
NORTH AYRSHIRE COUNCIL

19 September 2018

North Ayrshire Council

Title: School Road, Kilbirnie – Compulsory Purchase

Purpose: To approve the compulsory purchase of land required to provide access/egress to/from the former site of the Garnock Academy, School Road, Kilbirnie.

Recommendation: That the Council resolves to make a Compulsory Purchase Order to be called “The North Ayrshire Council (School Road, Kilbirnie) Compulsory Purchase Order 2018” as detailed in the proposals section of this Report

1. Executive Summary

- 1.1 Following the demolition of the former Garnock Academy it has been established that the Council does not have legal title to part of the site. The ground in question has been occupied by the Council and its predecessors since the 1850s. As no owner can be identified, a Compulsory Purchase Order is required to give the Council a title to the land.

2. Background

- 2.1 Following the demolition of the former Garnock Academy, a detailed title investigation was undertaken of the site and it was established that NAC do not own the exit adjacent to Ladyland House, School Road, Kilbirnie. The area is shown on the attached plan.
- 2.2 The ground formed part of the former Ladyland School, Kilbirnie (and adjacent School House) which were in existence on the oldest Ordnance Survey map from 1856 and it is likely that it operated as a school from around this time until replaced with Moorpark Primary School in the 1970s.
- 2.3 Ayr County Council acquired the adjacent ground for Garnock Academy in 1971 and thereafter the school was built and the exit to the car park was formed over the garden ground of the School House.
- 2.4 In 1986 and 1996 the remainder of the former Ladyland School and School House was sold by Strathclyde Regional Council (Ladyland House, 2/4 School Road) and NAC (Ladyland Place) by way of a *non domino* deeds. This type of deed is used by sellers who have possession of ground but who do not have a title. The defect in title is ‘cured’ after a further 10 years occupation by the purchaser. Comprehensive searches would have been carried out prior to both disposals.

- 2.5 In August 2018 professional searchers were appointed to search the Registers of Scotland with a view to establishing a title to the ground. Their report agrees that the ground in question must have been part of the former Ladyland School and School House but they confirm that they have been unable to locate a title and conclude that it is possible the title to the School and School House has never been recorded. No owner can be identified.
- 2.6 Acquiring title to this ground by means of Compulsory Purchase Order would ensure that NAC own all of the ground within the former Garnock Academy school site which is currently occupied by them and would ensure that there is no gap between the ground owned and the adopted road. Purification of this title problem will be required to facilitate any future development on the site. This would ensure that the title is good and marketable if the site is sold or if retained. It avoids the creation of any 'ransom strip' to impede any future development by the Council.

Compulsory Purchase Order

- 2.7 The Compulsory Purchase Order will require to be advertised and a site notice will be erected on the ground to advertise the Council's proposals. Thereafter there is a period for objection and any objections which cannot be resolved will in due course be determined at a public inquiry before a Reporter appointed by the Scottish Ministers. If the Order is confirmed there requires to be a further advert period prior to title being completed.
- 2.8 Disputes in relation to compensation can also be referred to the Lands Tribunal for Scotland. The estimated timescale for an opposed Compulsory Purchase Order is in the region of 18 months or more and officers therefore propose that the Council commence the compulsory purchase procedures as soon as possible.
- 2.9 The rights of the owners of land or property under the Human Rights Act 1998 must be considered before deciding to make a Compulsory Purchase Order. In this case, no owners have been identified and the Council has occupied the ground without challenge since the 1850s'. Accordingly it is considered there is a compelling case in the public interest for acquisition of the ground to facilitate the development of the adjacent Council owned ground, and a compulsory purchase order would strike an appropriate balance between public and private interest.
- 2.10 If the Order is promoted in terms of the legislation the Owners and any other person having an interest in the land have a right to object to the proposed Order at a fair, independent and public hearing and are also entitled to statutory compensation in respect of their interest in the land. In the absence of any identifiable owner who can agree the purchase, compulsory purchase is considered to be both necessary and proportionate in the circumstances.

3. Proposals

3.1 The Proposal is that the Council make the following resolution:

"That The North Ayrshire Council resolves in exercise of the powers conferred by Section 189 of the Town & Country Planning (Scotland) Act 1997 and in accordance with the provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to make a Compulsory Purchase Order to be called " The North Ayrshire Council (School Road, Kilbirnie) Compulsory Purchase Order 2018" to purchase compulsorily ALL and WHOLE the area of ground extending to 504.3 square metres or thereby at School Road, Kilbirnie being ground which is required to provide a suitable access/egress to the site of the former Garnock Academy, authorise and instruct the Senior Manager, Legal Services to sign the Order and Plan on behalf of the Council; affix thereto the Common Seal of the Council, submit the Order and Plan to the Scottish Ministers for confirmation; give the appropriate notice to the owners and occupiers of the subjects; insert the appropriate notice in the local press and certify to the Scottish Ministers that the subjects (a) do not belong to the local authority; (b) have not been acquired by statutory undertakers for the purposes of the undertaking; (c) do not form part of a common or open space (d) are not held inalienably by the National Trust for Scotland; and (e) are not listed as being of special historical or architectural interest under Section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and take all steps necessary to complete the compulsory purchase procedures".

