

THE HIGHLAND COUNCIL

SOUTH PLANNING APPLICATIONS COMMITTEE
12 April 2016

Agenda Item	6.10
Report No	PLS 030/16

16/00906/S42: Hercules Unit Trust
Inverness Retail and Business Park, Eastfield Way, Inverness

Report by Area Planning Manager - South

SUMMARY

Description: Application under Section 42 for the development of land without complying with Condition 4 and Condition 6 of planning permission 15/03390/FUL

Recommendation - GRANT

Ward: 18 – Culloden and Ardersier

Development category: Major

Pre-determination hearing: Not required

Reason referred to Committee: Major application

1. PROPOSED DEVELOPMENT

- 1.1 This proposal seeks to amend Conditions 4 and 6 imposed on planning permission 15/03390/FUL for the change of use of Unit 3A to form three restaurants; the erection of a customer services building; external alterations to the existing retail units; and the reconfiguration of the car park with associated works including landscaping improvements; which was granted at Committee on 11 February 2016.

Condition 4 states:

The proposed site layout changes including the alterations to the site access, alterations to the layout of the car park, and the provision of pedestrian routes and footpaths including the details approved as part of Condition 3 above, shall be carried out and implemented in full within 6 months of the date of any of the restaurants being brought into use to the satisfaction of the Planning Authority. (Reason: To ensure that the proposed layout changes for the site are implemented in a timeous manner in the interests of public safety.)

Condition 6 states:

No development or work associated with the proposed restaurants in Unit 3A shall commence until full details of the proposed ventilation system have been submitted to, and approved in writing by, the Planning Authority. The kitchen extraction system shall be designed to ensure the effective removal and dispersal of cooking odours from the restaurants, and shall be designed, installed, effectively operated and maintained in order that cooking odours are not detectable within any neighbouring premises. Thereafter the approved ventilation system shall be installed and fully operational prior to the use of any of the restaurants being implemented. (Reason: In order to safeguard the amenity of neighbouring units and occupants.)

The application is seeking to amend Condition 4 to enable the car park improvement works to be carried out over a longer period of time and in a phased manner and to amend Condition 6 to enable certain works to be carried out to the unit in advance of approval of the ventilation systems for each restaurant and as well as clarifying the terms of the condition. These matters are considered in detail in Section 8.4 of this report.

1.2 The proposal was the subject of an informal pre-application meeting with the applicant in February.

1.5 **Variations:** No variations have been made to the application since submission.

2. SITE DESCRIPTION

2.1 The site forms part of the existing West Seafield Retail Park which is located to the east of the Raigmore Interchange and accessed off the A96 trunk road. The application site consists of two blocks of retail units located across the south-eastern and south-western edges of the retail park respectively, with a large central car parking area. On the north-western edge are a cinema, drive-through restaurant and a health and fitness leisure centre incorporating a sports-related retail unit.

The site is bounded to the south west by open land with planning permission for bulky goods retail development, the boundary of which is defined by the railway line. On the other side of the railway line lies the Inverness Campus site.

To the west lies Stoneyfield Business Park along with the Snow Goose pub/restaurant, Holiday Inn Express and Travel Lodge hotels and Howden's garden centre.

To the east is open countryside allocated in the Inner Moray Firth Local Development Plan for mixed use development over an area in excess of 100 hectares.

3. PLANNING HISTORY

3.1 1995/833: Erection of non-food retail park, indoor leisure complex and business park. Granted outline planning permission February 1996;
1996/809: Approval of reserved matters for non-food retail warehousing and associated servicing, car parking and landscaping;
1997/0826/OUTIN: Extend existing non-food retail park. Granted September 1998;
99/00953/REMIN: Erection of 6 retail units. Granted January 2000;

14/04511/FUL: Change of use from Class 1 to Class 3 to form 3 no. restaurants (Unit 3) and associated external alterations. Withdrawn February 2015;

15/03390/FUL: Change of Use of Unit 3A from Class 1 (shops) to Class 3 (food and drink) to form 3 restaurants; external alterations; customer services building; alterations to access to Shopping Park; alterations to internal access/circulation within car park; alterations to car parking layout; alterations to pedestrian footpaths, public areas and landscaping.

