

Perth and Kinross Council
Development Management Committee – 12 May 2015
Report of Handling by Development Quality Manager

Variation of conditions 1 and 2 of permission 13/00436/IPM (modification of 07/00442/OUT residential development) to allow additional time for the submission of applications for the approval of matters specified in conditions, and the commencement of development on land at Pitdownies Farm, Manse Road, Milnathort.

Ref. No: 15/00240/IPM
Ward No: 8 - Kinross-shire

Summary

This report recommends approval of the application for variation of conditions 1 and 2 of permission 13/00436/IPM (modification of 07/00442/OUT residential development) to allow additional time for the submission of applications for the approval of matters specified in conditions, and the commencement of development on land at Pitdownies Farm, Manse Road, Milnathort.

The development is considered to accord with the provisions of the updated Perth and Kinross Local Development Plan.

BACKGROUND AND DESCRIPTION

- 1 The site is located at the western edge of Milnathort village with housing to the east and south-east, the motorway to the north-west and Back Burn to the south-west.
- 2 In the Kinross Area Local Plan 2004 the site was located in the Milnathort Settlement Boundary as allocated housing site (H8). A conditional permission in outline for residential development was issued by the Development Management Committee in February 2008 under reference 07/00442/OUT.
- 3 Under Condition1 of the 2007 permission the following matters were reserved for future approval; siting, design and external appearance of the development, landscaping, all means of enclosure, car parking and means of access to the site. The reserved matters were required, by Condition 2(i) of the initial permission to be submitted for approval not later than 3 years from the date of the planning permission (i.e. by 7 March 2011).
- 4 Since the initial approval of the outline application the time limit has been varied and approved under applications 11/01537/IPM and 13/00436/IPM. This submission represents the third application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to extend the period during which the matters reserved by condition can be submitted and when development can be commenced.

- 5 There has been no substantial change of circumstances in terms of the physical make-up of the site. The consultees have been re-consulted on the variation and their advice reaffirms their position associated with the earlier scheme. It should be noted that national and local policy has changed since the determination of the earlier application accordingly this assessment predominantly focuses on how the renewal relates to the change in policy.

PRE-APPLICATION CONSULTATION

- 6 Due to the size of the application site, which is over 2 hectares, this proposal is classed as a Major Application as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. The amended Regulations, which came into force on the 30 June 2013, removes the requirement for Pre-application Consultation for Section 42 applications (which relates to a 'major planning application') made on, or after the 3 February 2013. Accordingly there is not a requirement to carry out a pre-application public consultation on this major application due to the inclusion of Regulation 49(5) in the above Regulations.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 7 The proposed development, as an urban development project with a site area exceeding 0.5ha, falls under Schedule 2 (10(b)) of the Environmental Impact Assessment (Scotland) Regulations. An assessment of a project's likely significant environmental effects is required to be made.
- 8 A screening exercise has been carried out. It has been concluded that the development is not EIA development under the Town and Country Planning EIA (Scotland) Regulations 2011.

NATIONAL POLICY AND GUIDANCE

- 9 The Scottish Government expresses its planning policies through the National Planning Framework, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

The Scottish Planning Policy 2014

- 10 The Scottish Planning Policy (SPP) was published in June 2014 and sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:
- the preparation of development plans;
 - the design of development, from initial concept through to delivery; and
 - the determination of planning applications and appeals.

DEVELOPMENT PLAN

- 11 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2012-2032 and the Perth and Kinross Local Development Plan 2014.

TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012

- 12 The overall vision of the Tay Plan states *“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”*
- 13 There are no specific policies of strategic importance, relevant to this particular proposal contained in the TayPlan.

Perth and Kinross Local Development Plan 2014

- 14 The Local Development Plan was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 15 The principal policies are, in summary:

Policy PM1A - Placemaking

- 16 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaption.

Policy PM3 - Infrastructure Contributions

- 17 Where new developments (either alone or cumulatively) exacerbate a current or generate a need for additional infrastructure provision or community facilities, planning permission will only be granted where contributions which are reasonably related to the scale and nature of the proposed development are secured.

