

THE HIGHLAND COUNCIL

**SOUTH PLANNING APPLICATIONS COMMITTEE
21 January 2014**

Agenda Item	5.2
Report No	PLS/003/14

**13/03664/FUL : RDS Inverness Ltd
20 Lotland Street, Inverness**

Report by Area Planning Manager - South

SUMMARY

Description : Erection of 6 business starter units (General industrial, factories, workshops and non-food warehouse (trade) buildings).

Recommendation - GRANT

Ward : 17 - Inverness Millburn

Development category : Local

Pre-determination hearing : N/A

Reason referred to Committee : Objection from Statutory Consultee that cannot be resolved.

1. PROPOSED DEVELOPMENT

- 1.1 The proposal is to erect 6 industrial units designed for business start ups on a vacant site at Lotland Street within the Longman Industrial Estate. The buildings are standard industrial style units finished in white wet dash and grey eternit cladding. An element of red colouring is introduced to break up the facades. Four of the units are 140 sq.m with the remaining two being 128 sq.m and 112 sq.m.
- 1.2 No pre-application advice was provided.
- 1.3 Access to the site will be upgraded and the units connected to the public water and sewer networks. Surface water will be disposed of via a new SuDS attenuation tank within the site.
- 1.4 **Variations:** The layout has been amended to take account of TECS comments, including revised parking arrangements, SuDS and bin storage.

2. SITE DESCRIPTION

- 2.1 The site is currently vacant. Surrounding land uses are generally business/industrial and the site is close to the GB Oils depot.

3. PLANNING HISTORY

- 3.1 Planning permission was granted in April 2008 (07/01070/FUL) for the erection of an office and workshop.

4. PUBLIC PARTICIPATION

- 4.1 Advertised : Unknown Neighbour
Representation deadline : 25.10.2013
Timeous representations : 0
Late representations : 0

5. CONSULTATIONS

- 5.1 **Health and Safety Executive** : Sufficient reasons, on safety grounds, for advising against the grant of planning permission. This is on the basis that the proposal is within the Development Proximity Zone (DPZ) of the GB Oils Petrol Storage Site.
- 5.2 **TEC Services (Flood Team)** : No objections to the proposed development, although advise the applicant to wait until the contract for the River Ness Flood Alleviation Scheme phase 2 works has been awarded before commencing construction for this site (programmed for early 2014).
- 5.3 **TEC Services (Roads)** : No objection subject to appropriate conditions re access.
- 5.4 **TEC Services (Contaminated Land Unit)** : No objection subject to condition to deal with potential contamination.
- 5.5 **Development Plans** : Support proposal.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

- | | |
|----|---------------------------------|
| 28 | Sustainable Design |
| 29 | Design Quality and Place-Making |
| 30 | Physical Constraints |
| 42 | Previously Used Land |
| 64 | Flood Risk |

6.2 Inverness Local Plan (As Continued in Force)

- | | |
|------|----------|
| I | Industry |
| 2.13 | Longman |

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Inner Moray Firth Local Plan

Site is covered by the Settlement Development Policy (Policy 34) of the Highland-wide Local Development Plan

7.2 Highland Council Supplementary Planning Policy Guidance

Physical Constraints

Flood Risk and Drainage Impact Assessment

7.3 Scottish Government Planning Policy and Guidance

Scottish Planning Policy

7.4 Other

HSE Circular SPC/TECH/Gen/43 – Land Use Planning Advice Around Large Scale Petrol Storage Sites

PADHI – HSE's Land Use Planning Methodology

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

The site is covered by a number of policies in both the Highland-wide Local Development Plan and the Inverness Local Plan (As Continued in Force). The various policies have an element of contradiction as in many general policies and there is a need, therefore, for officers and Members to balance the competing policies.

8.4 With regard to the Highland-wide Local Development Plan, the key policies are Sustainable Design (28), Physical Constraints (30) and Previously Used Land (42). Policy 28 states that proposed developments will be assessed on the extent to which they meet a number of criteria, including, inter alia,

- are affected by physical constraints as described in the Physical Constraints Supplementary Guidance;
- make use of brownfield sites; and
- contribute to the economic and social development of the community.

