

Agenda Item	6.5
Report No	PLS-059-21

## HIGHLAND COUNCIL

**Committee:** South Planning Applications Committee  
**Date:** 17 August 2021  
**Report Title:** 20/00484/PIP: Ardersier Port Ltd  
Former Fabrication Yard, Ardersier, Nairn  
**Report By:** Area Planning Manager – South

### Purpose/Executive Summary

**Description:** Mixed use masterplan for residential and leisure development including housing, marina, boat yacht club, visitor centre, nature conservation zones and hotel with supporting community facilities and sewage treatment plant (Renewal of Planning Permission in Principle 12/04225/S42 and 05/01294/OUTIN)

**Ward:** 17 – Culloden and Ardersier

**Development category:** Major

**Reason referred to Committee:** Major Development

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 is an application to renew planning permission in principle for a masterplan comprising residential and leisure uses at the former fabrication yard at Whiteness, Ardersier. The key development components are:
- 1,950 residential homes, comprising a mix of house types;
  - a hotel with health club and conference facilities and a marina (400-500 moorings) with associated boat yard and yacht club;
  - shops and restaurants to serve both the local community and visitors;
  - community and education facilities including a primary school, community hall and health centre;
  - areas of landscaping and open space throughout the development, including play areas, an adventure playground and playing fields;
  - car parking for the residents, marina and visitor parking;
  - nature conservation zones, including new water features; and
  - upgrading of the existing services infrastructure, internal road network and a sewage treatment plant.
- 1.2 Planning permission was initially granted in 2007 for the above range of land uses (05/01294/OUTIN – ‘the Original Permission’), and was the subject of an application to vary Condition 1 of the Original Permission to extend the time limit for the commencement of development (12/04225/S42 – the ‘Planning Permission’). The Planning Permission’s 7 year implementation period was due to expire on 24 February 2020 and given that development has not commenced, the current application has been timeously submitted for renewal of the permission.
- 1.3 Although planning permission has more recently been renewed for industrial re-use of the site, the applicant wishes to maintain the principle of developing the site for the above residential and leisure uses, either in part or full.
- 1.4 A separate planning permission (07/01186/FULIN) was granted for the development of a sewage pumping station and ancillary works. This infrastructure has been installed with waste water being pumped to the recently upgraded Ardersier Waste Water Treatment Works. As such, this element of the renewal application is no longer required and any forthcoming permission would exclude this element.
- 1.5 The applicant has not sought formal pre-application advice via the Pre-Application Advice Service for Major Developments. An Environmental Impact Assessment (EIA) Scoping Opinion was provided on 24 April 2019.
- 1.6 The applicant served a Proposal of Application Notice on 10 October 2019 and held a public consultation event on 13 December 2019 seeking the views of the local community. The applicant has provided further information on the outcomes of that consultation within a Pre-Application Consultation Report.
- 1.7 The application is accompanied by an Environmental Impact Assessment Report (EIA Report), that identifies the environmental aspects where there have been new baselines, methodologies, legislative or other changes since the submission of the Original Planning Permission (and Environmental Impact Assessment) in 2005. A planning and design statement have been submitted, together with a copy of the

original Whiteness Masterplan Design Statement. The following post submission EIA Further Environmental Information (FEI) was also submitted:

- EIA FEI I: Estimated Boat Movements August 2020, Draft Marine Advisory Chart, Indicative Berth Layout Phases 1 – 3, Revised Harbour Survey 2020, Boat Numbers Report August 2020, Marine Management Plan 2008, Bird count surveys, and an Access Management Plan; and
- EIA FEI II: Drainage Strategy, March 2021.

1.8 Following the validation of the application a revised drainage strategy to confirm that: the drainage strategy is suitable in the event of a high groundwater table being encountered; runoff from a 1 in 200 year plus climate change storm event can be managed without flooding to property or critical roads; and that the network is either suitable for vesting by Scottish Water and the Council, or for private ownership and maintenance has been submitted.

## **2. SITE DESCRIPTION**

2.1 The site is the former McDermott Fabrication Yard located approximately 7.5km to the west of Nairn, 18km northeast of Inverness and 3km northeast of Ardersier. Access to the site is gained via a dedicated 2.5km long access road, which links to the B9092 to the south. The B9092 subsequently links with the A96, which is the main transport link between Inverness and Aberdeen.

2.2 The site extends to some 300ha of land that was reclaimed from the foreshore in the 1970's for the fabrication and construction of off-shore platforms for use in the North Sea gas and oil industry. The spit, known as Whiteness Head, shelters a harbour that lies between the spit and the main part of the fabrication area of the site. The majority of this brownfield site was reclaimed using dredged sand that was levelled behind a steel pile retaining wall, at approximately 4.5m Above Ordnance Datum (AOD).

2.3 The site is bounded by the Moray Firth to the north, an area of sand dunes and tidal mudflats to the west, Carse Wood to the south, and an undeveloped area of sand and mudflats, known as Carse of Delnies, to the east. To the southwest of the site is the Fort George live firing range owned by the Ministry of Defence.

2.4 Whiteness Head is designated a Site of Special Scientific Interest (SSSI) and forms part of the Inner Moray Firth Special Protection Area (SPA). It is also a Ramsar site. The Moray Firth proposed Special Protection Area (pSPA) bounds the site. The Moray Firth is designated as a Special Area of Conservation (SAC). The site also lies within the Sutors of Cromarty, Rosemarkie and Fort George Special Landscape Area (SLA).

2.5 The Moray Firth SAC is designated for its population of bottlenose dolphins with an additional qualifying interest of sub-tidal sand banks. The qualifying interests of the Inner Moray Firth SPA are principally common tern and ospreys breeding in summer and bar-tailed godwits in winter. It is also of international importance for waterfowl as well as being a wetland of international importance, which is the reason for its designation as a Ramsar site. The qualifying features of the Moray Firth pSPA are the overwintering birds. Notable features of the Whiteness Head SSSI are its

geomorphology, particularly the sand and shingle spit, inter-tidal systems of saltings, sand and mudflats.

