** None.

7. CONCLUSIONS

- 7.1** If the Committee is satisfied that the route(s) fulfil the criteria referred to in paragraph 4.2 above, it would be appropriate to add the route(s) to the Council's register of rights of way. Should Committee decide to add the route(s) to the register a further advertisement will be lodged in the local press and the landowner(s), where known, will be notified.

- 7.2** If the Committee is not satisfied that the route(s) fulfil the criteria then this decision will be reported to the group(s) promoting inclusion of the route(s) with a request for further information in support of the route should they wish to pursue the matter further.

8. RECOMMENDATIONS

- 8.1** It is recommended that the Committee: -

- (i) determine, with reference to the criteria indicated in paragraph 4.2 of this report, whether routes 1, 2 and / or 3 should be added to the Council's rights of way register and if so authorise the Head of Administrative and Legal Services/Solicitor to the Council to make the necessary arrangements regarding notification and advertisement.

David Mitchell
Head of Administrative & Legal Services / Solicitor to the Council

13th January 2003

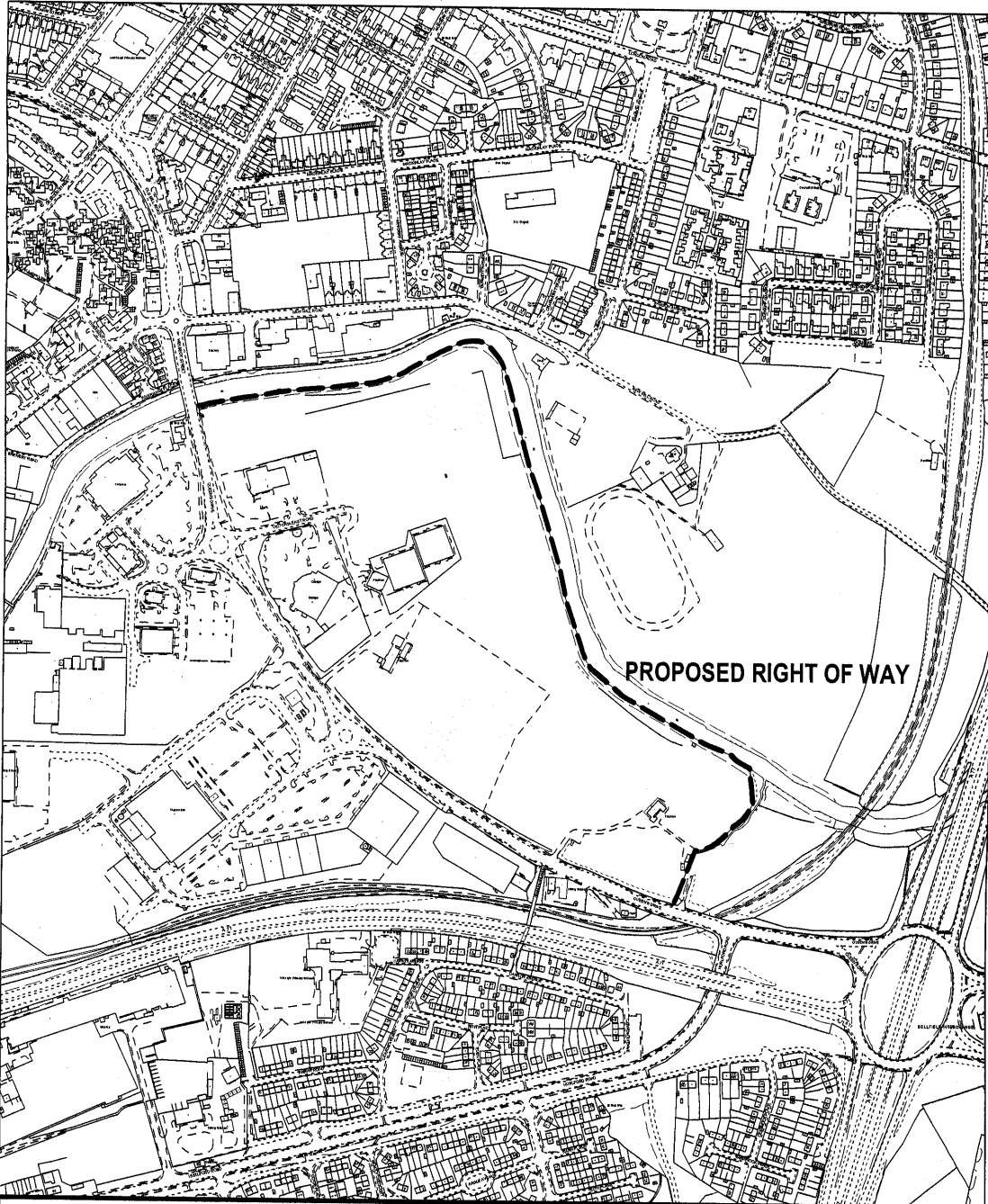
DM/KMcL/KN

BACKGROUND PAPERS

Evidence of use and advertisement.

