

Agenda Item	7.2
Report No	PLS-044-21

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 15 June 2021
Report Title: 20/04784/S42: GF Job Ltd
Alvie Moor Quarry, Dalraddy Estate, Alvie, Kincaig
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Application under Section 42 of the Act in relation to non-compliance with conditions 1 and 4 of planning permission 11/04428/FUL to extend the period of time of extraction

Ward: 20 – Badenoch and Strathspey

Development category: Major

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.

Recommendation

Members are asked to agree the recommendation to **GRANT** the application as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) and relates to Conditions 1 and 4 attached to planning permission 01/00226/FULBS (amended by planning permission 11/04428/FUL) granted on 03 January 2002 in respect of the Alvie Moor Sand and Gravel Quarry. The applicant seeks to extend the timescale for working of the quarry for a further 5 years.
- 1.2 The quarry at Alvie, if amended in line with the proposed application, would yield an estimated further 97,550 cubic metres of materials over 5 phased areas. Phase 1 at the northern end of the site has been partially restored with additional overburden laid that will be taken off to reduce the restored phase site level and reused for restoration on other phases. To date, a total area of 18,760 square metres has been reinstated on a site measuring 9.1 hectares.
- 1.3 The site has operated since 2001. A copy of the current planning permission for the quarry is included with Appendix 2.
- 1.4 This application has been supported by the following information:
- Supporting Statement / Letter;
 - Phased Working / Extraction Plan; and
 - Phased Reinstatement Plan
- 1.5 Variations: None.

2. SITE DESCRIPTION

- 2.1 The site comprises an existing quarry located entirely within an area of woodland between the B9152 and the Highland Main Line and west of Dalraddy Holiday Park. The site is approximately 800 metres in length and 200 metres in width at its widest point and sits roughly on a north/south axis. It is accessed directly from the B9152 via a 300 metre-long road.

3. PLANNING HISTORY

- | | | | |
|-----|--------------|---|-----------------------------|
| 3.1 | 03 Jan 2002 | 01/00226/FULBS - Sand and gravel extraction (10 years) | Planning Permission Granted |
| 3.2 | 02 Feb 2012 | 11/04428/FUL - Sand and gravel extraction – extension of time (8 years) | Planning Permission Granted |
| 3.3 | 18 Sept 2017 | 17/03613/FUL – Proposed siting of 2No converted shipping containers as offices; composting toilet/changing area and boundary treatments | Planning Permission Granted |

4. PUBLIC PARTICIPATION

4.1 Advertised: Schedule 3 and Unknown Neighbour

Date Advertised: 17.12.2020

Representation deadline: 31.12.2020

Timeous representations: 0

Late representations: 0

5. CONSULTATIONS

5.1 **Kincraig and Vicinity Community Council** did not respond to the consultation.

5.2 **Cairngorms National Park Authority** confirms that there are no significant concerns regarding the potential landscape and visual effects on the National Park due to the discreet location of the site and the screening provided by surrounding trees. CNPA suggests amendments to the conditions to improve aspects of monitoring restoration and the condition of restoration material.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 **Cairngorms National Park Local Development Plan 2021**

2 – Supporting Economic Growth

3 – Design and Placemaking

4 – Natural Heritage

5 – Landscape

10 – Resources

11 – Developer Obligations

6.4 **Cairngorms National Park Local Development Plan Supplementary Guidance**

Supporting Economic Growth Non-Statutory Guidance

Sustainable Design Non-Statutory Guidance

Natural Heritage Non-Statutory Guidance

Landscape Non-Statutory Guidance

Resources Non-Statutory Guidance

Developer Obligations Non-Statutory Guidance

7. OTHER MATERIAL CONSIDERATIONS

7.1 **Scottish Government Planning Policy and Guidance**

National Planning Framework 3 (2014)

Scottish Planning Policy (2014)

PAN 50 - Controlling the Effects of Surface Mineral Workings (1996)

PAN 51 - Planning, Environmental Protection and Regulation (2006)

PAN 60 - Planning for Natural Heritage (2000)

PAN 63 - Waste Management Planning (2002)

PAN 64 - Reclamation of Surface Mineral Workings (2002)

PAN 79 - Water and Drainage (2006)

PAN 1/2011 - Planning and Noise (2011)

PAN 2/2011 - Planning and Archaeology (2011)

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.

