

Agenda Item	<b>6.1</b>
Report No	<b>PLN/085/19</b>

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 26 November 2019

**Report Title:** 19/00233/S42: Ian Elliot Ltd  
Land 150m west of Wyndhill Industrial Estate, Muir of Ord

**Report By:** Acting Head of Development Management – Highland

### 1. Purpose/Executive Summary

- 1.1 **Description:** Section 42 Application to vary Condition 8 of planning permission 13/04534/PIP to allow 60 houses to be developed in Phase 1 of the mixed use scheme
- 1.2 **Ward:** 08 – Dingwall and Seaforth
- 1.3 **Development category:** Major
- 1.4 **Reason referred to Committee:** Major Application

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.

### 2. Recommendations

- 2.1 Members are asked to agree the recommendation to Grant planning permission as set out in section 13 of the report.

### 3. PROPOSED DEVELOPMENT

3.1 Planning Permission in Principle was granted for a mixed use development; comprising Class 4 business/office use; Class 1 garden centre/retail use; and class 9 residential use (60 units); as well as landscaping, open space, footpaths and supporting infrastructure; in January 2016 (13/04534/PIP). This Section 42 planning application is seeking a variation to Condition 8 of the Planning Permission in Principle to allow the 60 houses to be developed in a single phase, as opposed to being restricted to a maximum of 20 units per annum as previously approved. Condition No 8 reads:

**The Phasing Plan shown with the submitted Masterplan is indicative only. No development shall commence until a Phasing Plan outlining details of the phasing of the development has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development shall be undertaken in accordance with this approved Phasing Plan unless otherwise agreed in writing by the Planning Authority. For the avoidance of doubt, there shall be no more than 20 houses built in any one calendar year (if the 20 units are not built in any calendar year, the balance may be carried over to the subsequent year).**

3.2 A separate Matters Specified in Conditions application (19/00234/MS) seeks to discharge many of the conditions attached to the parent permission and specifically seeks approval for Phase 1 of the wider development, comprising the erection of 60 houses at the northern end of the development site. Although originally submitted in the name of Ian Elliot Ltd. and Scotia Homes, the Council was notified by the agent in May 2019 that Scotia Homes has withdrawn from the landowner agreement to promote the site and therefore the application is now being taken forward by Ian Elliot Ltd. only.

3.3 The details for Phase 1 submitted include formation of a new access point onto the A862 public road to serve a mix of detached and semi-detached houses, substantially two storeys in height, interspersed with some single storey properties.

3.4 There is no existing infrastructure on site. The related MS application proposes the formation of a new access onto the A862. A new footpath/cycle way is also shown along the eastern boundary adjacent to the public road. It is proposed to extend the current 40MPH speed limit southwards to the bend in the public road at Wyndhill. It is also proposed to connect to the public water and waste water networks and to provide SUDS compliant surface water drainage within the site.

3.5 Pre Application Consultation: Formal pre-application consultation was undertaken prior to submission of the application for Planning Permission in Principle. The applicants consulted with the Council's Major Pre-Application team on 13 May 2013 (13/01775/PREAPP) and received a response on 10 July 2013. Subsequent to this, statutory consultation with the Community was undertaken and a proposal of application notice was lodged with the Council on 8 August 2013 (13/03032/PAN).

3.6 Supporting Information: Supporting Statement

3.7 Variations: None

#### 4. SITE DESCRIPTION

4.1 The site is located on the southern edge of Muir of Ord to the south-west of the established Industrial Estate. It lies to the south of 'The Cairns' housing development and is contained between the railway line to the west and the A862 public road to the east. The site is relatively flat and is in agricultural use. A natural stone wall runs along the eastern boundary and a Scheduled Ancient Monument, 'Wyndhill Standing Stone' lies within the south-east corner of the site.

#### 5. PLANNING HISTORY

5.1	13/01775/PREAPP Pre-application enquiry	Advice issued	10.07.2019
5.2	13/03032/PAN Proposal of Application	Lodged	08.08.2013
5.3	13/03139/SCRE Screening Request for Environmental Impact Assessment	Screening Opinion advising EIA not required	09.11.2013
5.4	13/04534/PIP Mixed use development comprising Class 4 (business/office), Class 1 (garden centre/horticultural retail), Class 9 (private and affordable houses). Creation of formal and informal open space, footpaths and improved footway on the A862.	Planning Permission in Principle	28.01.2016
5.5	19/00234/MSC Erection of 60 residential units (private and affordable) (discharge of Planning Conditions 13/04534/PIP)	Application pending	

#### 6. PUBLIC PARTICIPATION

6.1 Advertised: Unknown Neighbour  
Date Advertised: 01.02.2019  
Representation deadline: 17.02.2019  
Timeous representations: 0  
Late representations: 0

#### 7. CONSULTATIONS

7.1 **Muir of Ord Community Council:** No objection. The application is generally welcomed.