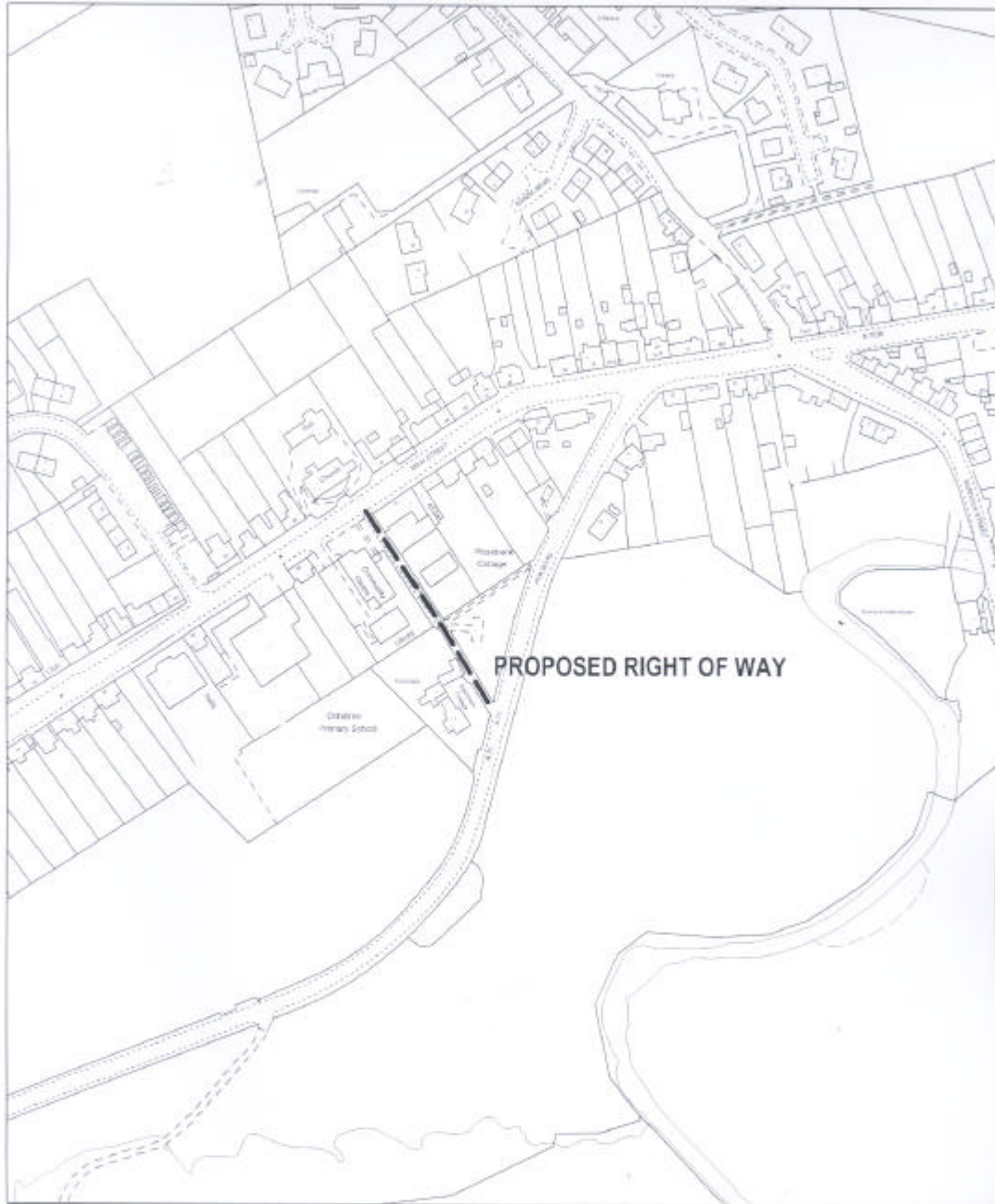
For further information on this report and background papers please contact Karen McLeod, Administrative & Legal Services, Tel: 01563 576220.

