

CLACKMANNANSHIRE COUNCIL

Report to Clackmannanshire Council

Date of Meeting: 2 June 2011

Subject: Proposed Land Excambion and Sale of Agricultural Land at Ditch Farm, Tullibody to Secure Allotments at Keilarsbrae, Sauchie.

Report by: Head of Facilities Management

1.0 Purpose

- 1.1. This report seeks approval to a land excambion and sale of Council owned farmland at Ditch Farm in exchange for allotment land at Keilarsbrae. The Keilarsbrae site is adjacent to a further area of allotment land owned by Clackmannanshire Council.
- 1.2. Subject to approval of the excambion additional approval is also requested to formalise a lease of this larger combined allotments site to Sauchie Allotments Association.
- 1.3. It is intended that this will bring to a conclusion protracted discussions and negotiations whereby the Council wishes to obtain legal title to the land unifying the Sauchie Allotments ownership.

2.0 Recommendations

- 2.1. The Council is requested to approve the following related recommendations:
 - a) declaration of 23.8 acres of land at Ditch Farm (as indicated in Appendix II) surplus to requirements;
 - b) an excambion arrangement whereby 15 acres of this same Council owned land at Ditch Farm will be exchanged with the landowner for 1.96 acres of land at Keilarsbrae, Sauchie (as indicated in Appendix III); and
 - c) the sale to the same landowner of the balance of 8.8 acres of Ditch Farm land for the sum of £16,800.
- 2.2. The Council is further asked to agree to a subsequent grant of a long term lease of the entire allotment site to Sauchie Allotment Association subject to satisfactory completion of the excambion and land sale as indicated in paragraphs 2.1 above. The lease will be subject to terms and conditions to be agreed by Director Services to Communities in consultation with Legal Services.

3.0 Considerations

Background

- 3.1. The initiative to provide allotments within Sauchie for use by members of Sauchie Allotment Association originates with the relocation of the Association from Sunnyside in 1994. This took place at the behest of Clackmannanshire District Council in support of the Sunnyside Cemetery extension. Since that time it has not been possible to secure full ownership and title of the complete allotments site to enable the council to grant a formal lease to the association and provide them with security of tenure.
- 3.2. The complete site previously comprised separate titles held by two distinct parties. The purchase of one of these titles was concluded by the Council in 1995.
- 3.3. This lack of a formal lease has placed the Association at a disadvantage as without any formal right to occupy the allotment land it cannot submit applications for funding support nor undertake improvements. It also occupies the land under theoretical threat of eviction by the landowner.
- 3.4. The Council (nor the landowner) have not charged rent to the Association since they took occupancy of the site due to the sale being "pending". A lease was drafted in 1996 but not signed due to the land ownership remaining unresolved.
- 3.5. Previous solutions considered by the Council in its attempts to remedy the situation have included outright purchase (approved by Clackmannanshire Council in December 2004); alternative land exchanges (approved by Clackmannanshire Council on October 2003) and Compulsory Purchase. Whilst the matter remains unresolved, it has however always been the intention of the Council to reach an amicable settlement and as such CPO powers have never been pursued.

Policy

- 3.6. Clackmannanshire does not have a specific policy to provide land for allotments. There has however, been a long term tradition of allotment provision in Scotland by local authorities. Since 1892 local authorities have been required to consider whether there is a proven need to provide allotments and if satisfied that such a need exists to acquire or lease land for that purpose. Specific compulsory purchase powers are set out in the legislation if land cannot be acquired by agreement.
- 3.7. The Keilarsbrae allotments will be one of two Council owned allotments sites. The other is Chapelle Crescent Tillicoultry which is leased to Tillicoultry Allotment Association. Both Tillicoultry and Sauchie Allotment associations indicate that there is a waiting list for new members.