Determining Issues

- 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.

Planning Considerations

- 8.3 The principle of the development has been established through the previous permissions. This is an application to modify Condition 1 and 4. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan policy and take into consideration any other material considerations.

Development Plan

- 8.4 Development Plan policy has changed since the time of the determination of the original application. The Highland Structure Plan (2001) is no longer in force. The policy provisions of this and the Cairngorms National Park Local Development Plans of 2010 and 2015 have been superseded by the newly adopted Cairngorms National Park Local Development Plan 2021.
- 8.5 The key issue therefore is whether the amendment of the condition applied for would result in the development being incompatible with the Development Plan. The remainder of this report will consider the modification proposed and assess its compatibility with the Development Plan.

Modification to Conditions 1 and 4

- 8.6 The applicant has sought to modify the wording of the condition to allow for the working of the quarry for a further 5 years and there are no technical concerns such as stability; impact on the water environment; or landscape impact. In principle, the

extension of time for working of the quarry is supported, as is the winning of further minerals from an existing quarry by the relevant policies in the Cairngorms National Park Local Development Plan. However, these modifications to the permission can only be supported if appropriate conditions exist to ensure appropriate environmental mitigation are in place and the site is satisfactorily restored.

- 8.7 It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. Following consideration of the conditions attached to the extant planning permission, it is considered appropriate to revisit all the conditions attached to the original permission to ensure the wording is in line with current good practice and to ensure the conditions are suitable to regulate the proposed development. This is also reflected in the response from CNPA. In doing so, this has provided an opportunity to strengthen the terms of the conditions and provide greater clarity as to the requirements of these, including the information required to satisfy the conditions.

Other material considerations

- 8.8 There are no other material considerations.

Non-material considerations

- 8.9 None

Matters to be secured by Legal Agreement

- 8.10 Restoration of the quarry is secured by condition and is largely progressing in line with the previously approved plans. However, in order to ensure that the restoration is completed to an appropriate environmental standard and in a timeous manner, a financial guarantee will be required. This will be secured via legal agreement and will comprise:

Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration and aftercare measures outlined proposed conditions.

Thereafter, the Quarry Operator will be required to:

- i. Ensure that the bond or other financial provision is maintained throughout the duration of this permission.
- 8.11 The applicant has four months from the date that the Council's solicitor writes to the Applicant/Applicant's solicitor indicating the terms of the legal agreement, to deliver to the Council a signed legal agreement. Should an agreement not be delivered within four months, the application shall be refused under delegated powers.

9. CONCLUSION

- 9.1 The extension of time for working the quarry and revision to the extraction and restoration programme is acceptable and will provide a resource for the delivery of

construction schemes across Highland. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment.

- 9.2 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. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued Y

Conclusion of Section 75 Obligation Y

Subject to the above actions, it is recommended to **GRANT** the application subject to the following conditions and reasons:

1. The permission hereby granted shall endure until 21 June 2026 by which time all workings shall have ceased, all plant and equipment removed, and the site restored in accordance with the details to be provided in accordance with Condition 2 below.

Reason: To clarify the terms of the permission and ensure the site is fully restored to an appropriate use.

2. A scheme of the phased final restoration of the whole site shall be submitted for the written approval of the Planning Authority within 12 months of the date of this permission. The scheme shall include detailed information on landform levels, drainage, soil coverage, final boundaries and phasing and shall include the following:

- a. The grading of all ground to stable slope angles not exceeding a gradient of 1:4 and the shaping and contouring of the ground such as to be sympathetic to adjacent geological features;

- b. The progressive phasing of restorations works to ensure early restoration of any excavated phase;

- c. The treatment of surfaces prior to and after topsoiling and proposals to establish suitable vegetative cover (including tree and scrub planting);
- d. A programme of after care for each phase or sub-phase of restoration;
- e. A programme of aftercare and maintenance for a minimum of 36 months following the last working of the site.