7.2 **Development Plans:** No objection. The site is allocated under MO5 in the Inner Moray Firth Local Development Plan (IMFLDP). Condition 8 reflected the following

developer requirement for the site set out in the IMFLDP: "development in separate phases not exceeding 20 units in any one calendar year (if the 20 units are not built in any calendar year, the balance may be carried over to the subsequent phase)". The implication in the IMFLDP is that a Phasing Plan is anticipated in which each year of housing delivery would be a distinct phase. The Section 42 proposal would therefore not comply with this particular provision of the Development Plan. If the housing is, as now envisaged by the developer, delivered over two years then the annual completion rate would be 30 (50% higher than that anticipated by the IMFLDP). However, the overall number of homes complies with the IMFLDP's indicative housing capacity for the site (60) and reflects the maximum of 60 set in Condition 2 of the permission 13/04534/PIP. Furthermore, whilst the percentage increase in rate of development appears large, the numbers of units involved are relatively low.

The IMFLDP noted, at paragraph 4.73, that there has been a significant growth in the village in recent times and that whilst this has helped to strengthen the community it has also put additional pressure on its infrastructure. The Plan is therefore concerned to manage further growth and seeks yearly limits on housing completions not only for site MO5 but also for MO1(Broomhill) and MO2 (Tore Road). The Housing Land Audit (HLA) 2018 forecasts completion of site MO1 during 2019 and the development of site MO2 over a 5 to 6 year period commencing 2020. Site MO3 (Ardnagrask/Corrie Road) is forecast to deliver homes over a similar period to MO2. MO2 and MO3 together are forecast to deliver around 30 homes per annum. However, it may be noted that there is currently a fresh application for permission in principle under consideration for M02, which would suggest that the timescale for site MO2 beginning to deliver homes is likely to be delayed beyond that forecast by HLA 2018.

It is noted that Condition 8 provides for the possibility of units allowed to be delivered one year but not completed, to be delivered instead in the next year as an addition to those phased for then. This means that it is conceivable that a phasing plan setting out 20 per year for three years might have delivered all 60 over two years.

A Section 75 Agreement is in place covering Development Contributions in respect of 13/04534/PIP. These previously negotiated contributions apply to the development now subject of the current S42 and MSC applications; there is no requirement to recalculate and renegotiate contributions. It is noted that contributions include: the provision of Affordable Housing (the MSC application meets the requirement for 25% affordable housing by proposing 15 affordable units); contribution to Community Facilities; contribution to Education Facilities; contribution to Transport Facilities (towards the cost of provision and installation of two bus shelters on the A862 road, each equipped with real time information points).

In view of the above observations, it is concluded that variance from Condition 8 may be supported but that the Council may wish nonetheless to condition a degree of phasing of the housing (e.g. Year 1, Phase 1 a, 30 units; Year 2, Phase 1 b, 30 units) to reduce the likelihood of as many as 60 units being delivered in a

period of 1 year or less, alongside other developments in the village. If considered necessary, consideration could be given to the phasing split between the two years

being e.g. 30/30, or 40/20, with a provision for completing some units from the first year's allowance if necessary in the second year.

## **8. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **8.1 Highland Wide Local Development Plan 2012**

28 - Sustainable Design  
29 – Design Quality and Place-making  
31 –Developer Contributions  
32 - Affordable Housing  
34 - Settlement Development Areas  
56 – Travel  
57 – Natural, Built and Cultural Heritage  
64 - Flood Risk  
65 – Waste Water Treatment  
66 – Surface Water Drainage  
74 – Green Networks  
75 – Open Space  
77 – Public Access

### **8.2 Inner Moray Firth Local Development Plan 2015**

Within Muir of Ord Settlement Development Area. MO5 – Allocated for Mixed use. Development in separate phases not exceeding 20 units in any one calendar year (if the 20 units are not built in any calendar year, the balance may be carried over to the subsequent phase).

### **8.3 Highland Council Supplementary Planning Policy Guidance**

Sustainable Design Guide (Jan 2013)  
Developer Contributions (November 2018)  
Flood Risk and Drainage Impact Assessment (Jan 2013)  
Green Networks (Jan 2013)  
Highland Historic Environment Strategy (Jan 2013)  
Open Space in New Residential Developments (Jan 2013)  
Standards for Archaeological Work (March 2012)

## **9. OTHER MATERIAL POLICY CONSIDERATIONS**

### **9.1 Scottish Government Planning Policy and Guidance**

Scottish Planning Policy 2014

## **10. PLANNING APPRAISAL**

- 10.1 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.