Proposal

- 3.8 The detail of this proposal has been agreed in principle directly with the landowner in question subject to conclusion of missives and the overriding proviso that all associated land transfer activity completes comprehensively and simultaneously.
- 3.9 The 23.8 acres of land at Ditch Farm (as indicated in Appendix II) must be declared surplus to requirements to allow the exchange to progress.
- 3.10 The proposal is that an area of Council owned land at Ditch Farm extending to 15 acres (as indicated in Appendix II) be exchanged for the required 1.96 acres of "allotment land " at Keilarsbrae (as indicated in Appendix III). This is on the basis that both pieces of land are of equal value (as indicated in Appendix 1).
- 3.11 The proposal also includes an extra area of land at ditch farm extending to 8.8 acres (as indicated in Appendix II). The landowner has included this as part of the negotiation terms, this to be added to the transaction. This will be the subject of a linked and related sale.
- 3.12 A report by the District Valuer of 7 April 2011 provides a valuation of these respective areas of land and advises that some 15 acres of farmland at Ditch Farm would form the basis for an equitable exchange of 1.96 acres at Keilarsbrae.
- 3.13 The value attributable to the additional 8.8 acres to be included in the transaction is £30,800. However, the landowner considers that the value of the rent due since 1996 for occupancy by the Association of 1.96 acres at Keillarsbrae equates to £14,000 (or 4 acres at Ditch Farm). This valuation cannot be supported by allotment use, the Association cannot meet these terms and the landowner considers the Council should reimburse his claim. Thus the net payment for the 8.8 acres is proposed at £16,800. These are the best terms of the landowner.
- 3.14 Keilarsbrae is presently identified in the adopted Clackmannanshire Local Plan as recreational space. The farmland at Ditch Farm is designated as Greenbelt on the Countryside Map in the local plan and currently remains in agricultural use. The District Valuer's assessment reflects the landowner's assertion of development potential at Keilarsbrae and thus the valuation takes account of this longer term possibility. It does not equate to normal allotment or agricultural land value.

By Pass Land Agreement

- 3.15 The construction of the Tullibody pass in 2004 called for the acquisition of an area of 6.3 acres of farmland to complete the Eastern section of the link road. This land was secured by means of an agreement with the landowner and missives concluded whereby compensation would be achieved by means of a land transfer of a corresponding 6.3 acres of Ditch Farm. (as indicated in Appendix 11 and iv).
- 3.16 Missives were concluded and the land was agreed to be transferred over within a period of five years otherwise the landowner would have the power to

exercise his right to resile and seek financial compensation. This agreement is still active and the date of the land transfer has been scheduled to coincide with the other elements of this transaction.

Existing Ditch Farm Tenancy

- 3.17 The entire Ditch Farm agricultural land extending to 163 acres is presently leased to an adjoining farm operator under a Short Limited Duration Tenancy.
- 3.18 Should the recommendations in this report be accepted then an area of land equating to a total of 30.1 acres consisting of the Excambion Land plus By Pass Land plus Additional Requested Land will be resumed .
- 3.19. This will leave a balance of 132.9 acres which will remain available to the farm operator.

Lease Terms and Conditions

- 3.20. Following full title to the land being obtained by the Council then Sauchie Allotment Association will be offered a long term lease of the complete site.
- 3.21. The lease terms and conditions will be sufficient to enable them to submit an application for external funding and enable works of improvement to be undertaken. The lease term will be for a period of not less than 25 years. This timespan will enable the association to fully benefit from the improvements and enjoy uninterrupted rights of occupancy.

4.0 Conclusion

- 4.1. The total transfer of Council owned agricultural land at Ditch Farm to the allotment landowner will amount to some 30.1 acres. This comprises :
 - 6.3 acres land transferred to secure bypass land from 2004
 - 8.8 acres additional land requested by landowner
 - 15 acres exchanged to obtain allotment land
- 4.2. The landowner has stipulated that only if all parts of the agreement are effected simultaneously will the allotment land at Keilarsbrae be transferred.

5.0 Sustainability Implications

- 5.1. Both the Keilarsbrae and Ditch farm sites are under cultivation and will remain so for the foreseeable future. The land exchange proposal does not involve any loss of either agricultural or leisure space.