Policy RD1 - Residential Areas

- 18 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private open space to be retained changes of use away from ancillary uses such as local shops will be resisted unless supported by market evidence that the existing use is non-viable. Proposals will be encouraged where they satisfy the criteria set out and are compatible with the amenity and character of an area.

Policy RD4 - Affordable Housing

- 19 Residential development consisting of 5 or more units should include provision of an affordable housing contribution amounting to 25% of the total number of units. Off-site provision or a commuted sum is acceptable as an alternative in appropriate circumstances.

Policy TA1A - Transport Standards and Accessibility Requirements

- 20 Encouragement will be given to the retention and improvement of transport infrastructure identified in the Plan.

Policy CF1B - Open Space Retention and Provision

- 21 Appropriate areas of informal and formal open space should be provided as an integral part of any new development where existing provision is not adequate. Where there is an adequate supply of open space a financial contribution towards improved open space may be acceptable. Opportunities should be to create, improve and avoid the fragmentation of green networks.

Policy CF2 - Public Access

- 22 Developments will not be allowed if they have an adverse impact on any core path, disused railway line, asserted right of way or other well used route, unless impacts are addressed and suitable alternative provision is made.

Policy HE1B - Scheduled Monuments and Non Designated Archaeology

- 23 Areas or sites of known archaeological interest and their settings will be protected and there will be a strong presumption in favour of preservation in situ. If not possible provision will be required for survey, excavation, recording and analysis.

Policy HE2 - Listed Buildings

- 24 There is a presumption in favour of the retention and sympathetic restoration, correct maintenance and sensitive management of listed buildings to enable them to remain in active use. The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the building's character, appearance and setting.

Policy NE1A - International Nature Conservation Sites

- 25 Development which could have a significant effect on a site designated or proposed as a Special Area of Conservation, Special Protection Area or Ramsar site will only be permitted where an Appropriate Assessment shows that the integrity of the site will not be adversely affected, there are no alternative solutions and there are imperative reasons of overriding public interest.

Policy NE1B - National Designations

- 26 Development which would affect a National Park, National Scenic Area, Site of Special Scientific Interest or National Nature Reserve will only be permitted where the integrity of the area or the qualities for which it has been designated are not adversely affected or any adverse impacts are clearly outweighed by benefits of national importance.

Policy NE3 - Biodiversity

- 27 All wildlife and wildlife habitats, whether formally designated or not should be protected and enhanced in accordance with the criteria set out. Planning permission will not be granted for development likely to have an adverse effect on protected species.

Policy NE4 - Green Infrastructure

- 28 Development should contribute to the creation, protection, enhancement and management of green infrastructure, in accordance with the criteria set out.

Policy ER6 - Managing Future Landscape Change to Conserve and Enhance the Diversity and Quality of the Areas Landscapes

- 29 Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross and they meet the tests set out in the 7 criteria.

Policy EP2 - New Development and Flooding

- 30 There is a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source, or where the proposal would increase the probability of flooding elsewhere. Built development should avoid areas at significant risk from landslip, coastal erosion and storm surges. Development should comply with the criteria set out in the policy.

Policy EP3B - Water, Environment and Drainage

- 31 Foul drainage from all developments within and close to settlement envelopes that have public sewerage systems will require connection to the public sewer. A private system will only be considered as a temporary measure or where there is little or no public sewerage system and it does not have an adverse effect on the natural and built environment, surrounding uses and the amenity of the area.

Policy EP3C - Water, Environment and Drainage

- 32 All new developments will be required to employ Sustainable Urban Drainage Systems (SUDS) measures.

Policy EP4 - Health and Safety Consultation Zones

- 33 Full account will be taken of advice from the Health and Safety Executive in determining planning applications for development within the consultation zones identified on the proposals and inset maps.

Policy EP8 - Noise Pollution

- 34 There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.