### **Determining Issues**

- 10.2 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.

### **Planning Considerations**

- 10.3 The key considerations in this case are:

a) compliance with the development plan and other planning policy

### **Development plan/other planning policy**

- 10.4 As noted above, the site is allocated for mixed development use in the adopted Inner Moray Firth Local Development Plan and the proposal to vary the requirement does not comply with the specific provision at MO5 of this development plan, which states that development should be in separate phases, not exceeding 20 units in any one calendar year.

- 10.5 A supporting statement has been submitted with the application, which states that rather than be restricted to building 20 housing units per calendar year, the applicants are proposing instead to deliver 60 houses (private and affordable), in one full first phase of the mixed use development. The proposal for 45 private and 15 affordable houses is now proposed over a period of around two years at an approximate build rate of 24 units in year 1, increasing to 36 units in year 2. It is submitted that the required infrastructure and other detailed site development commitments required by other conditions of PIP will be met – so far as to support the capacity and timing of this Section 42 proposal for delivery of 60 houses in a first phase of the mixed-use development. It is submitted by the applicant that the proposal will not negatively impact on any future phases of the PIP mixed-use development site as a result. These matters are detailed in the accompanying MSC planning application (19/00234/MSC).

- 10.6 In support of the application the applicant has provided justification by way of an explanation of the changes in circumstances in the 10 years since the landowners began promotion of the site. In terms of the existing situation, the Highland Council Housing Land Audit 2017 has been examined by the applicant to determine what impact if any, the flow of 60 new homes may have on the Development Plan strategy, on other allocated or committed housing sites, and whether such a proposal would be acceptable. It is noted that progress on the other allocated sites in Muir of Ord has been examined and that this concludes that of the four other sites allocated, only MO1 (Broomhill) has progressed with any construction. This demonstrates that there are a low number of larger scale housing developments under construction, or with consent at this date. However there are several planning applications progressing, including the current proposal. Given the timing of the application, the applicant is confident that the delivery of all 60 units can be realised in 2 calendar years, meaning by around 2022, the development will

be completed - and it will therefore bear a limited impact on the delivery of other housing sites planned or committed in Muir of Ord and as such, will not impact on the availability of planned infrastructure.

- 10.7 In addition, it is noted that the proposal also includes for delivery of infrastructure to serve the wider site – i.e. the access from the A862, the off road foot/cycle path, two new bus stops, generous provision of open space, protection and interpretation of the Wyndhill Standing Stone, and commitment to the drainage system for the whole development site, in so far as it being enabled for future development beyond the proposed 60 houses. Developer contributions have already been committed through a Section 75 Agreement securing a minimum of 25% affordable housing and financial contributions towards Education and Community Facilities. Therefore the applicant submits that the proposal to deliver 60 units in the first development phase of the mixed use scheme will not impact on the LDP Development Strategy in terms of competing sites, nor in terms of sufficient delivery of infrastructure to meet the development needs.

### **Matters to be secured by Section 75 Agreement**

- 10.8 A Section 75 Legal Obligation is already in place in relation to 13/04534/PIP and secures a minimum of 25% affordable housing; and contributions towards education and community use. This will require to be modified to reflect the S42 consent.

## **11. CONCLUSION**

- 11.1 The proposed erection of 60 houses does not exceed the capacity identified in the adopted development plan and reinforced by the existing Planning Permission in Principle. The requested variation of condition will only result in a minor change to the timescale of delivery of the houses, potentially over two years rather than three years. On the basis of the applicant's submission and advice from the Council's Development Plans team, it is not considered a significant departure from policy on the basis that the Condition is amended to read:

**The Phasing Plan shown within the submitted Masterplan is indicative only. No development shall commence until a Phasing Plan outlining details of the phasing of the development has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development shall be undertaken in accordance with this approved Phasing Plan unless otherwise agreed in writing by the Planning Authority. For the avoidance of doubt, there shall be no more than 40 houses built in the first calendar year following commencement of development.**

This will ensure that the houses will be delivered over a minimum of two years as set out within the applicant's Supporting Statement.

- 11.2 With regard to HwLDP Policy 31 and related Supplementary Guidance for Developer Contributions, the Guidance states that in the case of Section 42 applications, proposals will be reassessed to ascertain the impacts of the development and where necessary, developer contribution requirements will be re-established by applying the most up to date provisions of the Local Development Plan, including the Supplementary Guidance. In this case, the Council's Development Plans team has advised that no re-calculation of contributions will be

required. This is on the basis that the contributions relate to the housing element of the wider development and taking account of the fact that an MSC application has been submitted concurrently in respect of all 60 houses as part of the first phase of development (19/00234/MS). Thereby, even if this S42 application had not been submitted in respect of the change to timescale of delivery of the housing, the MSC based on the previous PIP would allow the same period (a further two years) for commencement of the housing development. On this basis there is no justification to re-calculate contributions.