- 8.5 Policy 30 states that where a proposed development is affected by any of the constraints detailed within the Guidance, developers must demonstrate compatibility with the constraint or outline appropriate mitigation measures. The Supplementary Guidance specifically refers to hazards identified by the Health and Safety Executive. In this instance the site is within the Development Proximity Zone (DPZ) of the GB Oils Petrol Storage Site.
- 8.6 Policy 42 on previously used land states that the Council will support development proposals that bring previously used land back into beneficial use provided:
- the site is suitable for the proposed development; and
 - the proposed development accords with all other relevant policies of the Plan.
- 8.7 The Inverness Local Plan (As Continued in Force) allocates land at the Longman Industrial Estate under Background Policy I (Industry) which states that the Council will maintain or promote industrial uses.
- 8.8 The draft Inner Moray Firth Local Development Plan does not specifically identify the site but the whole of the Longman falls within the Inverness Settlement Development Area where Policy 34 of the Highland-wide Local Development Plan applies. This states that proposals will be supported where they meet the terms of other Plan policies and meet a range of other criteria, including compatibility with the existing pattern of development and approved adjacent land uses. Developments judged to be significantly detrimental in terms of the criteria will not be supported unless there are clear material considerations which would justify permission being granted.
- 8.9 Members will note the clear conflicts within these policies. On the one hand it is difficult to see how a developer can show compatibility with, or mitigation from, the major hazard as identified by the Health and Safety Executive and the proposal would, therefore, be contrary to Policy 30. On the other hand, the site has been previously used for business/industrial uses, is compatible with other industrial developments in the vicinity, will contribute to the economic development of the city through the creation of small scale starter units and there are no other technical/infrastructure issues with the site.
- 8.10 Members should also note that the DPZ covers a significant area of the Longman Industrial Estate and there are other such areas within the Longman and also the Carse Industrial Estate. Accepting the Health and Safety Executive's position would effectively sterilise a large area of industrial land within the city that offers economic development opportunities.
- 8.11 It is difficult to reach a definitive conclusion in terms of development plan policy due to the inherent contradiction between the policies involved and the health and safety issues raised by HSE. However, discussions have taken place with the Development Plans team who advise that:

“Taking account of the above, and the potential benefits relative to the HSE’s concerns, as well as the potential for setting an unhelpful precedent for all similar development proposals, we would recommend approving this particular application, thereby deferring to Ministers to make a determination.”

8.12 Material Considerations

8.13 Members will also be aware that the first commitment in “Working Together for the Highlands” is to the economy and commits the Council to prioritising and supporting the creation of jobs in the Highlands. This includes supporting local enterprises and small businesses. Growth of employment is therefore a key commitment of the Council and the current proposal will contribute to that, albeit in a small way.

8.14 Whilst the concerns of HSE are recognised, and going against their advice is not to be taken lightly, there are a number of other factors that need to be considered. The refusal of this application on the grounds of the HSE comments alone would effectively sterilise a large area of the Longman which incorporates several significant opportunities for re-use of previously developed land within one of the few recognised established industrial areas of Inverness. As noted above there are other DPZs within the Longman/Carse that are also likely to be similarly affected. Moreover, the application would help to maintain and promote the role of the Longman area as a key industrial and employment centre.

In these circumstances, it is considered appropriate to test the HSE advice with Scottish Government. No matter the outcome, it would provide clear guidance to the Council as to how future applications within the DPZ should be considered in relation to HSE advice.

8.14 Other Considerations – not material

None

8.15 Matters to be secured by Section 75 Agreement

None

9. CONCLUSION

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

Members will note that if they are minded to support the proposal, the application will require to be notified to Scottish Ministers under the Direction in Scottish Planning Circular 3/2009 on the basis of the HSE advice.

10. RECOMMENDATION

Action required before decision issued	Y	
Notification to Scottish Ministers	Y	Objection by statutory consultee
Notification to Historic Scotland	N	
Conclusion of Section 75 Agreement	N	
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 other development shall commence until the site access has been upgraded in accordance with Drawing No. KWA/13061/004.