6.0 Resource Implications

- 6.1. *Financial Details*

6.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes ☒

6.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes ☒

6.4 *Staffing*

6.5 The proposed course of action will require the involvement of both Estates Staff and members of Legal services.

7.0 **Exempt Reports**

7.1. Is this report exempt? Yes ☐ (please detail the reasons for exemption below) No ☒

8.0 **Declarations**

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities 2008 - 2011** (Please double click on the check box ☒)

The area has a positive image and attracts people and businesses	<input checked="" type="checkbox"/>
Our communities are more cohesive and inclusive	<input checked="" type="checkbox"/>
People are better skilled, trained and ready for learning and employment	<input type="checkbox"/>
Our communities are safer	<input type="checkbox"/>
Vulnerable people and families are supported	<input type="checkbox"/>
Substance misuse and its effects are reduced	<input type="checkbox"/>
Health is improving and health inequalities are reducing	<input type="checkbox"/>
The environment is protected and enhanced for all	<input checked="" type="checkbox"/>
The Council is effective, efficient and recognised for excellence	<input checked="" type="checkbox"/>

(2) **Council Policies** (Please detail)

As detailed in the approved the Property Asset Management Plan 2010-2015.

9.0 **Equalities Impact**

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
Yes ☐ No ☒

10.0 Legality

- 10.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes ☒

11.0 Appendices

- 11.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Appendix I - Table of property transaction information.

Appendix II - Ditch Farm Plan.

Appendix III - Sauchie Allotments Plan.

Appendix IV - Proposed Exchange - Related Previous Property Transaction

12.0 Background Papers

- 12.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes ☒ (please list the documents below) No ☐

District Valuers Valuation of land forming part of Allotments, Keilarsbrae, Sauchie and at Ditch Farm Tullibody.

January 2011 Local Development Plan. Main Issues Report.

January 2011 Local Development Plan. Open Space Framework.

Author(s)

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Approved by

NAME	DESIGNATION	SIGNATURE
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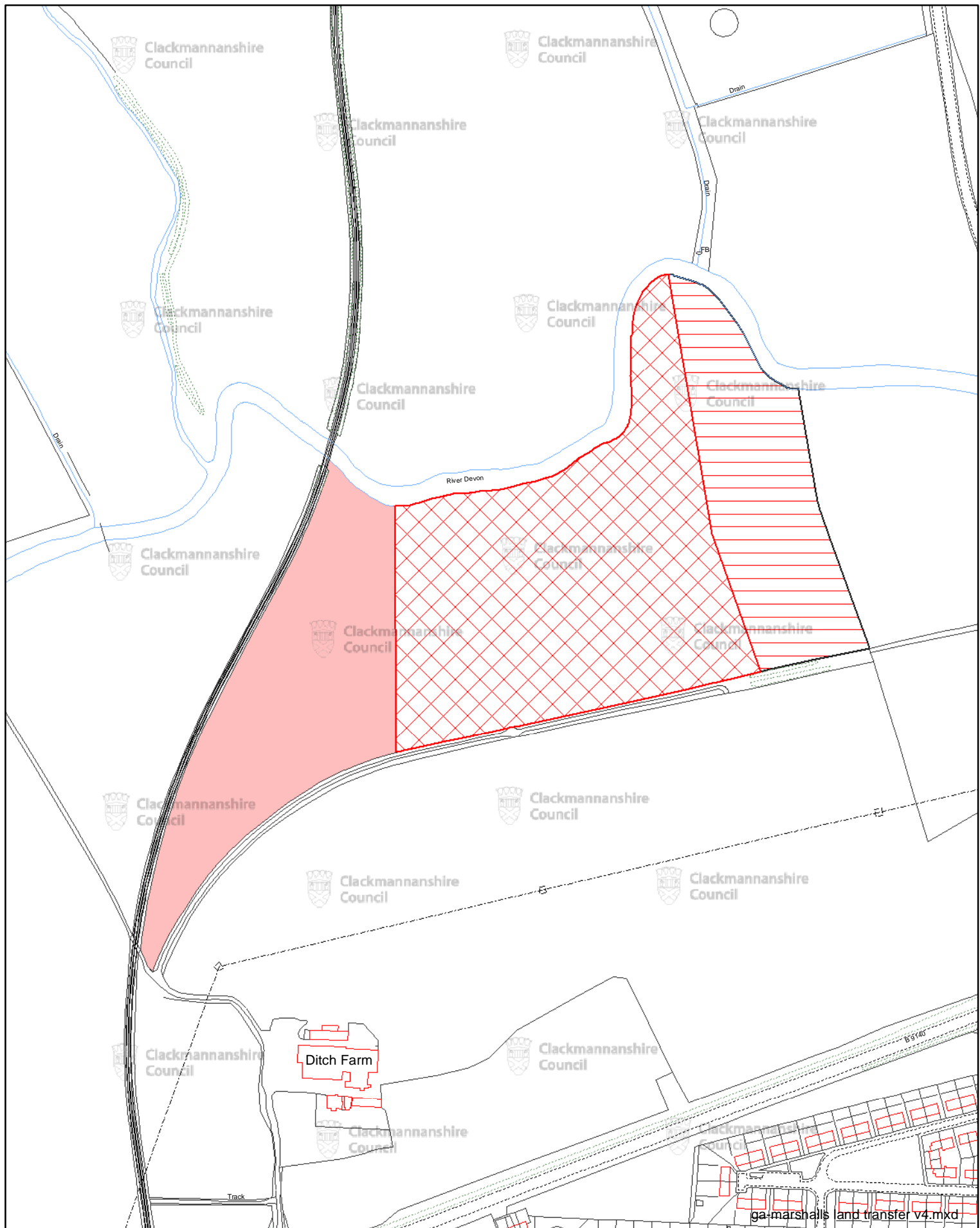
Appendix I