Reason: To ensure satisfactory restoration of the site and timeous completion of the work.

- 3. Topsoil stored beside the site shall be inspected by a Chartered Member of the Landscape Institute (CMLI) or Environmental or Ecological Clerk of Works (ECoW) prior to restoration works to confirm its condition, whether any improvement measures are required, and the recommended method of movement and application to enable successful vegetation restoration. Evidence of this inspection and any subsequent recommendations shall be submitted to, and approved in writing by, the Planning Authority prior to the works being undertaken. Thereafter, restoration shall progress in accordance with the approved details.

Reason: To ensure the satisfactory restoration of the site and its suitability for aftercare.

- 4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As Amended), no fixed plant (including any tar making or concrete making plant), other than those specifically approved through this permission, shall be operated on the site without the express grant of planning permission.

Reason: To clarify the terms of the permission and to ensure the amenity impacts of any additional plant are properly assessed.

- 5. The following activities shall not take place outwith the hours of 0700-1800 Monday to Saturday, 0700-1300, or without prior written approval of the Planning Authority:

- Production operations;
- Loading of lorries;
- Driving of lorries;
- Soil stripping;
- Bund formation

Works outlined above may be undertaken if they are required for saving of life or property or for the safety of the works. If works are carried out for this reason, the Planning Authority must be informed within 72 hours of such works.

Reason: In the interests of amenity due to the potential noise impacts of the above activities on noise sensitive receptors.

6. Reasonable measures shall be taken at all times to suppress dust arising from activities at the site. In the event of any dust nuisance arising off-site, the operator shall immediately implement dust suppressant measures to mitigate the off-site dust nuisance, including the dampening down of stockpiles and /or other work areas and where necessary the temporary suspension of activities resulting in the nuisance.

Reason: In the interests of amenity and to eliminate potential dust nuisance arising from the site.

7. At no time during the operation of the development shall anything obscure visibility between a driver's eye height of 1.05m along the visibility splays of 4.5 metres x 180 metres (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction, positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension.

Reason: In order to ensure the safety and free flow of traffic on the public road.

8. A copy of this planning permission, all approved plans and associated documentation together with any approved amendments shall be made available for inspection at the site offices during approved working hours.

Reason: In order to ensure the site operator and visiting officials are aware of the details of the planning permission and any approved amendments.

9. The noise levels arising from the workings on the site at the nearest noise sensitive receptors at the time of the commencement of this planning permission shall not exceed:

- 45 dB (A) Leq 1 hour free field during permitted operational hours Monday to Saturday;
- 35 dB (A) Leq 15 minutes free field at all other times;
- 70 dB (A) Leq 1 hour free field when undertaking soil stripping, mound construction and landscaping during permitted operational hours. Any such operations should not take place in more than 8 weeks of any calendar year.

For the avoidance of doubt the times stated means that period of time during the defined working day. Further "free field" shall be interpreted to mean at least 3.5m from significant sound reflecting surfaces, other than the ground plane.

In the event of a valid complaint in relation to noise, the operator shall at his own expense carry out an investigation into the complaint, including undertaking noise monitoring to assess compliance with the permitted noise levels detailed above, and where necessary cease the operations giving rise to the complaint until such time as appropriate mitigation measures have been implemented. Any monitoring required shall be carried out in accordance with BS4142:1997.

Reason: In order to ensure the operations cause no adverse impact on amenity of nearby occupiers.

10. The operator of Alvie Moor Quarry shall submit an annual statement incorporating illustrative drawings and photographs with grid references to the Planning Authority by 28 June each year. The annual statement will present an audit of the workings undertaken in the preceding calendar year, illustrating: -

1. The rates of extraction against the projected operations, and
2. Areas of final restoration delivered on site.

Reason: In order to ensure the planning authority can monitor the workings undertaken and retain effective control over the quarry operations.

REASON FOR DECISION

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.

FOOTNOTE TO APPLICANT

Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority 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. 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 notice referred to is 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 (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.

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.