OTHER POLICIES

- 35 None

SITE HISTORY

- 36 Application 04/02375/FUL for the erection of 64 dwellinghouses was withdrawn on the 8 June 2005.
- 37 An outline application, ref: 07/00442/OUT, for a residential development in outline along with associated landscaping, car parking, infrastructure and community woodland with footpath links was approved by the Development Management Committee, subject to conditions on the 27 February 2008.
- 38 A proposals of application notice (PAN), reference 11/00004/PAN, was submitted for the modification of condition 2 of planning consent 07/00442/OUT to extend the time limit for the submission of matters specified in conditions to five years. The content of the notice was accepted on the 15 April 2011.
- 39 Application 11/01537/IPM for the modification of planning condition 2 (07/00442/OUT) to extend the time limit, was approved by the Development Management Committee on the 18 January 2012.
- 40 Application 13/00436/IPM to modify conditions 2 and 3 of planning permission 07/00442/OUT to extend the time limit was approved by the Development Management Committee on the 17 July 2013.

CONSULTATIONS

External

- 41 **Scottish and Southern Energy** – Advise that 11kV, 33kV overhead lines and underground cables are located on the application site and these are linked to the Electric Substation.
- 42 **BP Consultations** – The safety and engineering integrity of the BP Forties Pipeline will not be affected.

- 43 **Transport Scotland** – Does not advise against the granting of permission.
- 44 **Scottish Environment Protection Agency** – Note they previously commented on this proposal under cover of application 07/00442/OUT. After initial concerns in relation to flood risk at this time, a revised Flood Risk Assessment (dated September 2007) was submitted and on the 20 December 2007 SEPA withdrew their outstanding objection. SEPA understand there has been no significant change to the site and no additional flood risk information has been submitted. As such, they have no objection to the proposed scheme and their previous comments of 20 December 2007 remain applicable.
- 45 **Scottish Water** – No response received.
- 46 **Milnathort Community Council** – No response received.

Internal

- 47 **Community Waste Adviser** – No objection.
- 48 **Environmental Health** – No objection to the principle of the application but recommend conditional control.
- 49 **Strategy and Policy** – The Council proposes that the residential allocation be carried forward again into the next Local Development Plan (2018-23) unless development commences at the site since it is understood the applicant remains committed to its development. Beyond that period however, the proposal should be assessed to determine whether there are factors adversely affecting its effectiveness as a housing allocation.
- 50 **Transport Planning** – No objection.
- 51 **Contributions Officer** – Provides comments on Affordable Housing and Education. Advise they have no objection subject to conditions and informatives set out in planning approval 07/00442/OUT remaining in force.
- 52 **Conservation Officer** - no concerns in relation to the proposed variation of conditions. The planning permission is “in principle” and the potential impact on the setting of Orwell House will therefore be assessed on submission of full details of the proposal.
- 53 **Local Flood Prevention Authority** – No objection to the application.

REPRESENTATIONS

- 54 No letters of representation have been received.

ADDITIONAL STATEMENTS

55

Environment Statement	Not required.
Screening Opinion	Undertaken
Environmental Impact Assessment	Not applicable
Appropriate Assessment	Not applicable
Design Statement / Design and Access Statement	Not applicable
Reports on Impact or Potential Impact	Undertaken for previous application.

APPRAISAL

Policy Appraisal

56 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plans that are applicable to this area are the TAYplan Strategic Development Plan 2012 – 2032 as well as Perth and Kinross Local Development Plan 2014.

57 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

58 The determining issues in this case are whether: - the development without compliance with part of the condition in contention would be consistent with the relevant provisions of the Development Plan; or if an exception to these provisions is justified by other material considerations.

59 This application is for the variation of Conditions 2 and 3:

60 Condition 2 as amended states:

The reserved matters relating to planning approval 07/00442/OUT shall be submitted for the approval of the Planning Authority in the form of a written application accompanied by detailed plans not later than:-

- (i) the expiration of 7 years from the date of the grant of that outline planning permission.

- (ii) the expiration of 6 months from the date on which an earlier application for such approval was refused, or
- (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest.