4. Implications

Financial:	The cost of compensating any land owner, should one emerge, will be met from existing budgets. Council representation at any public inquiry would be dealt with by the Council's in-house Legal Services, with no additional cost to the Council.
Human Resources:	There are no human resource implications arising from this report.

Legal:	A compulsory purchase order is the only way to complete title to land where the identity of the owner is unknown, where the Owner is not willing to agree a voluntary transfer, or where the Owner seeks a payment significantly in excess of the value determined by the District Valuer. The process can take some time to complete, but commencing the procedure does not preclude negotiations with the owner, should one be subsequently identified.
Equality: Children and Young People:	There are no equality implications arising from this report.
Environmental & Sustainability:	There are no environmental or sustainability implications arising directly as a result of this report.
Key Priorities:	A valid and marketable title will be required for any redevelopment of the site, either by the Council or otherwise. Accordingly this supports the Council Priority of Growing our Economy, Increasing Employment and Regenerating Towns.
Community Benefits:	There is no potential to include a community benefit clause within this process

5. Consultation

5.1 Consultation has taken place with officers in the Place Directorate.



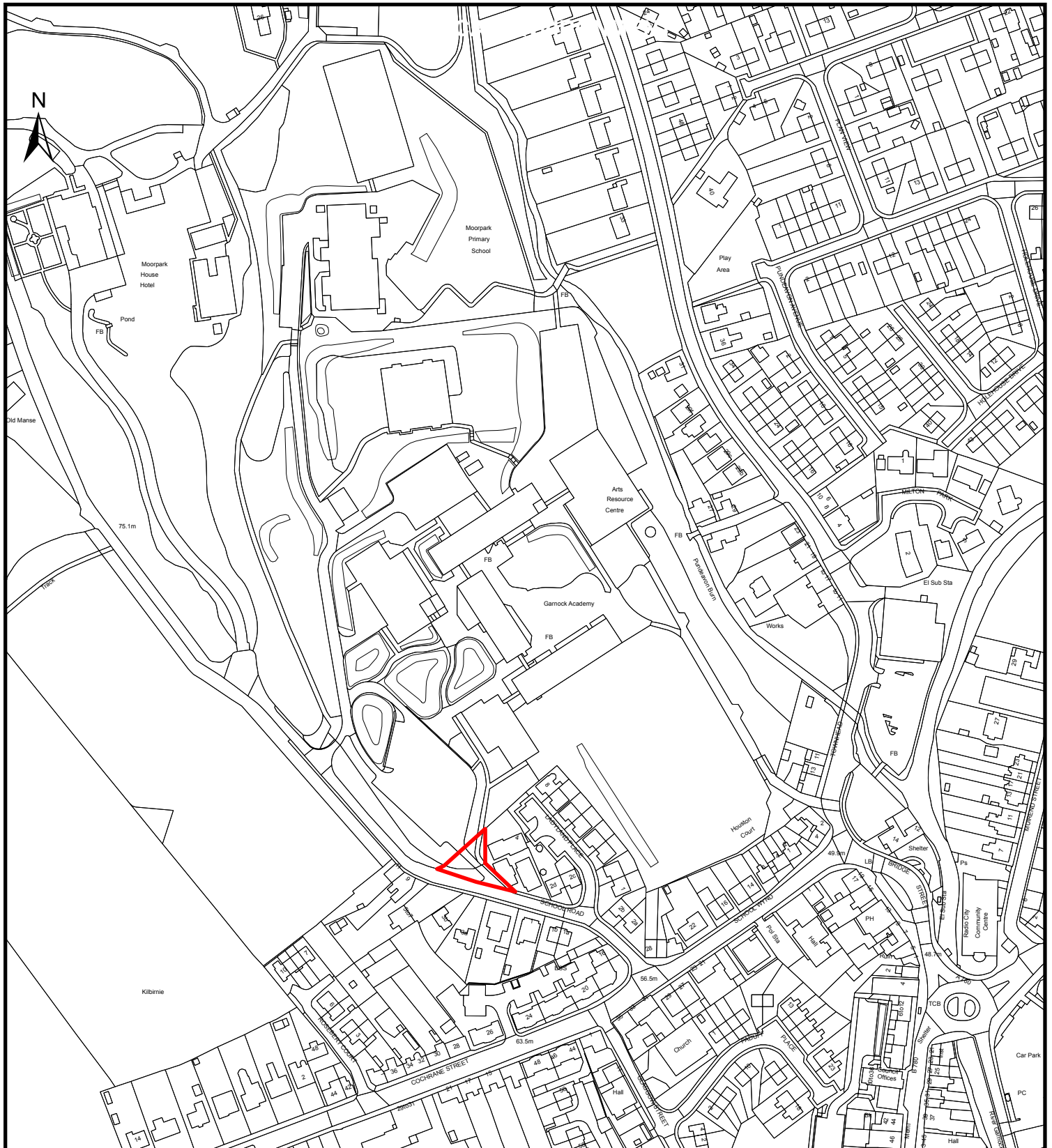
Elma Murray OBE
Chief Executive

For further information please contact **Andrew Fraser, Head of Democratic Services** on **01294 324197**.

Background Papers
Plan



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath



School Road Site, Kilbirnie (504.3 sq.m. or thereby)

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**ESTATES SECTION
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