- 2.6 The key feature of the Inner Moray Firth SLA is the visual interplay of land and sea particularly between the headlands at Chanonry Point/Fort George and the Sutor narrows at the head of the Cromarty Firth; the openings to the Inner Moray Firth and Cromarty Firth respectively.
- 2.7 Fort George is a Scheduled Ancient Monument and Category A listed building.

### 3. PLANNING HISTORY

3.1	25.08.2005	Use of a former industrial building for storage (05/00185/FULIN)	Planning Permission Granted
3.2	02.11.2007	Outline application for residential and leisure development including, housing, marina, boat yard, yacht club, visitors centre, nature conservation zones and hotel with supporting community facilities and sewage treatment plant (05/01294/OUTIN)	Planning Permission Granted
3.3	21.07.2008	Sewage pumping station and ancillary works (07/01186/FULIN)	Planning Permission Granted
3.4	25.02.2013	12/04225/S42 Vary condition 1 of planning permission 05/01294/OUTIN to extend the time limit of the consent	Planning Permission Granted
3.5	25.01.2013	Scoping Opinion for a port and port related services for energy related uses, including manufacture, construction, assembly, repair, maintenance, marine storage and decommissioning of renewables including turbines and their constituent parts; including marine channel dredging, quay realignment, repair and maintenance, offices, industrial and storage buildings and associated new road access, infrastructure, services, re-grading and upfilling of landward areas and landscaping (12/04893/SCOP).	Scoping Response Issued
3.6	09.04.2013	Vary condition 1 of planning permission (05/01294/OUTIN) to extend time limit (13/00682/S75M).	Grant section 75 (modify obligations)
3.7	30.01 2014	Establish a port and port related services for energy related uses, including marine channel dredging, quay realignment, repair and	Planning Permission Granted

maintenance, erection of offices, industrial and storage buildings and associated infrastructure, delivery and export of port related cargo, marine channel dredging, quay realignment, repair and maintenance, erection of offices, industrial and storage buildings and associated new road access, parking, infrastructure, services, temporary stockpiling of dredged material, re-grading and upfilling of landward areas and landscaping (13/01689/PIP).

3.8	08.06.2018	Scoping Report to agree the scope of the Environmental Impact Assessment Report to accompany the application submission for a renewal to planning permission in principle 13/01689/PIP (18/01411/SCOP).	Scoping Response Issued
3.9	04.02.2019	Establish a port and port related services for energy related uses, including marine channel dredging, quay realignment, repair and maintenance, erection of offices, industrial and storage buildings, delivery and export of port related cargo and associated new road access, parking, infrastructure, services, temporary stockpiling of dredged material, re-grading and upfilling of landward areas and landscaping (Renewal of planning permission 13/01689/PIP)	Planning Permission Granted
3.10	06.03.2019	MS-LOT Consult Licence: Ardersier Port Development - Capital Dredging and Construction works at Ardersier Port (18/05998/MAR)	Case Closed
3.11	24.04.2019	Residential and leisure development (19/01132/SCOP)	Scoping Response Issued
3.12	10.12.2019	Renewal of planning permission in principle application reference 12/04255/S42 (original application reference number 05/01294/OUTIN) for residential and leisure development including housing, marina, boat yard, yacht club, visitors centre, nature conservation zones and hotel with supporting community facilities and sewage treatment plant (19/04622/PAN)	Case Closed

#### 4. PUBLIC PARTICIPATION

4.1 Advertised: Edinburgh Gazette and Inverness Courier as EIA Development.

Date Advertised: 14.02.2020, 17.04.2020 (EIA), 09.10.2020 (EIA FEI I) and 07.5.2021 (EIA FEI II)

Representation deadline: 08.11.2020

Timeous representations: 0

Late representations: 0

#### 5. CONSULTATIONS

5.1 **Ardersier and Petty Community Council** did not respond to the consultation.

5.2 **Access Officer** objects to the application. Reservations and concerns are raised with the content of the Access Management Plan (AMP) and the associated addendum. Specifically, the main issue is enforceability of the AMP through the use of bye-laws. It is indicated that this approach should not be repeated and considers that a new comprehensive AMP is required to be agreed prior to determination. Developer contributions are sought towards the delivery of the Inverness to Nairn Coastal Trail as detailed in the Green Networks Supplementary Guidance.

5.3 **Contaminated Land Team** do not object to the application. It advises that the historic use of the site as a fabrication yard may have resulted in land contamination. Site investigation work has previously been undertaken at this site, however, given the time lapsed since the last assessment, this information requires to be reviewed in line with current guidance and legislation. This review process is ongoing, and a condition is advised to conclude this process prior to development commencement.

5.4 **Development Plans Team** do not object to the application. It advises that the Highland-wide Local Development Plan's (HwLDP) medium to long term vision is the growth of the A96 Corridor, between Inverness and Nairn, with land being developed for employment and housing uses. The plan allocates the application site for mixed use development under Policy 14: Whiteness. This policy supports the principle of developing the site for the range of land uses proposed. The Inner Moray Firth Local Development Plan (IMFLDP) continues to allocate the site for development, but for industrial uses only. The IMFLDP does not therefore provide support for the proposed uses, but nor does it attempt to explicitly update the position set out in HwLDP. The IMFLDP is undergoing review with the replacement plan anticipated to provide an updated policy position for the site. Updated developer contribution requirements are also set out.