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour. Expired 25/03/16

Representation deadline : 26/03/16

Timeous representations : None

Late representations : None

5. CONSULTATIONS

5.1 **Transport Planning:** No objection. The phasing of the car park improvement works is welcomed from a traffic management and road safety perspective.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

11 Inverness Retail and Business Park

28 Sustainable Design

29 Design Quality and Place-Making

31 Developer Contributions

40 Retail Development

42 Previously Used Land

56 Travel

65 Waste Water Treatment

6.2 Inner Moray Firth Local Development Plan 2015

1 Promoting and Protecting City and Town Centres

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable.

7.2 **Highland Council Supplementary Planning Policy Guidance**

Not applicable.

7.3 **Scottish Government Planning Policy and Guidance**

Scottish Planning Policy (June 2014)

8. PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 **Development Plan Policy Assessment**

Whilst the various policies listed under section 6 above are of relevance to the development as a whole, the principle of the development and an assessment against those policies has already been fully considered and established through the granting of planning permission 15/03390/FUL. The proposed variations to the conditions requested by the applicant do not raise any new material matters in relation to the development plan.

8.4 **Material Considerations**

Section 42 of the Act requires the Planning Authority to consider only the question of the conditions subject to which planning permission should be granted. If it is decided that planning permission should be granted subject to different conditions, it should be granted accordingly and if it is decided that permission should be granted subject to the same conditions the Planning Authority is obliged to refuse the application.

The determining issues in this case are therefore whether the proposed changes requested by the applicant are reasonable and justify granting a new planning permission with revised conditions.

Condition 4 (car park improvements)

Essentially Condition 4 required the car parking improvement works to be completed within 6 months of any of the restaurants being brought into use. This was to ensure that the changes would be implemented in a timeous manner in the interests of public safety.

The applicant has expressed concern that this requirement places an unreasonable and unjustifiable burden on them and that it should not be directly connected to the opening of the restaurants. In addition lease agreements with a number of existing tenants restrict the carrying out of car park works without their prior approval and there is a need to ensure that the majority of parking spaces are available for the duration of the works.

The applicant has submitted a proposed phasing plan along with a timetable for completion of the various phases which would enable the works to be carried out in a systematic manner whilst maintaining full access to the car park and preserving approximately 80% of available spaces for the duration of the works.

The Council's Transport Planning Team has no objection to the proposal and indeed welcomes the phased approach from a traffic management and road safety perspective.

The proposal put forward by the applicant is to require the car park improvement works to be carried out in accordance with the submitted phasing plan. In consultation with Transport Planning, the proposed phasing plan and timescales for implementation are considered to be acceptable.

Condition 6 (Ventilation system)

The applicant has requested that this condition is amended to clarify that the ventilation system is only required to be installed for each restaurant prior to that respective restaurant first opening. In addition the applicant has requested that the requirement for the ventilation system to be approved before any development or works commence on the unit, is relaxed. Both these requests are reasonable and subject to minor changes to the wording requested by the applicant will meet the objectives initially set by the Council whilst enabling certain development and works to progress without prejudicing those objectives.

Remaining conditions

The effect of approving a Section 42 application is to grant a new and separate planning permission for the development. As a consequence it is necessary to include the remaining conditions imposed on the previous planning permission, subject in this case to some minor variations. This includes slight alterations to the wording of the pre-commencement conditions to enable certain preliminary works to be carried out which do not prejudice the overall objectives of those conditions.

8.5 Other Considerations – not material

Not applicable.

8.6 Matters to be secured by Section 75 Agreement

A revised Section 75 Agreement will be required seeking a financial contribution from the applicant towards implementing the wider connectivity strategy for the retail park as the Agreement signed in connection with the earlier application is non-transferable.

9. CONCLUSION

9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. RECOMMENDATION

Action required before decision issued	Y
Notification to Scottish Ministers	N
Conclusion of Section 75 Agreement	Y
Revocation of previous permission	N

Subject to the above, it is recommended the application be **Granted** subject to the following conditions and reasons / notes to applicant.

1. No development shall commence until a detailed specification for all proposed external materials and finishes (including trade names and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. For the avoidance of doubt this includes the proposed customer services building, the external alterations to the existing buildings, and the hard landscaping and surfacing materials to be used on the car park and public footpaths and routes. Thereafter, development and work shall progress in accordance with these approved details.

Reason: In order to enable the Planning Authority to consider these matters in detail prior to the commencement of development; in the interests of amenity.