Reason : To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

2. Before the first unit is occupied, the existing public footpath shall be reconstructed over its full width and extend the full length of the site boundary in accordance with the Council's road construction guidelines.

Reason : In the interests of road safety.

3. The access shall be constructed in accordance with SDB2 material construction type in accordance with the Council's road construction guidelines. The surface material shall extend a minimum of 6 metres from the edge of the public road.

Reason : In the interests of road safety.

4. Any gates provided shall be set back 8 metres from the edge of the public road and open inwards.

Reason : In the interests of road safety.

5. No development shall commence until a scheme to deal with potential contamination within the application site has been submitted to, and approved in writing by, the Planning Authority. The scheme shall include:

- i. the nature, extent and type of contamination on site and identification of pollutant linkages and assessment of risk (i.e. a land contamination investigation and risk assessment), the scope and method of which shall be first submitted to and approved in writing by with the Planning Authority, and undertaken in accordance with PAN 33 (2000) and British Standard BS 10175:2011+A1:2013 Investigation of Potentially Contaminated Sites - Code of Practice;

- ii. the measures required to treat/remove contamination (remedial strategy) including a method statement, programme of works and proposed verification plan to ensure that the site is fit for the uses proposed;
- iii. measures to deal with contamination during construction works;
- iv. in the event that remedial action be required, a validation report that validates and verifies the completion of the approved decontamination measures;
- v. in the event that monitoring is required, monitoring statements submitted at agreed intervals for such time period as is considered appropriate in writing by the Planning Authority.

Thereafter, no development shall commence until written confirmation that the approved scheme has been implemented, completed and, if required, on-going monitoring is in place, has been issued by the Planning Authority.

Reason : In order to ensure that the site is suitable for redevelopment given the nature of previous uses/processes on the site.

6. All surface water drainage provision within the application site shall be implemented in accordance with the approved plans and shall be completed prior to the first occupation of the development.

Reason : To ensure that surface water drainage is provided timeously and complies with the principles of SuDS; in order to protect the water environment.

7. The permission hereby granted relates only to the use of the premises for the purpose of Classes 4, 5 and 6 as defined in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended, or any Order revoking and re-enacting that Order, with or without modification.

Reason : In order to allow the Planning Authority to retain effective control over the use of the site, in the interests of the amenity of adjacent occupiers.

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

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 (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

The River Ness Flood Alleviation Scheme is currently underway. You are advised to wait until the contract for the phase 2 works has been awarded before commencing construction for this site (programmed for early 2014).

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.

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

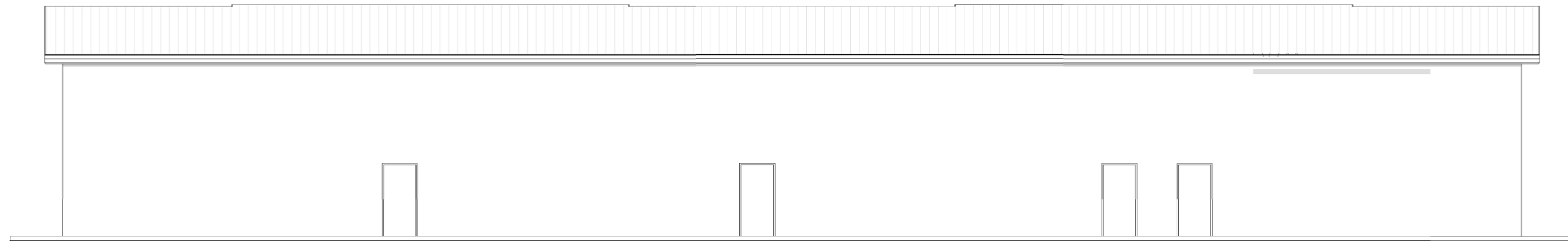
Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on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

Signature:	Allan J Todd
Designation:	Area Planning Manager - South
Author:	J. Harbison
Background Papers:	Documents referred to in report and in case file.
Relevant Plans:	Plan 1 – Site Layout - 2013 039-000-A Plan 2 – Ground Floor Plan – 2013 039 001 Plan 3 – Elevations – 2013 039 002



