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**DIRECTORATE OF CITY AND  
ENVIRONMENTAL SERVICES**

**23<sup>rd</sup> December 2014**

**Officer in Consultation**

**Scorby Lane – Removal of Highway Rights**

**Summary**

1. To resolve a long standing dispute over the highway rights on land either side of the Scoreby Lane carriageway. The decision requested is to confirm that extensive highway rights are not required (the verges being predominantly surplus to highway requirements) and can be revoked to a more “normal” layout, through the progression of a ‘stopping up’, via Sections 116 and 117 of the Highways Act 1980.

**Recommendations**

2. The Chief Officer for City and Environmental Services in consultation with the Cabinet Member are asked to consider:
3. The recommendation to, subject to the adjacent property owners submitting an application under Section 117 Highways Act 1980 to the council to request the ‘stopping up’ of said highway and confirming they will fund all the legal work required, to process the stopping up via S116 of the Highways Act 1980, give approval to initiate the legal process to remove the highway rights from Scoreby Lane except for the existing carriageway and 1m of verge either side.

Reason: in order to bring to a conclusion the long standing dispute over the extent of the highway rights along Scoreby Lane

**Background**

4. Scoreby Lane is a single track carriageway off the A166 and is not a through route. The plan in Annex A shows the extent of the recorded public highway around the turn of 2000 (shaded Blue and

Yellow). Whilst very extensive for such a minor route this is thought to be because it formed part of an ancient highway. Over the years fences have been erected enclosing areas of the highway and trees planted. At some point in the early 00's the highway records were tampered with to show a much reduced public highway (shown shaded blue in Annex A). Hence there is now a dispute as to where the public highway extents are. It is important to be aware that this issue is not one of land ownership, rather it deals with the rights of the public to pass over land. The photos in Annex B show the area in question in September 2014.

5. The Highway Authority has the duty to protect and assert the rights of highway users even when an encroachment on to the highway would not prevent users from reaching their destination. Council officer recollections of the highway in this area from many years ago (before the agricultural properties were renovated to modern residential premises) and a report commissioned from a Public Rights of Way expert strongly indicate that the extent of the public highway is as shown shaded blue and yellow in Annex A before the highway records were tampered with and no information supplied by the property owners proves that these highway rights did not exist.
6. Further investigation into the history of the highway rights would be quite costly for the council or the land owner and is thought unlikely to prove conclusively one way or the other the historical accuracy. A Highway Authority can seek to remove the highway rights from land through the Magistrates court when it is considered that the highway, or part of it, is no longer necessary. It should be noted though that if during the Magistrates court process any objections to removal of the Highway rights are raised then in all likelihood the application to remove the rights would fail.

## **Consultation**

7. No consultation has been carried out, but if the action recommended is approved there would be a formal consultation process to go through before the highway rights could be removed.
8. Ward councillor and political party representative comments on the proposal are shown in Annex C.

## **Options**

9. Option 1 - Take no further action at this time and leave the dispute resolution to a later date.
10. Option 2 – Allocate a budget for further investigations into the matter and once proved conclusively decide at that point what action might be appropriate.
11. Option 3 – Bearing in mind the unusually wide expanse of what is believed to be highway, the very few properties reached from Scoreby Lane and the fact that it is not a through route for vehicles it is thought reasonable to conclude that the highway rights could be reduced to the carriageway and a narrow verge.

## **Analysis**

12. Option 1 would be an unsatisfactory outcome for the local residents, but has the advantage of no budgetary implications or further draw on staff resources to deal with the issue.
13. Option 2 has the advantage of possibly identifying conclusively to all parties involved what the situation is at present, at which point the City Council can then decide whether to proceed with a removal of the highway rights or to let the matter rest as it is. In addition, this work would likely cost somewhere in the region of £1500 and as has been mentioned above the last investigation strongly suggests ancient highway rights across the land. There would then still be decisions to be made on how to proceed so this option does not guarantee achieving any significant progress.
14. Option 3 confirms the Highway Authority view on whether the full extent of the believed highway rights are necessary and allows progress to be made (providing the resident agrees to fund the process which is likely to be somewhere in the region of £3k to £4k)

to resolve the issue to the satisfaction of all involved and at negligible cost or officer time to the city council.