- 11.3 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.

## 12. IMPLICATIONS

- 12.1 Resource: Not applicable.
- 12.2 Legal: Not applicable.
- 12.3 Community (Equality, Poverty and Rural): Not applicable.
- 12.4 Climate Change/Carbon Clever: Not applicable.
- 12.5 Risk: Not applicable.
- 12.6 Gaelic: Not applicable.

## 13. RECOMMENDATION

**Action required before decision Yes issued**

Conclusion of Modified Section 75 Obligation **Yes**

The existing Section 75 which secures a minimum of 25% affordable housing; and contributions towards education and community use will require to be modified in association with the related planning application ref 19/00233/S42 before either decision notice can be issued.

**Subject to the above**, it is recommended that Planning Permission be **GRANTED** subject to the following:

### Conditions and Reasons

1. The site layout shown on submitted Masterplan is indicative only. No development shall commence until all of the matters specified below have been approved on application to the Planning Authority :

- i. a detailed finalised layout of the site of the proposed development (including site levels as existing and proposed);
- ii. the design and external appearance of the proposed development;
- iii. landscaping proposals for the site of the proposed development (including boundary treatments);
- iv. details of access and parking arrangements;
- v. details of the proposed water supply and drainage arrangements; and
- vi. details of a public art installation.

**Reason** Planning permission is granted in principle only and these specified matters must be approved prior to development commencing

2. For the avoidance of doubt, any details pursuant to Condition 1 above shall show a development which includes a mix of uses as shown on the submitted Masterplan, as follows:
  1. Class 1 Retail (maximum of 500m<sup>2</sup> gross floorspace, of which a maximum of 200m<sup>2</sup> shall be convenience food sales;
  2. Class 1 Retail (maximum of 2000m<sup>2</sup> gross floorspace, excluding polytunnels etc., for specific use as a Garden Centre;
  3. Class 4 Business (maximum of 2200m<sup>2</sup> gross floorspace; and
  4. Class 9 Houses (including flats) (maximum of 60 units).

**Reason:** In accordance with Policy MO5 in the Inner Moray Firth Local Development Plan, and to ensure that the development is delivered in accordance with the application and supporting information hereby approved.

3. Any details pursuant to Condition 1 above shall show a development featuring the following elements in relation to the housing element of the site:
  - i. walls finished predominantly in a white/off-white wet-dash render/smooth coursed cement render/natural stone/timber features;
  - ii. a roof covering of natural slate or flat dark grey/anthracite roof tiles;
  - iii. a maximum of two storeys in height;
  - iv. windows with a strong vertical emphasis;
  - v. a roof symmetrically pitched of not less than 35° and not greater than 45°;
  - vi. predominantly rectangular in shape with traditional gable ends; and

vii. window openings shall have a vertical emphasis and no interfacing openings shall be within 18 metres of one another other than for bathroom, shower room or WC windows with obscure glazing.

**Reason:** To ensure the character of the development relates well to existing buildings within the vicinity and to contribute to levels of privacy within the development in accordance with Policies 28 and 34 of the Highland-wide Local Development Plan.

4. In terms of the matters specified in Condition 1 above, the site access and internal roads and footpaths shall be designed to the standard required by the Council to allow adoption. No development shall commence until evidence has been submitted to and approved in writing by the Planning Authority that demonstrates that all necessary consents and bonds are in place for the road. For the avoidance of doubt, the following requirements shall be incorporated within the access and road design:
- i. The location of the site junction off the A862 shall be agreed with the Council and shall be located to comply with the junction spacing requirements relative to existing junctions in accordance with the Council's Roads and Transport Guidelines for New Developments. The junction shall incorporate a right turn lane on the A862 which shall be demarcated as agreed with the Council and shall be compatible with the existing right turn lane at the A862/B9169 junction. The junction shall be constructed prior to commencement of development;
  - ii. Visibility splays at the site access junction with the A862 shall be 9 x 215 metres;
  - iii. The development shall be designed for 20mph vehicle speeds and be signed at 20mph;
  - iv. Parking for cars and cycles for all elements of the development shall be provided in accordance with the Council's standards and parking layouts shall be agreed with the Council;
  - v. The internal road layout including carriageways, footways, and shared surfaces shall be agreed with the Council and the extent of adoption agreed;
  - vi. Adequate provision shall be made for storage and collection of recycling and refuse bins;
  - vii. A scheme for street lighting shall be agreed with the Council and provided prior to first occupation.