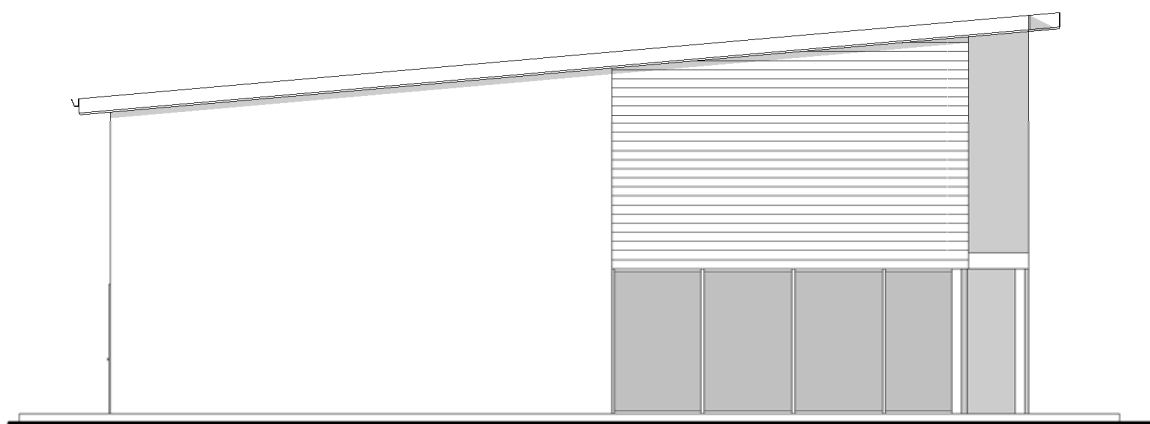
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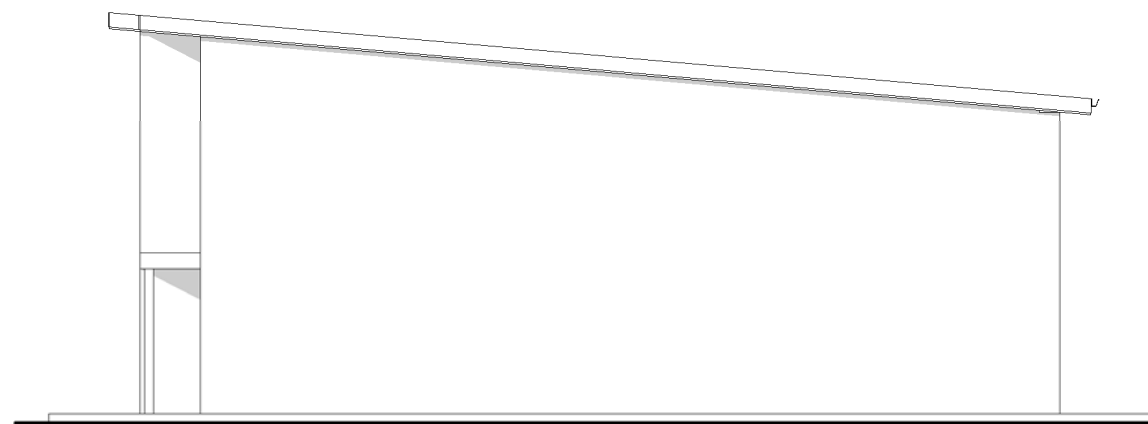
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North west