5.5 **Environmental Health Officer** does not object to the application. It advises that in terms of Construction noise, best practice mitigation measures are proposed and expect the works to accord with the measures set out in the Construction Environmental Management Plan. It notes that planning conditions are not used to control the impact of construction noise, as similar provisions are available to the local authority under Section 60 of the Control of Pollution Act 1974. Conditions are however recommended to prepare a dust mitigation scheme, establishment of a

community liaison group, to limit operational noise from all plant and equipment, and for operational noise to be re-assessed for each component part of the Master Plan against existing baseline noise levels. In relation to the neighbouring MOD firing operations at Fort George, it advises that the MOD are exempt from enforcement under the Statutory Nuisance provisions of the Environmental Protection Act 1990, that there is already a neighbouring property closer than the development to this existing noise source and therefore no conditions or section 75 legal agreement terms are advised.

- 5.6 **Flood Risk Management Team** do not object to the application following submission of further information. It has reviewed the applicant's Flood Risk Assessment and highlighted pertinent recommended development and site access site levels to allow for future sea level rises and climate change with a suitable freeboard, with these matters to be secured by condition. It has also reviewed the Drainage Impact Assessment and are satisfied with the high level strategy in terms of water quantity. Further groundwater monitoring is however needed to inform the final design solution which must be designed to accommodate the 1 in 200 year plus climate change storm event, which may be challenging given the aforementioned ground level requirements and the flat nature of this site. It is also recommended that it needs to be demonstrated that: the drainage strategy is suitable in the event of a high groundwater table being encountered; runoff from the 1 in 200 year plus climate change storm event can be managed without flooding to roads or property; that Transport Planning agree the finalised drainage strategy; and the drainage network will be suitable for vesting and maintenance by Scottish Water.
- 5.7 **Historic Environment Team** do not object to the application. It advises that most of the site is expected to be archaeologically sterile due to previous development and made-up ground. However, a small area in the south of the site is considered to have archaeological potential. As such, a condition is requested to undertake further archaeological survey and evaluation across this area of interest.
- 5.8 **Transport Planning Team** do not object to the application. It is aware that this is a proposal for the renewal of previously approved Planning Permission. Given the time lapsed since the last applications, it advises that the road infrastructure proposals should be reviewed in relation to current guidance and legislation. It advises that in relation to drainage, the Council acting as the Roads Authority generally only adopt SuDS that convey purely roads water that is designed to Scottish Water's Sewers for Scotland 4. A condition is advised that the detailed surface water drainage design is provided for review and approval with this protecting properties and critical roads from flooding and detailing vesting/maintenance arrangements.
- 5.9 **Health and Safety Executive** did not provide a consultation response.
- 5.10 **Highlands and Islands Airport Authority** do not object to the application. It advises that the site falls within the safeguarded areas for Inverness Airport and that conditions are required to secure: a bird hazard and landscape management plan to mitigate the potential for bird strike; and a construction and operational lighting scheme(s) to ensure the site is not confused with aeronautical ground lights, or results in glare. Further prior consultation and HIAL approval is also required prior to

the erection of any construction cranes. It may also be necessary to limit the height of boats utilising the moorings.

- 5.11 **Historic Environment Scotland** do not object to the application. It notes that that the development parameters of the proposal have not changed from the planning permission to be renewed and that the proposal was previously assessed for its potential impacts on the historic environment. As no significant adverse impacts were previously identified, they are content that there is no need for an updated cultural heritage assessment.
- 5.12 **Marine Scotland** do not intend to comment on the planning application. It advises that if any part of the project is located below Mean High Water Springs, a marine licence may be required under the Marine (Scotland) Act 2010.
- 5.13 **Ministry of Defence** do not object to the application. As the application site boundary falls within proximity to Fort George Training Estate (Danger Area D702), it advises that: “the creation of marina could severely impact our range sea danger area due to increase in boats and other flotation craft; and an encroachment on foot from proposed residential property, given its proximity, will inevitably cause issues with potential increased access onto the training estate, and the impact that could have on training/firing range use and safety.” Following the review of the proposed mitigation measures in the form of the Access Management Plan and Marine Management Plan, a range of further mitigation is advised to prevent encroachment into the sea danger area when the ranges are live. This includes: signage, buoys, marshals, a potential temporary physical barrier close to the marina on firing days or requirements for no sails to be used out to a certain point. On land advised additional mitigation includes: educational signage, physical barrier fencing, bunds or water features, sentry, flags, and newsletters. Further consultation is advised at all future application stages to assess the detailed proposals.
- 5.14 **NatureScot** do not object to the application following the submission of further information. It advises that the proposal could affect internationally important natural heritage interests although there will be no avoid adverse effects on the site integrity of these interests. This is on the basis that the conditions agreed as part of the former planning permission and Section 75 legal agreement will be carried forward.

It advises that since the previous application: the Moray Firth proposed Special Protection Area (pSPA) has been progressed; recent work by Dynamic Coast has highlighted the vulnerability of this development to the effects of sea level rise and coastal change, in particular, erosion appears to be increasingly affecting the coastal spit protecting the proposed development site and any mitigation should avoid impacts on the Inner Moray Firth SPA and the Whiteness Head SSSI; and the common seal haul out site at Whiteness Sands was formally designated as a haul out site in September 2014 under the Marine (Scotland) Act 2010.

In the view of NatureScot, the proposal is likely to have a significant effect on the bottlenose dolphin interest of the Moray Firth SAC, the common seal interest of the Dornoch Firth and Morrich More SAC and the bird interests of the Inner Moray Firth SPA. These effects relate to disturbance from both the construction and operational phases of the proposal. Consequently, The Highland Council requires to carry out an appropriate assessment. It advises that providing that a robust and enforceable Access Management Plan (AMP) and Vessel Movement Plan, hereafter referred to



as a Marine Management Plan (MMP), are secured by legal agreement, and underpinned by bye-laws, such impacts would not adversely affect the integrity of the sites.