**Reason:** In the interests of road safety and to ensure a standard of access commensurate with the scale of development in accordance with Policy 28 of the Highland-wide Local Development Plan.

5. No development shall commence until a Traffic Order has been made which will extend the 40mph speed limit to the south of the proposed access junction. The traffic order for this will be promoted by the Council at the developer's expense with new and/or relocated signage provided and installed by the developer prior to first occupation of any part of the development.

**Reason:** In the interests of road safety and to ensure a standard of access commensurate with the scale of development in accordance with Policy 28 of the Highland-wide Local Development Plan.

6. No development shall commence on site until evidence has been submitted to the Planning Authority that Scottish Water has granted consent for the development to connect to the public sewer.

**Reason:** In order to ensure public infrastructure has the capacity to accept the additional development.

7. Any details pursuant to Condition 1 above shall show a design and layout informed by the flood risk assessment approved as part of this planning permission. Any measures included within the design and layout for the purposes of mitigating and/or protecting properties and/or land from flood risk shall be completed prior to the first occupation of the development. For the avoidance of doubt, the finalised site layout shall be designed to ensure that no built development or land raising take place within the area shown to be at risk of flooding on Drawing No: 100363/2001 Rev A submitted as part of the supporting Flood Risk Assessment (Issue 3) prepared by Fairhurst and dated 13.11.2013.

**Reason:** To ensure that all flood mitigation infrastructure, required in order to reduce the risk of flooding occurring both within and outwith the application site, is provided timeously.

8. **The Phasing Plan shown within the submitted Masterplan is indicative only. No development shall commence until a Phasing Plan outlining details of the phasing of the development has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development shall be undertaken in accordance with this approved Phasing Plan unless otherwise agreed in writing by the Planning Authority. For the avoidance of doubt, there shall be no more than 40 houses built in the first calendar year following commencement of development.**

**Reason:** To ensure that build-out of the development is phased so as to avoid adverse impact on local services and infrastructure until required improvements have been put in place.

9. Any details pursuant to Condition 1 above shall show surface water drainage provision within the application site which accords with the principles of Sustainable Urban Drainage Systems (SUDS) and is designed to the standards outlined in Sewers for Scotland Second Edition (or any superseding guidance prevailing at the time). Finalised details for each phase of the development shall be submitted for the approval of the Planning Authority in consultation with SEPA. All areas, except for roofs, shall be provided with two levels of SUDS treatment. For the avoidance of doubt, the climate change allowance within the drainage system shall be 20%. Furthermore, the detailed design shall demonstrate how the 200 year event will be contained within the site boundary without flooding critical roads or properties. Development shall proceed thereafter on the basis of such approved details and implemented in full for each phase prior to occupation of any houses within this phase.

**Reason:** To ensure adequate surface water drainage management and prevent localised flooding in accordance with Policy 66 of the Highland-wide Local Development Plan.

10. Any details pursuant to Condition 1 above shall include details of a scheme for the layout, design and construction of green spaces and play areas (including specifications, protection measures, boundary treatments and timescales for implementation). Thereafter, the approved scheme shall be implemented in full and in accordance with the timescales contained therein. For the avoidance of doubt, this shall include full details of the location, form and programme for delivery of a centrally located, mixed age group, equipped play area. Thereafter, the play area shall be installed by, and at the expense of, the developer in line with these approved details, and its ongoing upkeep shall be included in a factoring agreement (or similar), unless otherwise first agreed in writing by the Planning Authority.

**Reason:** To ensure that adequate measures for the delivery and future maintenance of sufficient green spaces and play space have been provided in accordance with Policy 31 of the Highland-wide Local Development Plan.

11. No development shall commence until a scheme for the maintenance, in perpetuity, of all on-site green spaces and/or woodland and/or sports facilities and/or play areas and/or other spaces, facilities, features or parts of the development that are not the exclusive property of any identifiable individual home owner (such as communal parking areas, the common entrances to flatted developments and estate lighting, and those elements of surface water drainage regimes not maintained either by the Council or Scottish Water), has been submitted to, and approved in writing by, the Planning Authority. Thereafter, the approved scheme shall be implemented in full and in accordance with the timescales contained therein.

**Reason:** To ensure that all communal spaces, facilities and landscaping areas are properly managed and maintained.

12. Any details pursuant to Condition 1 above shall include a detailed Landscape Plan and Maintenance Programme. This shall be clearly linked to the Phasing Plan required by Condition 6 above. The Landscape Plan for each phase shall be implemented in full during the first planting season following commencement of development, with maintenance thereafter being carried out in accordance with the Maintenance Programme. For the avoidance of doubt, 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:** To ensure the provision of planting and landscaping at appropriate times during the development of the site and for replacement when required, in accordance with Policies 28, 29 and 34 of the Highland-wide Local Development Plan.