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 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

Signature	David Mudie
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 5 Year Phased Working / Extraction Plan
	Plan 3 5 Year Phased Reinstatement Plan

Appendix 1 – Legal Agreement requirements

Type	Details
Restoration and Aftercare Bond	<p>Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration and aftercare measures outlined proposed conditions.</p> <p>Thereafter, the Quarry Operator will be required to:</p> <ol style="list-style-type: none"><li data-bbox="400 526 1343 598">i. Ensure that the bond or other financial provision is maintained throughout the duration of this permission.

PLANNING PERMISSION

Reference No: 11/04428/FUL

To:

Mr Adrian Johnstone
GF Job Limited
Hudson House
Grigorhill Industrial Estate
Nairn
IV12 5HX

Town & Country Planning (Scotland) Act 1997 as amended by the Planning Etc. (Scotland) 2006 Act

DECISION NOTICE

**Application under Section 42 to vary condition 1(time limit)
Alvie Moor Quarry, Dalraddy Estate, Kinraig, Kingussie**

The Highland Council in exercise of its powers under the above Acts **grants planning permission** for the above development in accordance with the particulars given in the application and the following plans/drawings:

Type of Plan	Plan Number	Version No.	Date Plan Received
Location Plan	GFJ-AM1/LP		13.12.2011
Location Plan	000001		13.12.2011
Block Plan	ASG-001		13.12.2011

This permission is granted subject to the following conditions: -

- (1.) The permission hereby granted for mineral extraction shall endure for a period of 8 years from the date of this consent within which period, unless with the express approval of the Planning Authority, the site shall have been reinstated to the following standard. All slopes shall be graded to no greater than 1:4 and shall be designed to conform with the surrounding landform. Topsoil stored beside the site shall be carted back on to the area and left in heaps and then spread with a track machine over the site. The surface of the site shall be planted with conifers at a density and of species approved by the Planning Authority.

Reason: To allow sufficient time for completion of mineral extraction at the site and subsequent restoration.

- (2.) Unless otherwise approved in writing by the Planning Authority, mineral operations at the site, with the exception of maintenance operations for plant and machinery, shall only take place within the hours of 7.00am and 6.00pm Monday to Saturday and not at all on Sundays.

Reason: in the interests of amenity.

- (3.) Measures shall be taken at all times to suppress dust arising from the activities at the site. In the event of any dust nuisance arising off-site, the developer shall immediately implement appropriate remedial action in accordance with details which shall be submitted to and require the approval in writing of the Planning Authority prior to any action being taken.

Reason: in the interests of amenity and to avoid dust nuisance.

- (4.) Two years from the date of the issue of this consent and in every two years thereafter, there shall be submitted to the Planning Authority a plan and a schedule showing the extent of mineral extraction carried out over the preceding two year period along with any restoration work carried out over the same period. Restoration shall be carried out in a phased manner

Dated: 2nd February 2012

 **Area Planning Manager**

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where practicable. In addition, the plan and schedule shall indicate what extraction is proposed over the next two year period along with proposed restoration and planting.

Reason: in order to allow the Planning Authority to monitor the progress of the works.

- (5.) Prior to the operation of any plant or machinery at the site, there shall be submitted to and approved in writing by the Planning Authority, a plan showing the location of all such equipment along with a specification of the plant and equipment involved. Such a plan shall also show the location and size of any stockpiles of minerals at the site.

Reason: in order to allow the Planning Authority to retain control of such operations in the interests of amenity.

- (6.) Except for the maintenance of visibility splays measuring 4.5 metres x 180 metres on both sides of the junction of the quarry access road with the B9152, there shall be no clear felling of trees between the quarry extraction area and the B9152. Only silvicultural thinning shall take place within the tree belt between the quarry extraction area and the B9152 throughout the life of this permission unless otherwise approved in writing by the Planning Authority.

Reason: in order to maintain screening of the quarry site from the B9152 in the interests of visual amenity.

FOOTNOTE TO APPLICANT RELATIVE TO APPLICATION 11/04428/FUL

Please note: Your attention is drawn to the conditions attached to this permission. 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 meet these conditions may invalidate your permission or result in formal enforcement action.