- 5.15 **Royal Society for the Protection of Birds (RSPB)** object to the application. It considers there to have been insufficient assessment undertaken and raises concerns with the quality of the EIA. It considers that the proposal's impacts on the Inner Moray Firth SPA and Ramsar Site, Moray Firth pSPA and Whiteness Sands SSSI, have not been considered, particularly in relation to potential disturbance/displacement impacts on SPA birds. It considers the mitigation proposed to be inadequate, lacking clarity how the proposed Access Management Plan (AMP) and its addendum relate to each other and what exact measures from the AMP are still proposed. It also finds it unclear how the AMP and Marine Management Plan will be implemented, monitored and enforced and requires the mitigation and monitoring to be legally binding.
- 5.16 **Scottish Water** do not object to the application. It sought further clarification regarding the nature of the sewage treatment works proposed given it is proposed to connect to the Ardersier Waste Water Treatment Works which currently has sufficient capacity to serve the development. It also confirmed that there is currently sufficient capacity in the Inverness Water Treatment Works (WTW) to serve the development. It highlights the work and investment that has been carried out over the past number of years to facilitate development along the 'A96 Corridor' including developing this site. The proposed development, along with numerous other planned developments, have been included within their Strategic Modelling work, the outputs of which need to be taken into consideration where appropriate for this site.
- 5.17 **Scottish Environment Protection Agency** do not object to the application subject to application of conditions relating to flood risk, waste water treatment, surface water drainage, wetlands and other mitigation. It provided further technical advice, relating to their concerns about the longer term sustainability of developing the site given the uncertainties surrounding increased future flood risk associated with rising sea levels and climate change. It concludes however that the probability of flooding occurring is low enough to satisfy the requirements of Scottish Planning Policy.
- It cautions that the site is also at risk of coastal erosion, and that the site currently benefits from protection from the long spit, but there is evidence that it is being eroded. An updated study on coastal processes has been provided and residential development inland from there is reliant on the long term maintenance of any coastal management, particularly in future as the vulnerability of the area increases due to climate change and erosion. It therefore cautions that the appropriateness of development which is dependent on long term maintenance should be given due consideration. It also highlights the current single site access which is not subject to flood risk and therefore advise that a second emergency access is constructed above the flood risk level.
- 5.19 **Transport Scotland** do not object to the application. Conditions are advised to: limit the number of homes to 1,950; restrict the phasing of development to allow for no greater than 418 homes from being built until the completion of the upgrading and realignment of the A96(T) Inverness to Nairn (including Nairn Bypass) section of the A96 Dualling programme, and the submission of a further Transport Assessment

with implementation of further trunk road mitigation measures; and before the occupation of the development, the main access road is brought up to adoptable standard for bus use, bus services have been implemented with the internal road network being suitable for bus use with suitable stop provision within 400m of all homes. Transport Scotland confirm that no developer contributions are required to the delivery of the upgraded A96.

## **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

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

- 9 - A96 Phasing and Infrastructure
- 14 - Whiteness
- 28 - Sustainable Design
- 29 - Design Quality & Place-making
- 30 - Physical Constraints
- 31 - Developer Contributions
- 32 - Affordable Housing
- 35 - Housing in the Countryside (Hinterland Areas)
- 38 - New Settlements
- 40 - Retail Development
- 41 - Business and Industrial Land
- 42 - Previously Used Land
- 43 - Tourism
- 44 - Tourist Accommodation
- 49 - Coastal Development
- 51 - Trees and Development
- 52 - Principle of Development in Woodland
- 55 - Peat and Soils
- 56 - Travel
- 57 - Natural, Built & Cultural Heritage
- 58 - Protected Species
- 59 - Other important Species
- 60 - Other Importance Habitats
- 61 - Landscape
- 62 - Geodiversity
- 63 - Water Environment
- 64 - Flood Risk
- 65 - Waste Water Treatment
- 66 - Surface Water Drainage
- 70 - Waste Management Facilities
- 72 - Pollution
- 73 - Air Quality
- 74 - Green Networks
- 75 - Open Space
- 76 - Playing Fields and Sports Pitches
- 77 - Public Access
- 78 - Long Distance Routes

## 6.2 Inner Moray Firth Local Development Plan (2015)

The site is allocated in the IMFLDP as Strategic Employment Site. The site allocation WH1: Whiteness is for Industry use (renewables, innovation, manufacturing and maintenance hub). Developer requirements include the preparation of a master plan / development brief which must address: phasing, scale of development, transport and travel, contamination, species, habitats and other heritage issues, water environment (inc. flood risk, waste water treatment, surface water drainage pollution), air quality and geomorphology. The developer requirements also state no adverse impacts on the integrity of the Moray Firth SAC and Inner Moray Firth SPA and Ramsar via adherence to a number of construction and operational mitigation measures specified within the IMFLDP.

Other relevant IMFLDP Policies include:

- 1 - Promoting and Protecting City and Town Centres
- 2 - Delivering Development
- 4 - Water and Waste Water Infrastructure in the Inverness to Nairn Growth Area

## 6.3 The Highland Council Supplementary Planning Guidance

- Construction Environmental Management Process for Large Scale Projects (Aug 2010)
- Developer Contributions (Nov 2018)
- Flood Risk and Drainage Impact Assessment (Jan 2013)
- Green Networks (Jan 2013)
- Highland Historic Environment Strategy (Jan 2013)
- Highland's Statutorily Protected Species (Mar 2013)
- Managing Waste in New Developments (Mar 2013)
- Open Space in New Residential Developments (Jan 2013)
- Physical Constraints (Mar 2013)
- Public Art Strategy (Mar 2013)
- Special Landscape Area Citations (Jun 2011)
- Standards for Archaeological Work (Mar 2012)
- Sustainable Design Guide (Jan 2013)