### **Council Plan**

15. Taking this project forward does not contribute to the Council Plan.

### **Implications**

#### **Financial**

16. There are no detrimental financial implications to the recommended option to the removal of highway rights on this land. The applicant will fund all legal costs in the order and accept full maintenance liability for the land. As there is no transfer of ownership of land there is no compensation.

**Human Resources (HR)** There are no HR implications

**Equalities** There are no equalities implications

#### **Legal**

Any person can request a highway authority to make an application to a magistrates' court to stop up a highway or part of a highway under s116 Highway Act 1980 on the ground that the highway is unnecessary. The Section 117 of the 1980 Act provides the Council with powers to recover its reasonable costs for making such an application.

When considering whether to make an application to stop up a highway, the highway authority should consider any objections it receives during a statutory consultation on the application. If, on the balance of evidence, the highway authority cannot demonstrate to the magistrates' court that the highway is "unnecessary", the application should not be proceeded with. In particular, it should be observed that parish councils have a right of veto to s116 Highways Act 1980 applications.

The successful making of a stopping order will extinguish the highway rights over the land concerned and control over the land will revert to the freehold or leasehold owner of the subsoil.

**Crime and Disorder** There are no crime and disorder implications

**Information Technology (IT)** There are no IT implications

**Property** There are no property implications

**Other** There are no other implications

**Risk Management**

17. There are no risk management implications.

**Contact Details**

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**Traffic management**  
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**Chief Officer responsible for the report:**  
**Sarah Tanburn**  
**Acting Director**  
**City and Environmental Services**

**Report**  
**Approved**



**Date** 23/12/2014

**Wards Affected:** Derwent

**All**  *tick*

**For further information please contact the author of the report**

**Background Papers:**

**All relevant background papers must be listed here.**

Report by Robin Carr

**Annexes**

**Annex A** – Plan of Scoreby Lane showing the extent of the adopted highway before (yellow and blue) and after (blue only) the highway records were tampered with.