61 Condition 3 states:

The development to which this permission relates must be begun not later than:-

- (i) 7 years from the date of the permission; or
- (ii) 2 years from the date of the final approval of all reserved matters.

62 The applicants' supporting statement has confirmed that the development has not begun in the original timescales as a direct result of the economic downturn. The site has been actively marketed over the last couple of years and interest is returning. The applicants are confident that if the timescales of the development can be extended, a purchaser can be secured ensuring development of the site.

Principle

63 Since the approval of the 2007 application there has been a development plan change from the Kinross Local Plan 2004 to the adoption of the Perth and Kinross Local Development Plan 2014. Notwithstanding this change the principle of residential development is still maintained under housing allocation H48. Accordingly the proposed variation of the conditions to extend the time to commence development is considered to accord with the updated Development Plan.

Site Circumstances

64 There has been no change to site circumstances since the previous planning approval. I have taken account of the applicable policies of the adopted Local Plan which relate to residential amenity, access/traffic/transport, waste collection, developer contributions, listed buildings, bio-diversity, contaminated land as well as flooding. I find that these matters have been satisfactorily addressed or covered via earlier applications. If these conditions are maintained and the time limit conditions varied it is considered that the development accords with the adopted Development Plan.

Economic Impact

65 The construction of the residential development would provide opportunities for local trades and tradesmen to become involved in the construction phase. Additionally there would also be positive economic impact on the local area associated with the increase of population to Milnathort.

LEGAL AGREEMENTS

66 None required.

DIRECTION BY SCOTTISH MINISTERS

67 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

CONCLUSION AND REASONS FOR RECOMMENDATION

68 To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, I have taken account of the updated policy position and explored how this relates to the previous assessments associated with the scheme.

69 In this case I am content that the variation of conditions associated with the commencement of development is compliant with the updated policy position subject to adherence to conditions imposed under the earlier applications that have not been varied under this application.

70 Accordingly the variation should be granted as it complies with the Development Plan and there are no other material considerations that would justify refusing the application.

RECOMMENDATION

A Approve the application subject to the following conditions:

Conditions:

- 1 The reserved matters relating to planning approval 07/00442/OUT shall be submitted for the approval of the Planning Authority in the form of a written application accompanied by detailed plans not later than:-
 - (i) the expiration of 10 years from the date of the grant of that outline planning permission.
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval was refused, or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest.
- 2 The development to which this permission relates must be begun not later than:-
 - (i) 7 years from the date of the permission; or
 - (ii) 2 years from the date of the final approval of all reserved matters.

- 3 The conditions contained in planning permission notice ref. 07/00442/OUT dated 07 March 2008 in respect of proposed residential development with associated landscaping, car parking, infrastructure and community woodland with footpath links (in outline) on Land At Pitdownies Farm, Manse Road, Milnathort remain in full force and effect, except only insofar as expressly modified by Condition Nos. 1 and 2 attached to this planning permission notice.

Reasons:

- 4 In accordance with the terms of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc (Scotland) Act 2006.
- 5 In accordance with the terms of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc (Scotland) Act 2006.
- 6 For clarification purposes and for the avoidance of any possible misunderstanding.

B JUSTIFICATION

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

C PROCEDURAL NOTES

None

D INFORMATIVE

- 1 The applicant is reminded that the conditions and informatives set out in outline planning approval 07/00442/OUT remain in force and form an important part of this multi-stage planning consent.