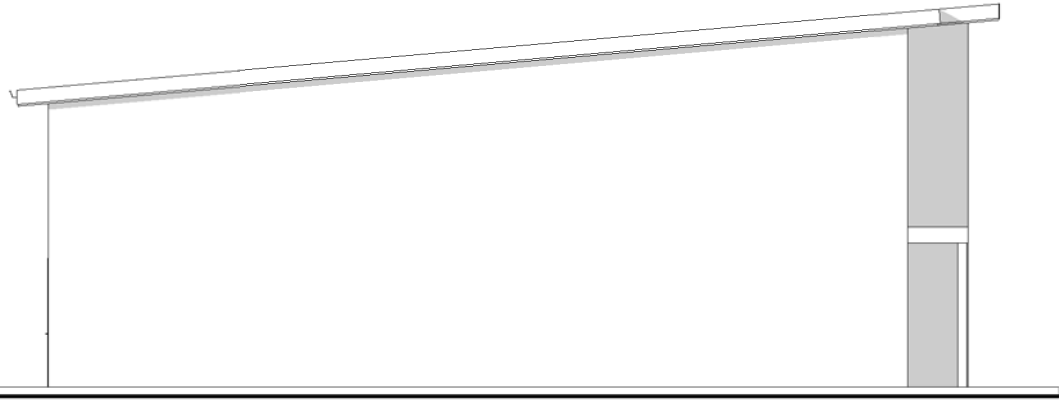
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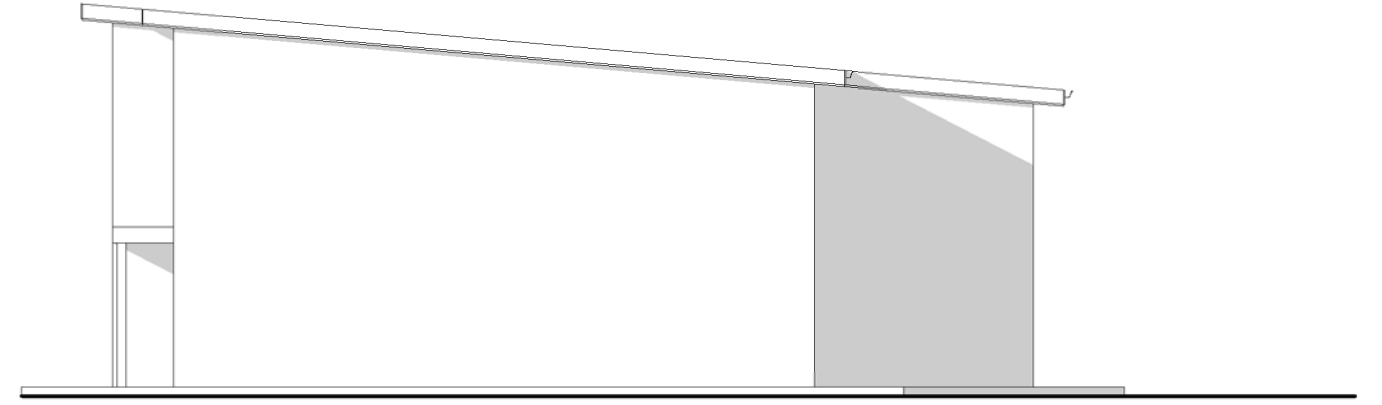
South east