**Annex B** - Plan of Scoreby Lane and Photographs – September 2014.

**Annex C** – Ward Councillor and Political Party Representative Comments

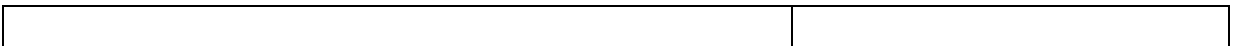
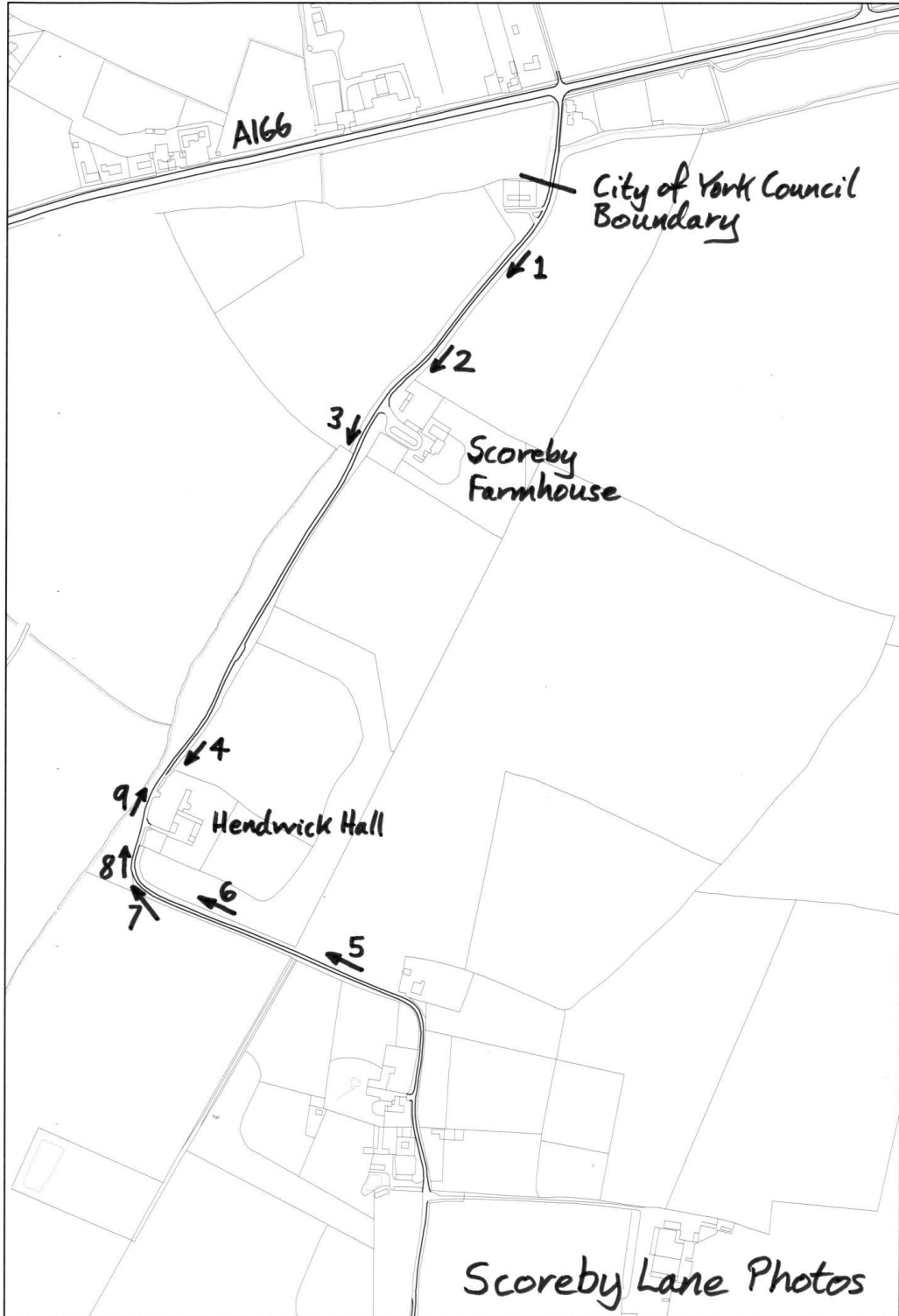
# Annex A

## Scoreby Lane Adopted Highway



# Annex B

## Scoreby Lane Photos







# Annex C

## Ward Councillor and Political Party Representative Comments

### Ward Councillor Brooks

Will you take my comments to be those expressed by Mr Mackfall below.

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From: John Mackfall  
Sent: 15 November 2014 17:28  
To: Cllr. J. Brooks  
Subject: RE: Reports to Officer in Consultation meeting on 9th December 2014

Dear Mr Briggs,

I have now consulted with our neighbour and other property owner in Scoreby Lane Mr and Mrs Wood of Scoreby Farm House.

We are in full support of your proposals and we are willing to jointly pay the costs of this process. We would like to confirm a few points in advance of the proceedings.

1/ Can we have an estimate of the total costs to ourselves.

2/ Can we agree the width of the Tarmac road (Excluding additional meter each side) This is due to the fact that when we moved into Scoreby lane the tarmac road was 8 feet wide along its full length, this has eroded due to farm vehicles and lorries and varies from 8 feet to 10 feet in places)we would compromise on the tarmac road been no more than 9 feet(3 meters)wide.

Plus the agreed 1 meter each side, taking the highway to 5 meters wide in total or 2.5 meters from the centre of the road.

3/ We agree to pay the costs of the process.

4/ We agree to 1 meter each side of the tarmac road to be included as highway.

5/ That YCC are aware that private services are in the ground next to the tarmac road containing Telephone cable, Gas line, and water supply. All of which are privately maintained by the land owners.

If these concerns are agreeable then we would like to go ahead without further concerns and as soon as practical.

John and Derek Mackfall of Hendwick Hall, Scoreby.  
Richard and Barbara Wood of Scoreby Farm House, Scoreby.

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**Political Party Representative**

Councillor Reid - *I have no problem with Scoreby lane*

Councillor Steward - No comments received

Councillor D'Agorne - No comments received