13. Prior to first occupation of any part of the development, two bus stops shall be provided adjacent to the site on the A862 at a location to be approved by the Council. Bus stops shall include bus lay-byes, shelters, lighting and real time

information displays. Direct pedestrian access shall be provided from the development to the bus stops at a location agreed with and to a standard approved by the Council again prior to first occupation of any part of the development.

**Reason:** To ensure timeous enhancement of public transport services in accordance with Policies 28, 31 and 56 of the Highland-wide Local Development Plan.

14. Prior to first occupation of any part of the development, a 3 metre wide combined footpath/cycle way shall be provided for the full length of the development site parallel with the A862. The path shall be connected within the road verge to the existing path within the Cairns development to the north and to the existing path to the south which extends to Beauly. This path should be built to the adopted standards (section 10) within Cycling By Design (Transport Scotland, 2010), consideration of cycle priority at junctions (section 7.2.2.3) and details for future maintenance shall be submitted for approval by the Planning Authority in consultation with the Roads Authority. Development shall proceed thereafter on the basis of such approved details.

**Reason:** To ensure timeous provision for enhancement of pedestrian and cycleways in accordance with Policies 28, 31 and 56 of the Highland-wide Local Development Plan.

15. No development shall commence until a detailed Outdoor Access Plan of public access across the site (as existing, during construction and following completion) has been submitted to, and approved in writing by, the Planning Authority. The plan shall include details showing:

i. All existing access points, paths, core paths, tracks, rights of way and other routes, and any areas currently outwith or excluded from statutory access rights under Part One of the Land Reform (Scotland) Act 2003, within and adjacent to the application site;

ii. Any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or effect on curtilage related to proposed buildings or structures;

iii. All proposed paths, tracks and other routes for use by walkers, riders, cyclists, all-abilities users, etc. and any other relevant outdoor access enhancement (including construction specifications, signage, information leaflets, proposals for on-going maintenance etc.);

iv. Any diversion of paths, tracks or other routes (whether on land or inland water), temporary or permanent, proposed as part of the development (including details of mitigation measures, diversion works, duration and signage).

The approved Outdoor Access Plan, and any associated works, shall be implemented in full prior to the first occupation of the development or as otherwise may be agreed within the approved plan.

**Reason:** To ensure suitable and timely provision of all-abilities access across the site and in order to safeguard public access during the construction phase of the development.

16. No development or work (including site clearance) shall commence until a programme of work for the evaluation, preservation and recording of any archaeological and historic features affected by the proposed development/work, including a timetable for investigation, all in accordance with the attached specification, has been submitted to, and approved in writing by, the Planning Authority. The approved programme shall be implemented in accordance with the agreed timetable for investigation

**Reason:** In order to protect the archaeological and historic interest of the site.

17. No development or work (including site clearance) shall commence until a Heritage Interpretation Plan for the Windhill Standing Stone has been submitted to, and approved in writing by the Planning Authority. The Plan shall:

- i. propose interpretative text and source appropriate images; and
- ii. propose a suitable design for the interpretation panel/s; and
- iii. propose for a location and design for the interpretation plinth or stand; and
- iv. include proposals for implementation of the Plan.

The approved Plan shall be implemented prior to the first use of the development hereby approved, or, if different, in accordance with the approved Plan.

**Reason:** In order to promote the archaeological/historical interest of the site.

18. Any details pursuant to Condition 1 above shall show repair and retention of the existing stone dyke forming part of the eastern boundary to the site and details for continuation of the feature along the eastern site boundary over the section to the north-east of the site where the wall does not exist at present. Where the wall is proposed to be breached to facilitate access detailed archaeological recording will be required and should form part of the programme of work required under Condition 15 above.

**Reason :** In order to protect the archaeological and historic interest of the site.

## **REASON FOR DECISION**

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.

## **TIME LIMITS**

In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended), an application or applications for the approval of matters specified in conditions attached to this Section 42 planning permission in principle must be made no later than whichever is the latest of the following:

- i. THREE YEARS from the date on this decision notice;
- ii. SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. SIX MONTHS from the date on which an appeal against such refusal was dismissed.

The development to which this S42 planning permission in principle relates must commence no later than TWO YEARS from the date of the requisite approval of any matters specified in conditions. If development has not commenced within this period, then this planning permission in principle shall lapse.

## **FOOTNOTE TO APPLICANT**

### **Accordance with Approved Plans and 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

### **Flood Risk**

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

### **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 and 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 road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area 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/info/20005/roads\\_and\\_pavements/101/permits\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

## **Mud and 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.

**Construction Hours and Noise-Generating Activities:** You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) for more information.