2. No development associated with the changes to the car park and public footpaths shall commence until full details of the play areas, all external street furniture, including refuse bins, recycling facilities, secure cycle racks and bollards, have been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

Reason: In order to enable the Planning Authority to consider these matters in detail prior to the commencement of development; in the interests of amenity.

3. No development associated with the changes to the car park and public footpaths shall commence until the following details have been submitted to, and approved in writing by, the Planning Authority:

- (i) A scheme for creating safe and attractive routes from the staff parking area to the front of the retail units;
- (ii) A plan showing coloured marked pedestrian routes no less than 1 metre wide along both sides of the one-way aisles within the visitor car park.

Following approval of the above details, development shall progress in accordance with the timescales agreed in compliance with Condition 4 below.

Reason: In the interests of public safety and all users of the retail park and to ensure the adequate provision of safe pedestrian routes as well as motorcycle parking.

4. The proposed layout changes including the alterations to the site access, alterations to the layout of the car park, and the provision of pedestrian routes and footpaths, including the details approved as part of Condition 3, shall be implemented in accordance with the approved Phasing Diagram drawing no. A5303/P(-)11 Rev B, unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure that the proposed layout changes for the site are implemented in a timeous manner in the interests of public safety.

5. All landscaping works shall be carried out in accordance with the scheme and plans approved as part of this permission. All planting, seeding or turfing as may be comprised in the approved scheme and plans shall be carried out in the first planting and seeding seasons following the completion of the layout changes referred to in Condition 4 above, unless otherwise agreed in writing by the Planning Authority. Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that the approved landscaping works are properly undertaken on site.

6. Full details of the proposed kitchen extraction ventilation system designed to ensure the effective removal and dispersal of cooking odours from each individual restaurant shall be submitted to and approved in writing by the Planning Authority. Thereafter the approved ventilation system for each individual restaurant shall be installed and fully operational prior to each individual restaurant being first brought into use and shall be retained in use thereafter.

Reason: In order to safeguard the amenity of neighbouring units and occupants.

7. Prior to first occupation of any of the restaurants in Unit 3A, a scheme providing for adequate storage of refuse arising from the use shall be submitted to, and approved in writing by, the Planning Authority. Thereafter the refuse storage shall be carried out in accordance with the approved scheme.

Reason: To ensure that adequate provision is made for the storage of refuse in the interests of amenity.

8. Prior to first occupation of any of the restaurants in Unit 3A, the infrastructure to enable foul drainage from the unit to be pumped directly to a new connection to the Longman Transfer Sewer and which shall incorporate a stand-by pump system which will be fitted with a new external grease interceptor, as shown in Appendix B of Drainage Strategy Report A/14560/001, will be constructed and fully operational.

Reason: To ensure the provision of a sustainable foul drainage system which allows for the increase in flows and loads proposed by this development, in the interests of improving and maintaining a good quality water environment.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks & Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupation.htm>

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Building Regulations

Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at BuildingStandards@highland.gov.uk or on 01349 886606.