## 7. OTHER MATERIAL POLICY CONSIDERATIONS

### 7.1 Scottish Government Planning Policy and Other Guidance

- Scottish Planning Policy (The Scottish Government, 2014)
- National Planning Framework 3 (The Scottish Government, 2014)
- National Renewables Infrastructure Plan Stage 2 (HIE and Scottish Enterprise 2010)
- National Marine Plan (The Scottish Government, 2015)
- Designing Streets (The Scottish Government, 2010)
- Creating Places (The Scottish Government, 2013)
- Historic Environment Policy for Scotland (HEPS, 2019)
- PAN 1/2011 - Planning and Noise (Mar 2011)
- Circular 1/2017: Environmental Impact Assessment Regulations (May 2017)

- PAN 60 – Planning for Natural Heritage (Jan 2008)

## 7.2 **Emerging Local Development Plan Policy**

Inner Moray Firth Local Development Plan 2 - Main Issues Report (MIR) (2021) has been published with the Proposed Plan anticipated to be consulted upon in early 2022. The MIR is a discussion document and is not a material consideration in the determination of this application.

## 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 key considerations in this case are:

- a) Development Plan and other planning policy;
- b) Landscape and visual impact, (including design, layout, open space and landscaping);
- c) Natural heritage – Terrestrial
- d) Natural heritage – Marine
- e) Roads, access and parking
- f) Water, flood risk and drainage;
- g) Amenity, noise and air pollution;
- h) Infrastructure provision (including education and health); and
- i) Other Material Considerations.

### **Development plan and other planning policy**

- 8.4 The proposal relates to the renewal of the planning permission in principle granted in 2007, renewed in 2013, for the creation of a master plan led residential and leisure use development. The principle of the development has therefore previously been accepted. The key matter for consideration is changes to policy since the initial grant of permission and therefore whether current policy continues to provide support for the development.

- 8.5 There has been no change to the HwLDP since the last renewal of planning permission in 2013. The HwLDP is a 'hybrid plan' containing general planning policies, as well as land use allocations for strategic development sites. A key component of the plan's medium to long term vision is the growth of the A96 Corridor, between Inverness and Nairn, with land being developed for employment and housing uses. The plan allocates the application site for mixed use development under Policy 14: Whiteness. This policy supports the principle of developing the site

for the range of land uses proposed. In particular this policy acknowledges the importance of the site for strategic development and outlines that:

*'The Council will support the development at Whiteness as part of the strategy to provide a long term housing land supply in the area. Detailed master plans will accompany each phase of development in line with the current planning permission, including provision in line with the already agreed upgrades to the A96. The Council will also support the reuse of the site for renewables related development, should the housing element not come forward. Renewables-related development will be subject to the production of a master plan which should ensure that there are no adverse effects on the integrity of the Moray Firth SAC and Inner Moray Firth SPA/Ramsar site.'*

- 8.6 Since the determination of the last renewal of planning permission in 2013, the Inner Moray Firth Local Development Plan (IMFLDP) was adopted. The IMFLDP continued to allocate the site for development, but for industrial uses only. This aligns with National Planning Framework 3 (NPF3) (2014) and National Renewables Infrastructure Plan (NRIP) (2014) which lists Ardersier amongst a small number of ports/sites which are well placed to support and take advantage of the growth in the energy/renewables sector. Therefore, the IMFLDP does not provide support for the proposed uses, but nor does it attempt to explicitly update the position set out in HwLDP. The IMFLDP is undergoing review with the Proposed Plan expected to be published in early 2022. The replacement plan is anticipated to provide an updated policy position for the site.
- 8.7 Given the dual allocation within the Development Plan, the principle of this development has been accepted. This is however subject to the duration of any forthcoming permission respecting the need for a Development Plan led approach and any forthcoming permission not pre-judging the outcome of the ongoing review of the IMFLDP and content of the replacement plan, which is expected to confirm that future planning and investment decisions should attribute more weight to the more up to date policies within the replacement IMFLDP. To avoid this matter of prematurity, and to align any renewal with the adoption of the replacement IMFLDP, the implementation period for any permission would be time limited to require an application for matters specified in conditions for Phase 1 of development to be submitted within two years from the date of this determination, and any forthcoming renewal being subject to the conclusion of a new Section 75 legal agreement within the Council's targeted four month period.

#### **Landscape and visual impact (including design, layout, open space and landscaping)**

- 8.8 The development site lies within two main landscape character types (LCT's); the Intensive Farming LCT and Coastal Farmlands LCT identified within the Inner Moray Firth and Moray and Nairn Landscape Character Assessments produced by NatureScot. The spit at Whiteness Head lies within the Soft Coastal Shore LCT in the Moray and Nairn Landscape Character Assessment. The site also lies within the Sutors of Cromarty, Rosemarkie and Fort George Special Landscape Area (SLA). It is approximately 4km to the east of Fort George which is a Scheduled Ancient Monument. No new landscape designations have been brought forward through any recent changes to the Development Plan.