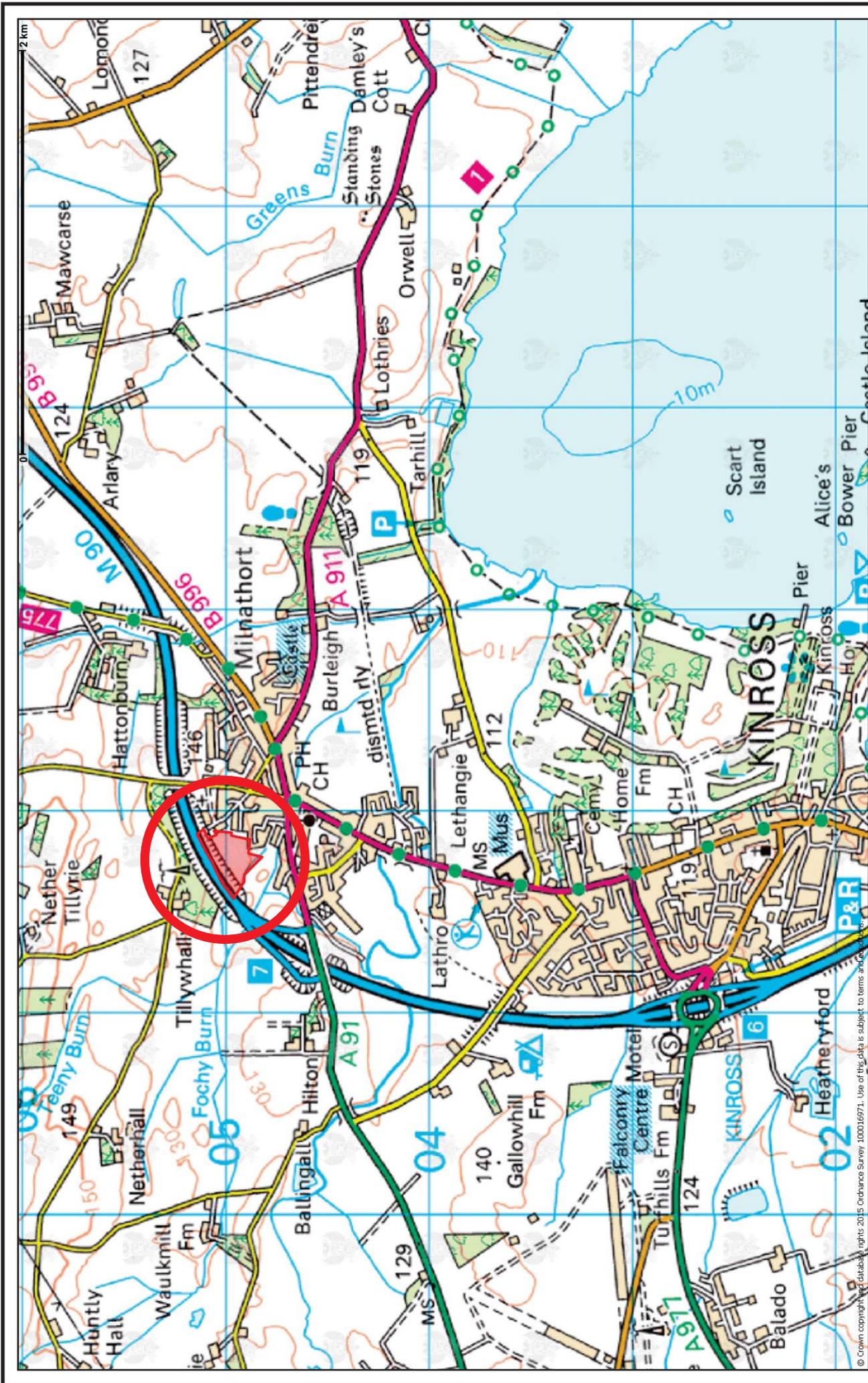
Background Papers: None
Contact Officer: John Russell – Ext 75346
Date: 27 April 2015