Environmental Health

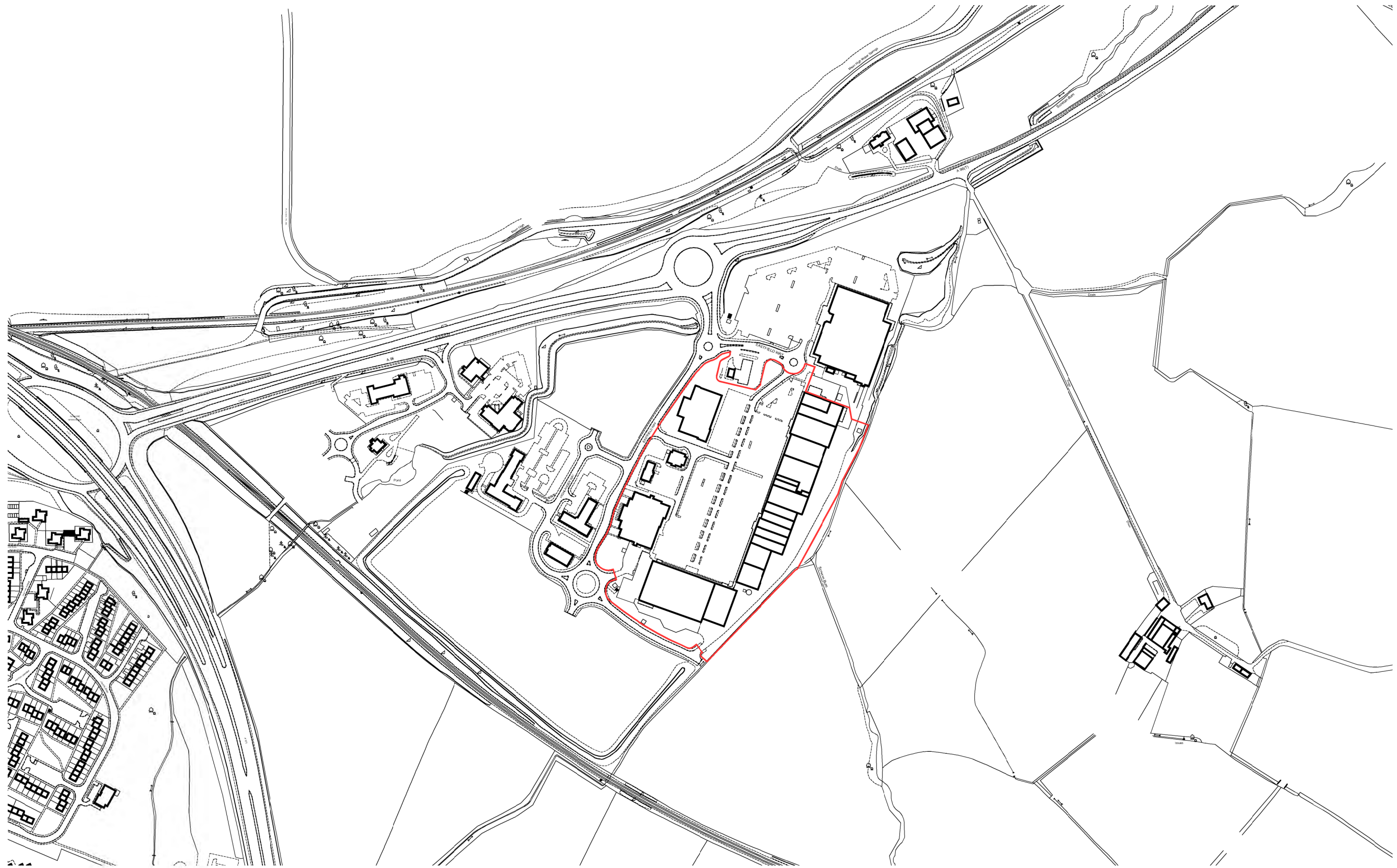
The development must comply with all relevant Health and Safety legislation. Early contact for further advice on this and operational Health and Safety requirements should be made with the Environmental Health Service.

The development must comply with the Food Hygiene (Scotland) Regulations 2006 and early contact should be made with the Environmental Health Office prior to commencement of the works.

The kitchen extraction system requires to be designed, installed, effectively operated, and maintained in order that cooking odours are not detectable within any neighbouring premises.

For more information on any of the above requirements Please contact Environmental Health at envhealth@highland.gov.uk or on 01349 886603.

Signature: Allan J Todd
Designation: Area Planning Manager – South
Author: John Kelly
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Location Plan
Plan 2 – Phasing Plan (car park improvement works)



HALLIDAY FRASER MUNRO

CHARTERED ARCHITECTS • PLANNING CONSULTANTS

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**Inverness Shopping Park
Park Improvements**

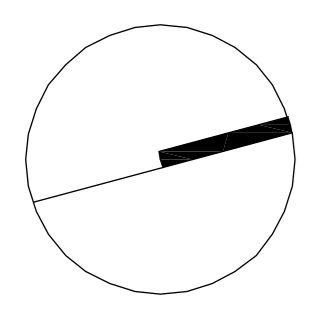
Site Location Plan

Scale: 1:5000 @ A3

Date: October 2014

Dwg No: A5303/P(--)-01 Rev B

Copyright of this drawing subsists in Halliday Fraser Munro



Phasing Diagram

Phase	Color	Timeline
Phase One	Blue	February - March 2017
Phase Two	Teal	April - May 2017
Phase Three	Green	June - July 2017
Phase Four	Yellow	August - September 2017
Phase Five	Orange	September - October 2017
Phase Six	Red	February - March 2018
Phase Seven	Purple	April - May 2018
Phase Eight	Light Green	June - July 2018

Walkway Markings