Proposed Land Excambion and Sale of Agricultural Land. Ditch Farm / Keilarsbrae

Property Transaction Information.

The following figures represent a summary of the respective values attributed to the land by the District Valuer.

Property	Area (Acres)	Value
Ditch Farm	15	50,000
Keilarsbrae Sauchie	1.96	50,000
Ditch Farm	8.8	£30,800



0 90 180 270 Metres




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Date : May 2011

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Appendix 2 Land at Ditch Farm Tullibody.

-  = Area of proposed excambion (15 acres)
-  = Area for Bypass Land Agreement (6.3 acres)
-  = Area requested for sale (8.8 acres)

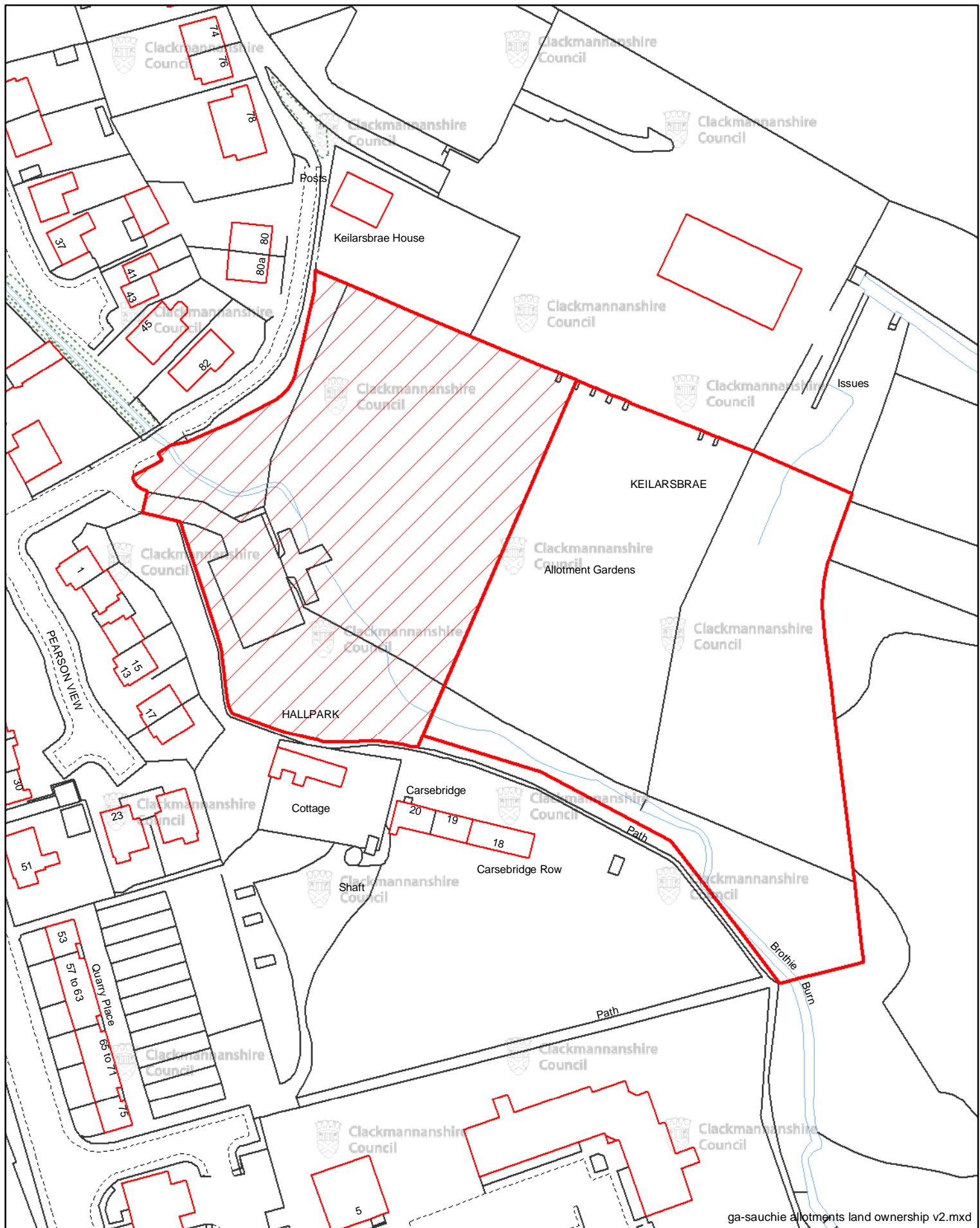


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FK10 1EB

Tel: 01259 450 000
Fax: 01259 727 452

ga-marshalls land transfer v4.mxd



0 25 50 75 Metres



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Date : Apr 2011

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Appendix 3 Land at Sauchie Allotments.

-  = Area of Proposed Excambion (1.96 acres)
-  = Area Owned by Clackmannanshire Council



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Appendix 4 - Proposed Exchange Ditch Farm land and Keilarsbrae allotments

Related Previous Property Transaction

Background

When the Council acquired land at Tullibody for the by-pass road in 2004 from Marshall Farms the registered concluded missives imposed legally binding contractual obligations which have never been finally implemented. The agreed value of the land was £24,000.00. The date of entry to the by-pass land was 22 September 2004. The price to be paid not in cash but by the transfer of an identified area of land measuring 2.5463ha at Ditch Farm. The Ditch Farm land has not yet been transferred to Marshall Farms. The relevant missives clauses provide:-

"5..... In the event that (i) the sale of the Ditch Farm Subjects has not completed within five years of the Date of Entry in terms of the Missives and (ii) the Sellers have in such circumstances exercised their right to resile from the Ditch Farm Missives, the Purchasers (the Council) shall be bound to pay to the Sellers (Marshall Farms) as the price for the subjects the sum of £24,000 **with interest thereon from the Date of Entry at the statutory rate until payment, less the amount paid by the Purchasers to the Sellers in terms of Condition 7 of this Offer.**"