Variations

None.

Section 75 Agreement

None.

NOTIFICATION TO APPLICANT

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed local development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to:
Highland Council Review Body Administration Team, Chief Executive's Service, Council Headquarters, Glenurquhart Road, Inverness.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Dated: 2nd February 2012



Area Planning Manager

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ALVIE MOOR QUARRY - LOCATION PLAN



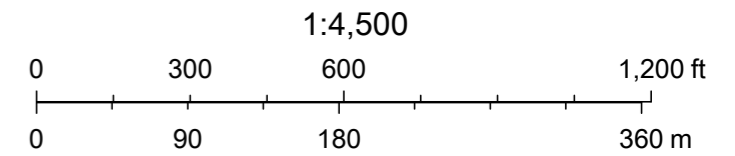
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Areas

 Override 1

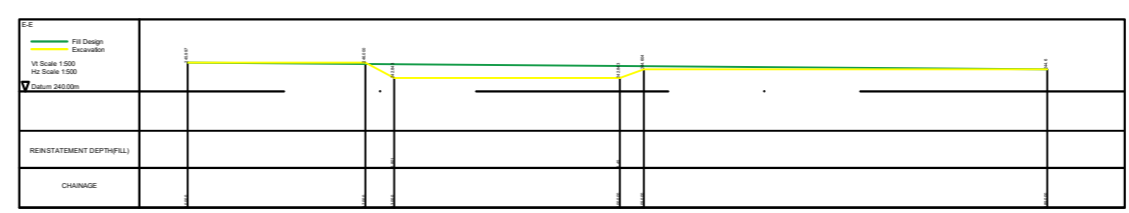
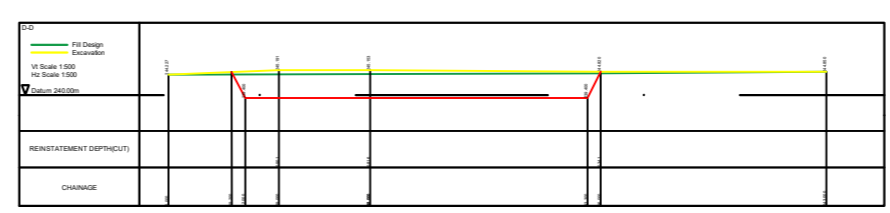
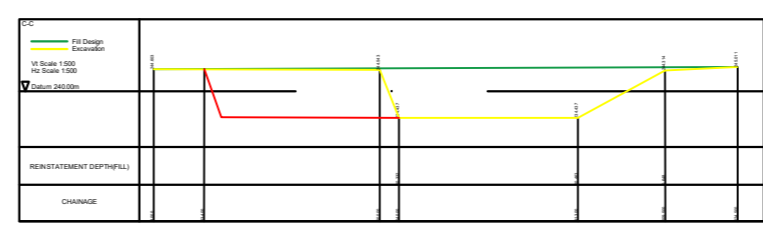
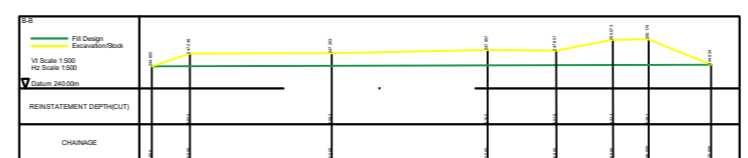
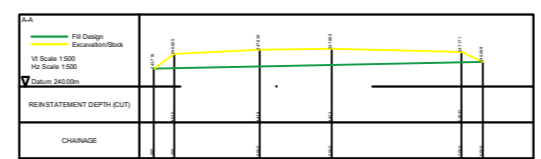
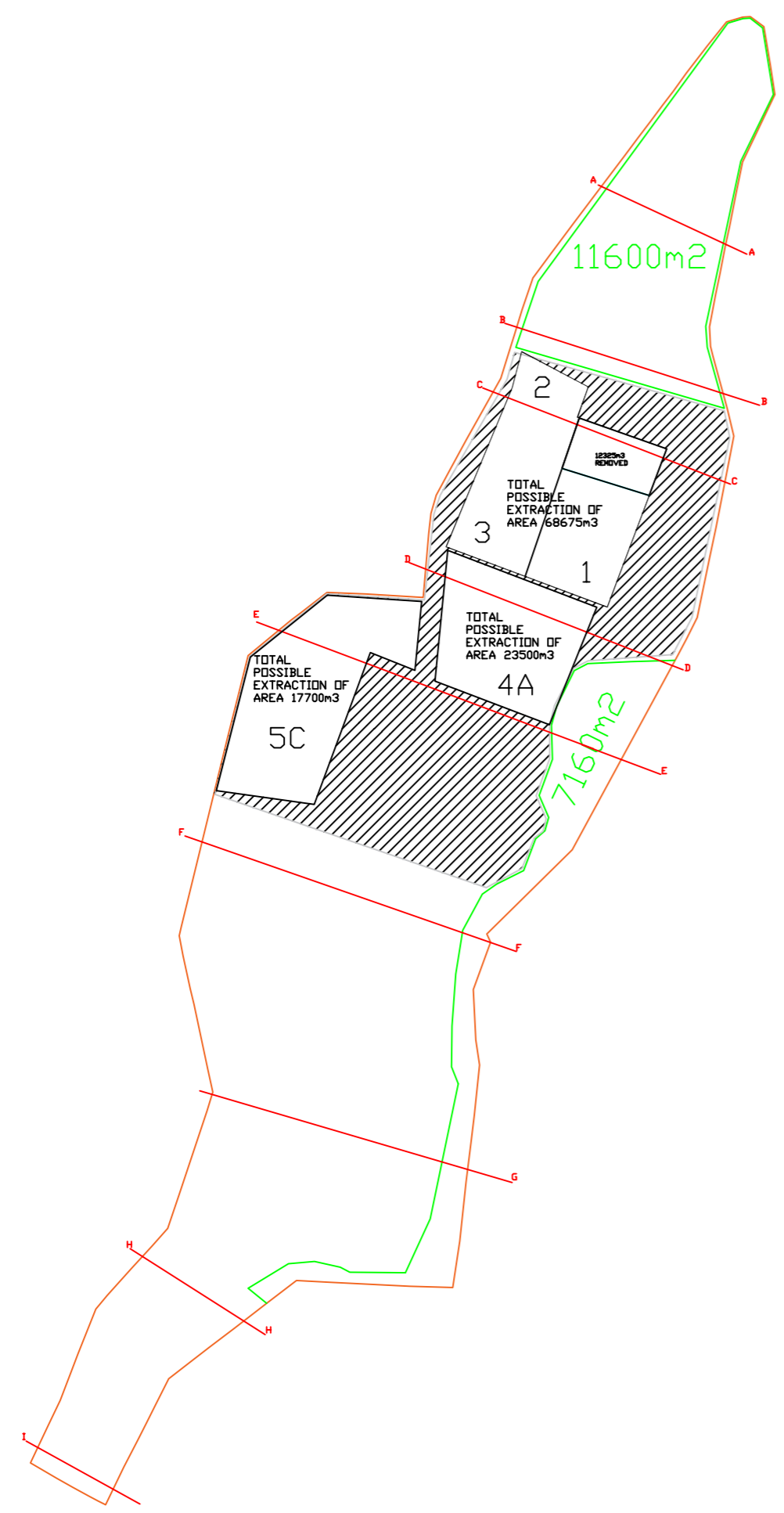