## **Protected Species – Halting of Work**

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: [www.snh.gov.uk/protecting-scotlands-nature/protected-species](http://www.snh.gov.uk/protecting-scotlands-nature/protected-species)

## **SSE**

SSE has highlighted that a high voltage overhead line crosses the site. All works in proximity to overhead lines must be carried out in accordance with the Health and Safety Guidance Note GS6. A map showing the approximate location of the line is attached and if you have any further enquiries please contact SSE Engineering and Connections Team. (Tel. 08000 483515).

## **Major Development Site Notice**

Prior to the commencement of this development, the attached Site Notice must be posted in a publicly accessible part of the site and remain in place until the development is complete. This is a statutory requirement of the Town and Country Planning (Scotland) Acts and associated regulations.

## **Scheduled Monument Consent**

Please note that the Windhill Standing Stone is a Scheduled Ancient Monument and that Scheduled Monument Consent may be required for any works which affect this structure. Further information on the Scheduled Monument Consent process can be downloaded from Historic Environment Scotland.

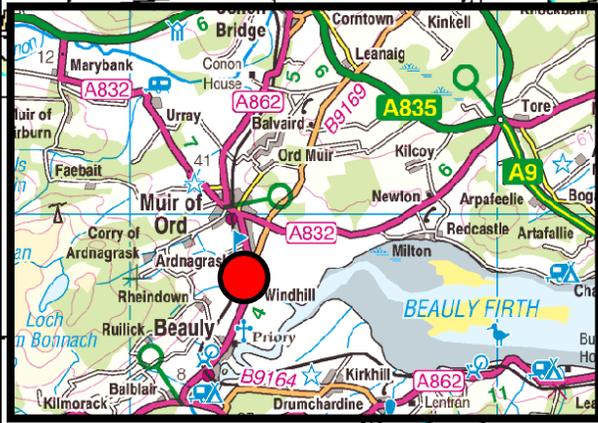
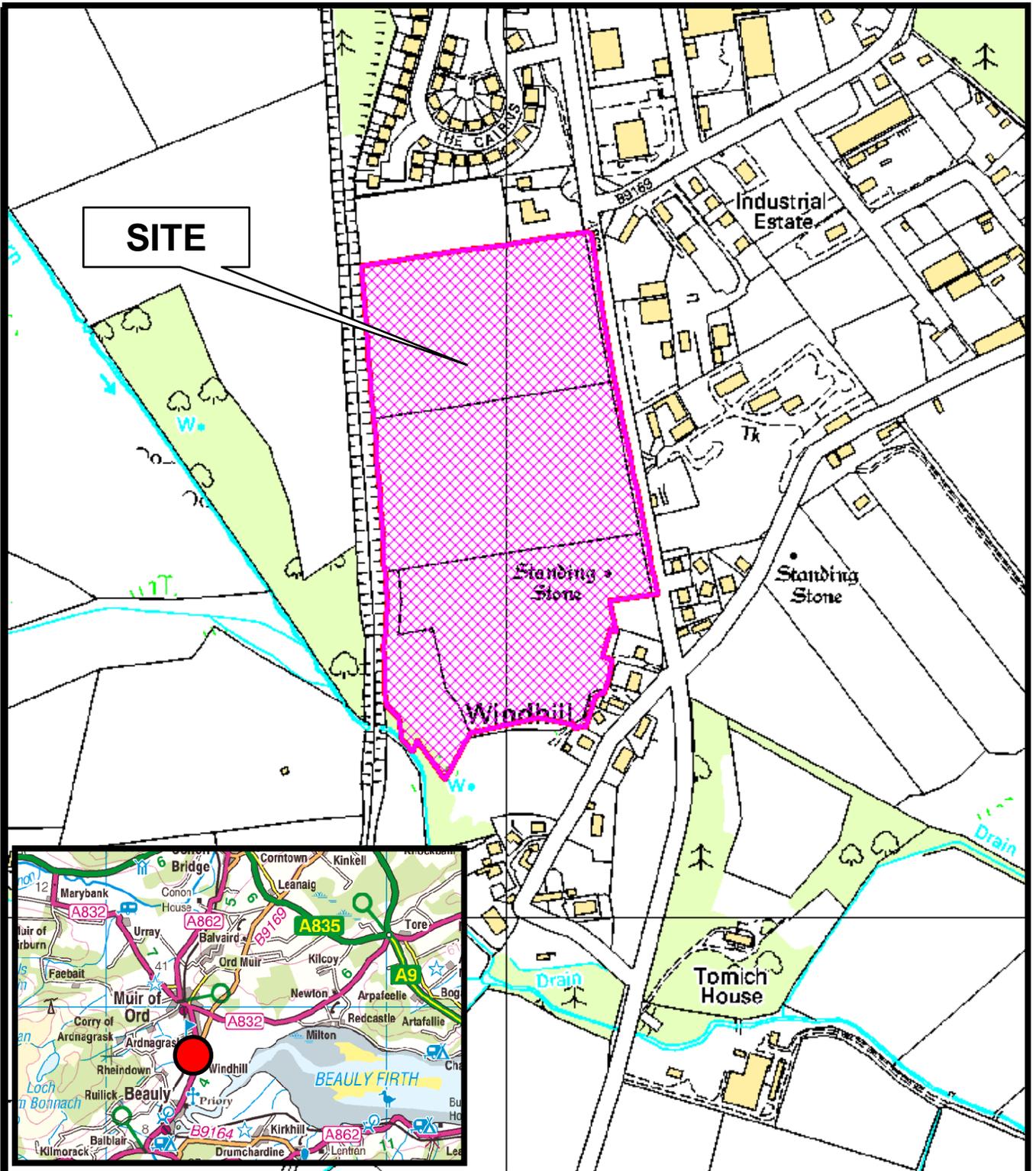
## **Building Regulations**