Implementation Officer: David Mitchell



<p>Title/Location Proposed New Public Right of Way: Victoria Bridge/Queens Drive, Kilmarnock NS4336</p>	<p>East Ayrshire Council Planning & Building Control Division 6 Croft Street Kilmarnock KA1 1JB</p>
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Title/Location **Proposed New Right of Way:
The Doctor's Road, Ochiltree
NS5021SE**

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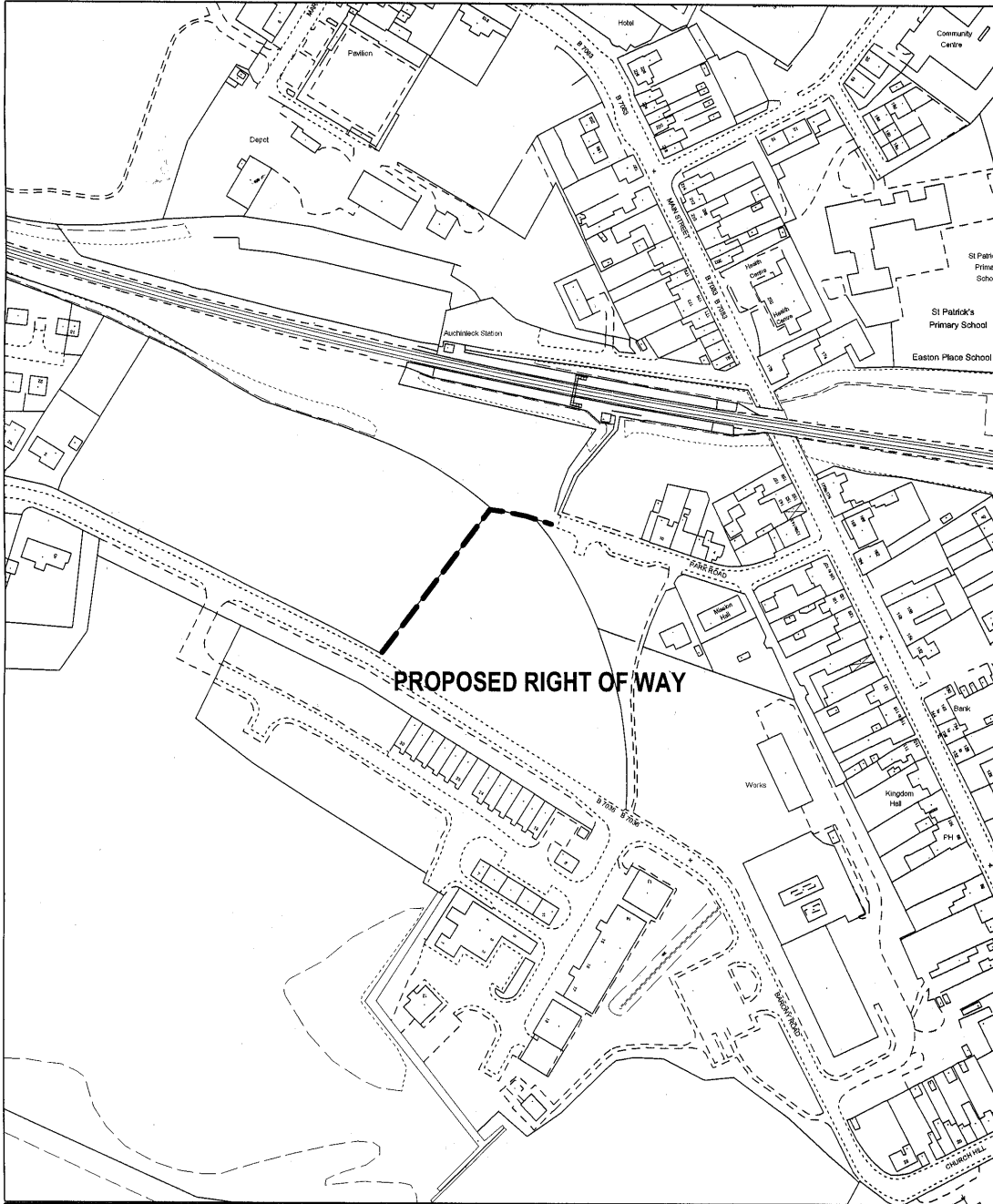


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SCALE:1:2500

Date: 25/01/2005



<p>Title/Location Proposed New Public Right of Way: Barony Road to Park Road, Auchinleck NS5421NE</p>	<p>East Ayrshire Council Planning & Building Control Division 6 Croft Street Kilmarnock KA1 1JB</p>
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