- 8.9 As a consequence, the landscape and visual effects of the development were not required to be reassessed by the applicant. The impacts identified in the original submission were accepted.
- 8.10 The original Master Plan for the site is of a conceptual nature, reflective of the fact that the application is for planning permission in principle. Details of each phase will be brought forward through matters specified in conditions applications. The application drawings do however provide further detail with development to take place in accordance with a progressive phasing plan. The maximum built envelope within each phase has been specified with building heights being in the order of four to five storeys (15-20m) at the quayside, with a higher focal hotel building being up to 25m. The other developable areas of the site would be lower with building of around two to three storeys (10m) in height with the combined developable areas of the site (around 100 hectares) having an overall medium density of around 20 homes per hectare, in addition a wider range of mixed land uses. The introduction of development into this low lying, open landscape will inevitably result in considerable landscape change. The proposal will introduce prominent new features to what is currently a relatively quiet area but is considered acceptable.
- 8.11 While views out from the SLA are likely to be adversely affected by the development, again when seen within the context of historic and current industrial activity on this side of the Firth that impact was considered acceptable. The appreciation of the most important features of the SLA, the Sutors, Eathie Cliffs and Chanonry/Fort George promontories will be largely unaffected. There have been no changes to the SLA, or introduction of further landscape designations, that would alter this previously held opinion.
- 8.12 Turning to visual impacts, the impact on visual amenity in particular, significant visual effects will generally be experienced within 10km with the most significant visual receptors being Fort George/Chanonry Point, the South Sutor, Ardersier and Nairn West Beach. The development will however be read in the context of other built development along this stretch of the coastline; Dalcross and Norbord in particular. Evidence of the historical use of the site still exists in many of these views. The visual impact will be gradual due to the phased nature of the development and will provide enhancements beyond the existing baseline of redundant industrial infrastructure. Subject to detailed design of the development, the visual is would be acceptable.
- 8.13 Owing to the renewal nature of the application, no amendments have been made to the original Master Plan or the associated application drawings pertaining to original permission. Certain aspects of these drawings will however be updated via a suite of updated planning conditions and Section 75 legal agreement. These cover matters pertaining to the provision of site landscaping, open space provision, and notably securing an enlarged primary school site to reflect updated school capacity requirements set out in the Developer Contributions Supplementary Guidance (DCSG), which was published in 2018 post the last renewal.

### **Natural heritage – Terrestrial and Ornithology**

- 8.14 The site forms part of the Whiteness Head SSSI which is designated for ornithological, saltmarsh, sand dunes, sandflats, shingle and coastal geomorphology

interests. The spit feature has evolved due to the occurrence of long shore drift in an east to west manner; sand stirred up by wave action within the intertidal area of Nairn beach being carried and gradually deposited at Whiteness. This feature currently provides natural protection for the proposed marina, however, as a result of this continuous coastal process, it is possible that the spit may be lost in time. NatureScot highlights that more recent information from Dynamic Coast on future coastal change suggests that ongoing erosion could have implications for the sustainability of the development during its lifetime. Sea level rise may accelerate the rate of erosion leaving the site vulnerable to breach from storm events resulting in a need for engineered coastal defences in the form of rock armour placement which will replace the existing sheet pile in the quayside. Given the location of where such infrastructure would be required these works and other mitigation in the form of rock armour, piling or dredging activity, will form part of a future marine licence application. As such, the significant effects relate to the operational phase of this proposal, rather than the construction phase.

- 8.15 The spit and foreshore of the site also forms part of the Inner Moray Firth SPA and Ramsar site. In 2016 details on the classification of a further proposed Special Protection Area (pSPA) affecting the site emerged - the Moray Firth pSPA - the qualifying features of which are its overwintering bird populations. Impacts mainly relate to the potential for water environment pollution, which is considered elsewhere within this report, as well as the potential for the spread of Invasive Non-Native Species (INNS) and human and vehicle activities causing bird displacement. The applicant's Ecological Impact Assessment concludes that, even with effective mitigation, there could be significant effects from recreational disturbance (including from pets) on birds, plants and habitats, albeit at a local level. As a consequence, the effects of disturbance (including from pets) on the SSSI and the SPAs could be significant.
- 8.16 The level of assessment work undertaken by the applicant, and the mitigation measures proposed have been criticised by RSPB who requested further information to be forthcoming, particularly in relation to bird disturbance. NatureScot also considers that the development is likely to have a significant effect on bird interests of the Inner Moray Firth SPA and could adversely affect other internationally important natural heritage interests. Through the submission of further information (EAIR FEI I) NatureScot however advise that there will be no adverse effects on the site integrity of these interests. To reach this conclusion NatureScot has set out that the measures contained within the previous planning conditions and Section 75 legal agreement being retained within any future permission. Mitigation measures to be secured include: a Access Management Plan, a Marine Management Plan and a Construction Environmental Management Plan (CEMP) which includes provision for surface water management, pollution prevention plan, bird protection plan, species protection plan, habitat management plan, and appointment of an Ecological Clerk of Works (ECoW) to undertake further monitoring and oversee the construction phases.
- 8.17 In terms of habitats and the presence of other protected species, the majority of the site is manmade having been created using dredged material when constructing the fabrication yard in the mid 1970's. Around the periphery woodland, dune and salt marsh habitat are present. Notwithstanding this, the site is of limited suitability and

hosts limited habitats. With the exception of otter, no other evidence of protected mammal species has been recorded within the site. Subject to undertaking pre-construction surveys for otter along all watercourses and around the edge of the lagoon (as per the CEMP condition) the construction and long-term habitation of the site is unlikely to affect any protected mammal species. The development would also have a positive environmental effect locally in relation to the creation of landscaping and wetlands and the planting of trees as part of the landscape proposals.