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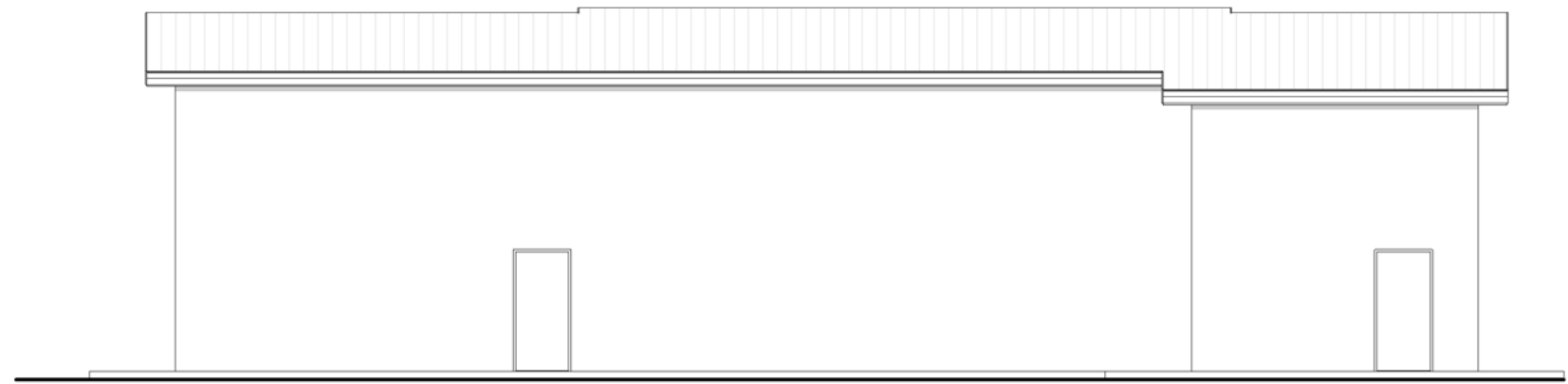
Planning issue		
 reynolds architecture ltd. 1 tulloch street, dingwall. IV15 9JY tel. 01349 867766 fax. 01349 867769 www.reynolds-architecture.com		
No.	Description	Date
RDS Inverness Ltd Starter units, Lotland Street, Inverness		
Elevations		
Date	01.08.13	
Drawn by	GIR	
Scale	1 : 125	
2013 039-002		
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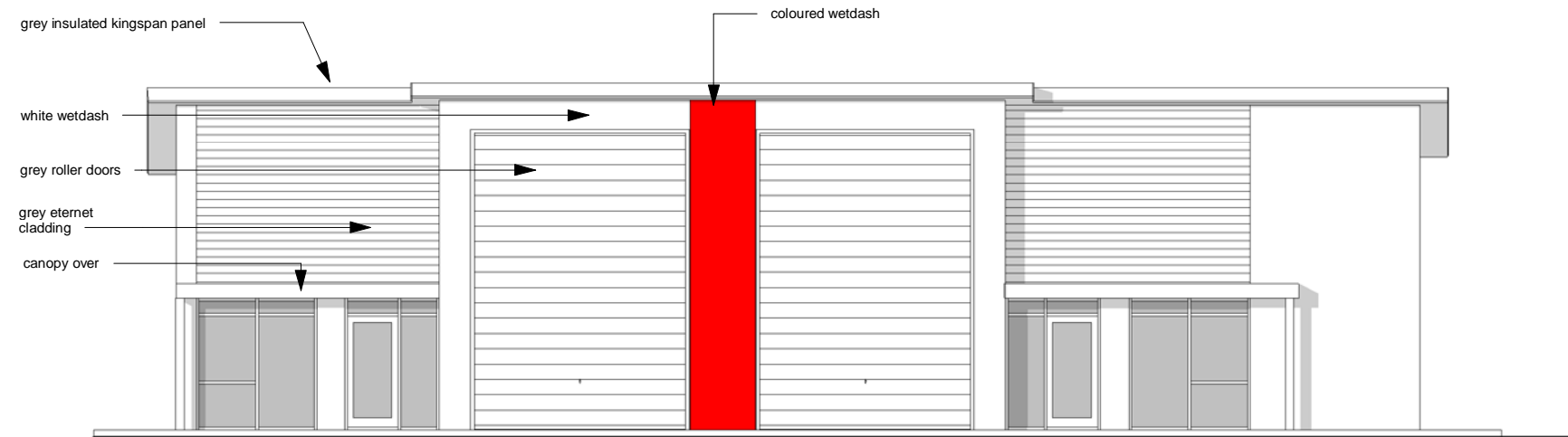
South east
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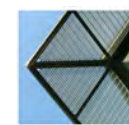
North west
1 : 125



South west
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North east
1 : 125

Planning issue		
 reynolds architecture ltd. 1 tulloch street, dingwall. IV15 9JY tel. 01349 867766 fax. 01349 867769 www.reynolds-architecture.com		
No.	Description	Date
A	Unit made smaller	08.11.13
B	Dimensions altered	12.12.13
RDS Inverness Ltd Starter units, Lotland Street, Inverness		
Elevations		
Date	01.08.13	
Drawn by	GIR	
Scale	1 : 125	
2013 039-011		
<small> 1. Protected by copyright, no reproduction without express permission from architect. 2. Contractor is responsible for checking all dimensions prior to construction. 3. Discrepancies to be referred to architect for decision. 4. Must be read in conjunction with written specification and engineers/sub contractors construction information. </small>		