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 [ebuildingstandards@highland.gov.uk](mailto:ebuildingstandards@highland.gov.uk) or on 01349 886608.

## **Section 75 Agreement**

An Agreement in terms of Section 75 of the 1997 Planning Act relates to this development. The terms of the Section 75 Agreement secure 25% affordable housing contribution together with financial contributions towards education, community facilities and public transport. The full Section 75 Agreement can be viewed on request.

Designation: Acting Head of Development Management – Highland  
Author: Dorothy Stott  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 - Location Plan  
Plan 2 - Site Plan ZZ-XX-DR-A-0002 Rev P4  
Plan 3 - Site Layout /Phasing Plan ZZ-ZZ-DR-A-0004 Rev P1



**The Highland Council**  
Comhairle na Gàidhealtachd

**Planning & Development Service**

**19/0023/S42**

Section 42 application to vary Condition 8 of Planning Permission 13/04534/PIP to allow 60 houses to be developed in Phase 1 of the mixed use scheme

Land West of Wyndhill Industrial Estate, Muir of Ord

N



All levels and dimensions to be checked on site prior to construction/fabrication; report discrepancies immediately. Do not scale dimensions from this drawing. This drawing is copyright protected.

Rev	Description	Date	Dr by	App by
P1	Layout updated: Boundary Updated.	21.12.18	CF	SS
P2	Layout updated.	16.01.19	CF	SS
P3	Boundary amended	17.01.19	CF	SS
P4	Planning issue.	18.01.19	CF	SS

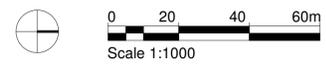


See landscape drawing No. 2121/01 for SUDS & Play area.

Approximate location of standing stone

MIP 12.0

- Phase 1 Site Boundary
- Ownership Boundary
- Indicative Future Development
- Area reserved to route SUDS outfall pipe



SCALE	DATE	DRAWN	CHECKED
1 : 1000 @A1	11/22/18	MS	SS

CLIENT  
**SCOTIA HOMES**  
PROJECT  
**WYNDHILL, MUIR OF ORD**

DRAWING No.  
**Phase 1 Site Plan**

**Threesixty Architecture**  
MORAY HOUSE  
16-18 BANK STREET  
INVERNESS  
IV1 1QY  
t 01463 729929  
www.360architecture.com

DRAWING No.  
**180391A-360-ZZ-XX-DR-A-0002**

REVISION ISSUE STATUS  
**P4 PLANNING**

**1 Site Plan**  
1 : 1000

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All levels and dimensions to be checked on site prior to construction/fabrication; report discrepancies immediately. Do not scale dimensions from this drawing. This drawing is copyright protected.

Rev	Description	Date	Dr by	App by
P1	Retail phase moved	16.09.19	BD	AM



- Ownership Boundary
- Phase 1 Site Boundary
- Phase 1 green space
- Future development green space
- Garden centre
- Business
- Retail

SCALE	DATE	DRAWN	CHECKED
1 : 1000 @A1	28/05/19	CF	SS

CLIENT  
**SCOTIA HOMES**  
 PROJECT  
**WYNDHILL, MUIR OF ORD**

DRAWING  
**Overall Site Phasing Plan**

**Threesixty Architecture**  
 MORAY HOUSE  
 16-19 BANK STREET  
 INVERNESS IV1 1QY  
 1 01463 729929  
 www.360architecture.com

DRAWING No.  
**180391A-360-ZZ-ZZ-DR-A-0004**  
 REVISION  
**P1 PLANNING**

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