### **Natural heritage – Marine**

- 8.18 Other sensitive issues when considering development proposals on this site has been the effects on bottlenose dolphin and common seal. The applicant's Marine Ecological Impact Assessment and Underwater Noise Assessment contained within the EIA Report identifies that the potential impacts of the development relate to: water pollution during construction and from vessels during the operation of the marina, disturbance and collision risk from vessels, disturbance due to recreation and pets, and underwater noise and vibration generated by the demolition of the quay, construction of a marina, dredging and operational activities. With the application of effective mitigation measures, including those set out within the Natural Heritage – Terrestrial and Ornithology section above, and the preparation of a finalised Marine Management Plan (MMP), vibropiling, the majority of adverse effects on marine ecology will not be significant.
- 8.19 The applicant's assessment concludes that there is still likely to be major significant adverse effects on marine mammals, specifically on grey and common seals while they are in the haul-out. As a consequence, the effects of disturbance on the Dornoch Firth and Morrich More SAC and the seal haul-out at Whiteness Sands (Ardersier) could be significant at an international and national (UK) level respectively.
- 8.20 Since consideration of the last renewal of planning permission, the common seal haul out site at Whiteness Sands was formally designated as a haul out site in September 2014 under the Marine (Scotland) Act 2010 (see MF-00 Ardersier West of Nairn: Intertidal sandbanks west of Whiteness Head and north of Kirkton within the Ministry of Defence Danger Area). Whilst NatureScot advise that Marine Scotland will likely provide comment on the seal haul out designation when a marine license is applied for, NatureScot requested an updated robust and enforceable AMP and MMP be submitted prior to determination of the application. Further environmental information has since been submitted.
- 8.21 In NatureScot's view, this proposal is likely to have a significant effect on the bottlenose dolphin interest of the Moray Firth SAC. In addition, they advise that the proposal will have likely significant effects on the common seal interest of the Dornoch Firth and Morrich More SAC. These effects relate to disturbance from both the construction and operational phases of the proposal, principally due to the introduction of a permanent resident population at the site, with people utilising the surrounding environment for recreation and access purposes. NatureScot has now however confirmed that in its view, the proposals will not adversely affect the integrity of the aforementioned sites. This is again based on the finalised AMP and MMP being secured through a Section 75 legal agreement with these finalised plans require to be underpinned by bye-laws. Such mitigation measures allowed the Council to conclude through the Appropriate Assessment, provided at Appendix 3 to



this report, that adverse impact on site integrity can be avoided as a result of the which considers the effects of the proposal on the aforementioned designations and their qualifying interests.

### **Roads, access and parking**

- 8.22 Since planning permission was granted for this development in 2013, Transport Scotland has completed the development and assessment of the preferred option for dualling the section of the A96(T) between Inverness and Nairn (including a Nairn Bypass). It published Draft Orders for the scheme on 29 November 2016, with a public inquiry held on 30 October 2018 and the final road orders and CPO submitted to the Scottish Ministers for approval on 17 October 2019. On 19 February 2021 Scottish Ministers gave the go ahead for completion of the statutory procedures for the A96 dualling between Inverness and Nairn.
- 8.23 The dualled A96 identifies a significant new junction at Nairn West that, in addition to providing access to Nairn, will also provide direct access to service the site. This utilises the existing route from the A96(T), that crosses the B9092. On the basis that the scheme is allowed to progress there is commitment from Transport Scotland to deliver this section of the A96 route as an early phase of the overall A96 Inverness - Aberdeen dualling project that is scheduled to be completed by 2030. It may however be some years until this part of the scheme is constructed.
- 8.24 In recognition of this, Transport Scotland are recommending that alternative conditions restricting the level of Phase 1 development to 418 dwellings until either: Transport Scotland has completed the upgrading and realignment of the A96(T) between Inverness and Nairn, or, a Transport Assessment for development beyond Phase 1 has been submitted and any required mitigation implemented. It has however also clarified that a financial contribution is no longer requested as an alternative to the provision of the upgraded A96(T) infrastructure. This stance differs from the approach taken in determining the previous planning permission for renewal, however, the trunk road proposals have advanced and the applicant is proposing to amend the phasing of development to reduce the number of homes which are proposed to be built ahead of the completion of the A96 dualling. The number of homes is now proposed to be more than halved, reduced from 891 to 418 homes, which better reflects the Master Plan's phasing and limit of residential development specified for Phase 1.
- 8.25 Despite Transport Scotland's position on this matter, given the potential for delays associated with the implementation of the A96 dualling project, it is considered that any forthcoming renewal should still maintain the contingency provisions set out within the previous planning permission's legal agreement. This requires a contingency financial contribution in the order of £3 million towards the A96 or physical delivery of road improvements prior to the occupation of Phase 2 – 419<sup>th</sup> home.
- 8.26 Transport Scotland also recommend conditions to ensure that the overall total number of homes is limited to 1,950, and that prior to occupation of the first phase, the main access road to an adoptable standard suitable for busses, a frequent bus

service is operational, and the internal road layout is suitable for busses with stops within 400m of all homes. These matters can be secured via condition.

- 8.27 Transport Planning advise that conditions are imposed to require: an updated Master Plan and phasing plan ahead of the commencement of each phase of development; a revised Transport Assessment be provided prior to the commencement of Phase 1 if the latest January 2020 traffic data is more than three years old; each phase of development to have a Transport Statement; travel plans to be prepared; Construction Traffic Management Plans (CTMPs) and for the routing to be via the A96(T), U2218 McDermotts Road and the private access link road with no construction traffic using the B9092. All of the recommended conditions can be included in any permission that may be granted. In relation to the revised masterplan, it is proposed that the conditions ensure that the revised masterplan is brought forward in a manner which will deliver Designing Streets principles through each phase of development, with clear street hierarchies to enable a legible development.
- 8.28 Transport Planning has also highlighted the requirement for public transport to serve the development with a subsidised bus route required for Phase 1 of the development, for the first five years. Frequent bus services will be required from the onset of the occupation of properties, subsidised at the developer's expense, to reflect the build-up of demand due to the phasing of the project. THC Transport Services, in consultation with Stagecoach, has confirmed that a six days a week daytime service extension would be required to serve Phase 1, adding one bus to the vehicle requirement to the Inverness – Ardersier service to Nairn. Initial cost estimate for this is £350,000. This can be secured via a legal agreement.
- 8.29 While the Council's Access Officer raises concerns, through further collaborative working, the applicant has provided more detailed advice on the recommended content of an updated Section 75 legal agreement, the head of terms for which are proposed to specify the requirement for a finalised AMP and a MMP be submitted prior to the commencement of development. The applicant has also set out that the implementation of these plans, and associated backstop bye-laws, do not result in any financial or resource implications for the Council with these mitigation measures to be fully funded by the applicant / landowner. Wording to this effect shall be contained within the revised Section 75 legal agreement as per the heads of terms provided at Appendix 2. Despite earlier concerns being raised by the Ministry of Defence and NatureScot, this approach has now been accepted by these other consultees and remains appropriate given the planning permission in principle stage of this application.
- 8.30 The need to connect the site with the nearby settlement of Ardersier has also been highlighted through the Council's Green Networks Supplementary Guidance. Ideally an appropriate routing and path would be delivered by the applicant prior to occupation of the development. Given that this is likely to require third party land, it is proposed that the Council takes forward the responsibility for delivery of this with the cost being borne by the applicant through provision of an up-front payment prior to development commencement in the order of £500,000 reflective of the costs set out in the supplementary guidance for the totality of residential component of the Master Plan. In addition to this offsite connection, physical provision on site is also required with this to be set out within the finalised AMP.