"7. The Purchasers (the Council) will make **annual rental payments** to the Sellers (Marshall Farms) for the period from the Date of Entry in terms of the Missives to the date of settlement of the Ditch Farm Missives, or (in the event of the Sellers exercising the right to resile from the Ditch Farm Missives in terms of Condition 2 of the said Missives) to the date of payment of the sum of £24,000 with interest all as referred to in Condition 5 hereof and that **at the rate of £629 per annum** (being one hundred pounds £100 sterling per acre for the acreage of the Subjects) said payments to be made annually as aforesaid commencing as at the Date of Entry in respect of the Missives for the period from that date to the first anniversary of the Date of Entry and annually thereafter with a proportionate payment being due in respect of any period from the anniversary of the date of Entry of less than a year."

Current Position

The five year period referred to in the missives expired on 22 September 2009 but Marshall Farms have not formally sought to resile from the missives. The land at Ditch Farm has still not been transferred over to Marshall Farms. It would be appropriate for the transfer to be completed along with the present proposed transfer of further Ditch Farm land in exchange for the Keilarsbrae allotment land.

The Council's legal liability to Marshall Farms under the concluded missives will be met by the transfer of the identified area of land and payment of interest on the agreed notional value of £24,000 from 22 September 2004 to date under deduction of sums paid by way of annual rent. Interest at the varying statutory rate on £24,000 from 22 September 2004 until 31 May 2011 is £4,703.69. From this fall to be deducted rental payments totalling £3774 leaving a sum owing by the Council to Marshall Farms of £929.69.