**NICK BRIAN
DEVELOPMENT QUALITY MANAGER**

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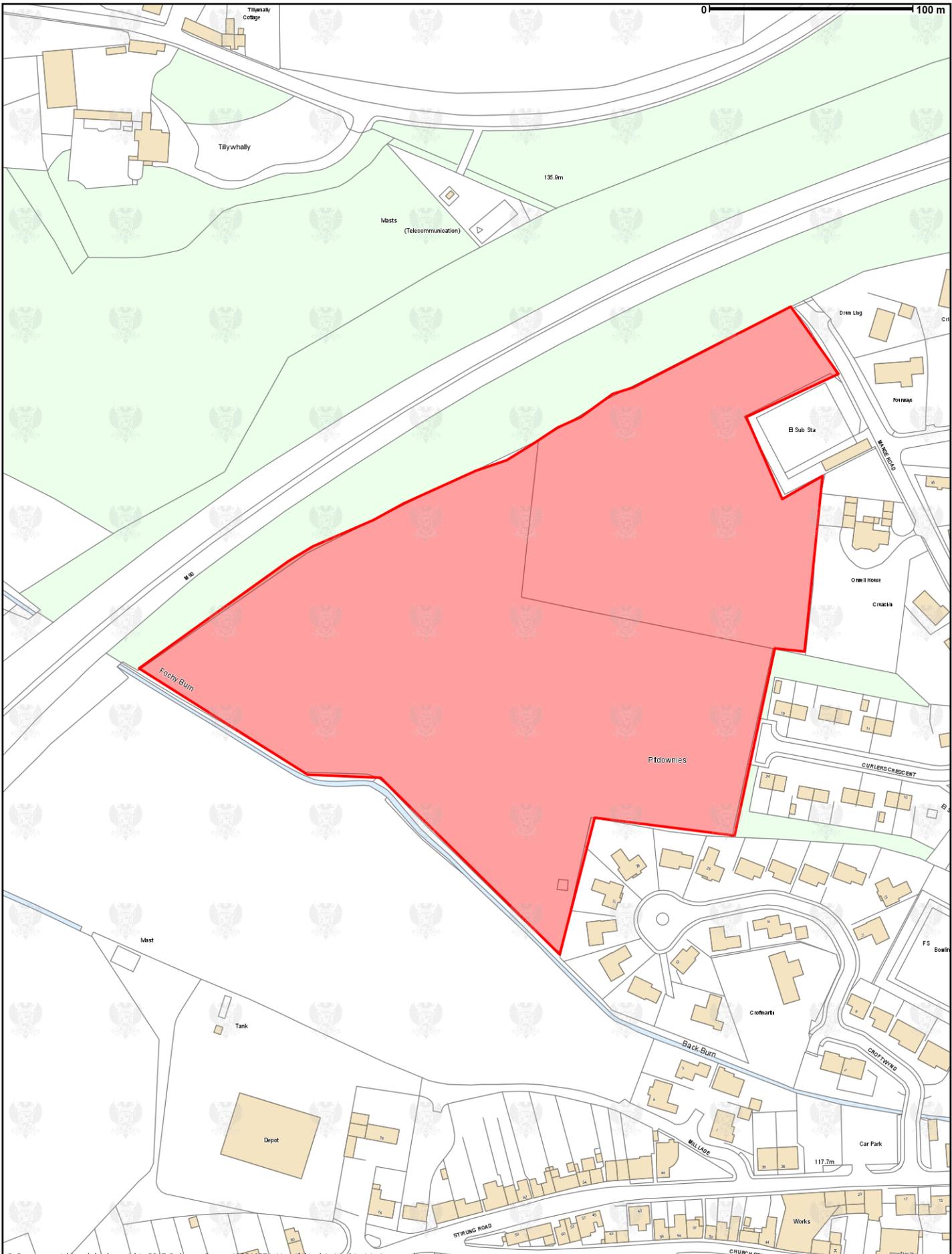
15/00240/IPM

15/00240/IPM (modification of 07/00420/UT residential development application) for the proposed development of 15 plots on the site of the former Kinross Prison, Kinross, Perth & Kinross Council area. The development is subject to the conditions of development, Land At Pittdownies Farm, Mansie Road, Milnathort



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15/00240/IPM

Variation of conditions 1 and 2 of permission 13/00436/IPM (modification of 07/00442/OUT residential development) to allow additional time for the submission of applications for the approval of matters specified in conditions, and the commencement of development. Land At Pitdownies Farm, Manse Road, Milnathort