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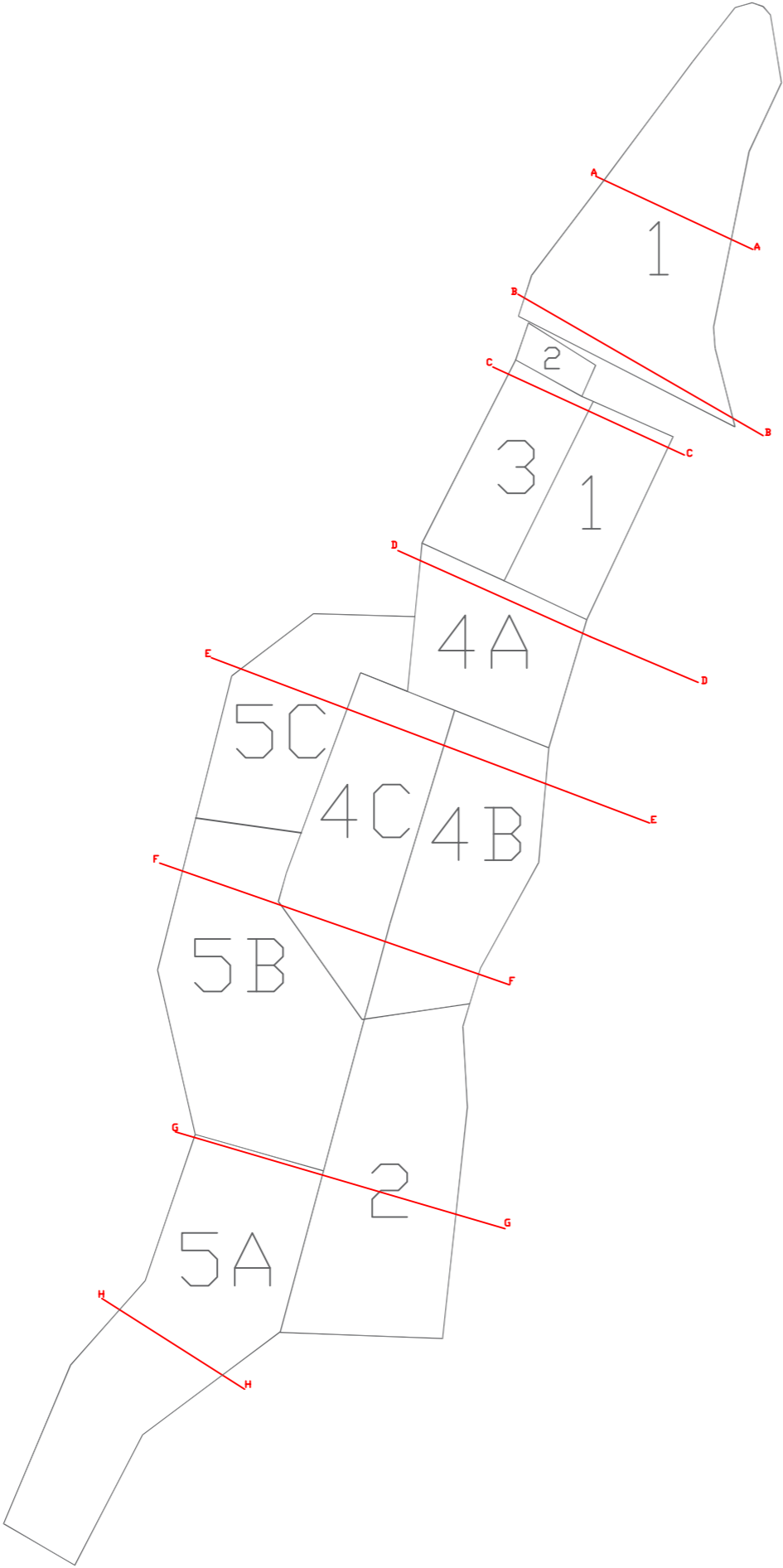
- PHASED WORKING/EXTRACTION PLAN
- AREAS 1,2,3,4A,5C
- LONG SECTION SHOWING CURRENT EXTRACTION IN YELLOW AND PROPOSED EXTRACTION IN RED
- AREA IN GREEN IS REINSTATED



Drawn by DG	Date 4/11/19	Checked by
Scale NTS	Project ALVIE QUARRY	
Drawing number	Rev	

NOTES:

- PHASED REINSTATEMENT PLAN



Drawn by DG	Date 4/11/19	Checked by
Scale NTS	Project ALVIE QUARRY	
Drawing number	Rev	