- 8.31 Transport Planning had suggested that there could be scope for developer contributions to be required towards the delivery of Dalcross Railway Station as rail infrastructure and station parking is listed in Developer Contribution Supplementary Guidance. The rail infrastructure is however being proposed by HIAL to predominantly serve its Airport Parking Strategy and access to the emerging uses in the Inverness Airport Business Park. Further, the Dalcross Railway Station is fully funded by Network Rail. As this is the case, no developer contributions are required towards delivery of this infrastructure.
- 8.32 Any future application will be required to provide details of car and cycle parking in accordance with the Roads and Transportation Guidelines for New Developments. This will be secured by condition. To facilitate a move toward a low carbon economy it is considered appropriate to facilitate the transition toward the phasing out of diesel and petrol cars. This would include the provision of electric car charging points. The details of the design and scale of this infrastructure can be secured by condition. Further, a strategy for energy use and sustainability is to be conditioned.

### **Water, flood risk and drainage**

- 8.33 SEPA advises, based on the current best evidence on flood risk, that the site will not be at direct risk of flooding either now or in periods within current estimates. That said, it advises that the margin of safety at the site above those current best estimates is low. SEPA has concerns that with the effects of both coastal erosion and climate change the site could be at steadily increasing vulnerability over coming years.
- 8.34 Flooding and climate change are major considerations for the suitability of the site for any long term vulnerable development. Coastal erosion is also a major issue for the site. Erosion, flooding and climate change are inextricably linked and new information has become available on all these matters since the existing planning permission for the site for was granted. Up to date assessments to consider these issues have been carried out to support the application.
- 8.35 SEPA advise the approximate 1 in 200 year flood level for the area is 3.35m AOD based on extreme still water level analysis using the Coastal Flood Boundary (CFB) method. This does not take into account the potential effects of wave action or climate change. The CFB dataset was revised in 2019 and the latest estimates are broadly similar to previous estimates for the area. From 1994 until 2002 a tide gauge was operated at the site, and in that time the maximum sea level recorded was 3.1m AOD which indicates that the current 1 in 200 year estimate for the area is not unrealistic.
- 8.36 The expected sea level rise for the area is 0.89m by 2100 based on the latest UK climate change predictions published in 2018. This allowance added to the 1 in 200 year estimated flood level means that land below 4.24m AOD should not be developed as it is at risk of flooding, or is likely to be in the foreseeable future. Most of the site which is to be developed is stated to be at an elevation of around 4.5m AOD. Conditions are therefore required to avoid development on any land below 4.24m AOD which will be at risk of flooding.

- 8.37 A minimum freeboard allowance of 0.6m to account for uncertainties in flood estimation and physical processes means that design levels for the development should be set higher than the estimated flood levels. The Flood Risk Assessment (FRA) has recommended minimum design levels of 4.84m AOD for highly vulnerable development on the site (such as housing) and of 4.99m AOD for any 'most vulnerable' uses on the site such as the school. These design levels can be conditioned.
- 8.38 SEPA advise that more information is available on uncertainty in flood level estimates in the Coastal Flood Boundary dataset. A range of estimates are given for each return period to define upper and lower confidence limits of the flood levels, and that indicates that an additional 40cm is possible at the 200 year return period, and 70cm is possible for the 1 in 1,000 year return period. These levels are possible, rather than most probable. Under these possible conditions, and with the addition of climate change, there is potential for flooding of the site in the 1 in 200 year flood and larger events beyond 2100. SEPA's assessment is that the probability of this occurring is low enough to satisfy the requirements of SPP to avoid areas at flood risk, but it does raise concerns that there is some uncertainty in the long term sustainability of the location.
- 8.39 The FRA also considers the risk of flooding from the small watercourses around the south and east of the site, as well as the probability of coastal flooding in that area, and joint coastal and fluvial flooding. No development would however be located within this area found to be at risk.
- 8.40 In relation to coastal erosion, the National Coastal Change Assessment was published in 2017 and highlights significant concerns with coastal erosion and change at the site. The research finds that the site could be at much greater risk of erosion and flooding in future as it currently benefits from protection from the long spit, but the evidence is that it is being eroded. An updated study on coastal processes has been provided for the application. Harbour and marina uses are proposed along the northern side of the development area and long term management of the coast will be required as part of that. Residential development inland from there will also be reliant on the long term maintenance of any coastal management, particularly in future as the vulnerability of the area increases due to climate change and erosion. SEPA advise that the appropriateness of development which is dependent on long term maintenance should be given due consideration.
- 8.41 The site is mainly formed of historically raised up and reclaimed land, formed using dredged material for industrial uses. It is surrounded by much lower land which is salt marsh, sand dune and coastal environments. A small watercourse runs along most of the southern boundary. As this lower land is at higher risk of flooding than the development site, there is potential for the site to become almost an island during serious flood events in future, with access limited to the two roads into the site. In the event of it being required, evacuation could be difficult given the size of the development and the limited flood free routes available to higher ground. Based on the information currently available, it would not be expected that evacuation would be required, but given the difficulties if it were, SEPA recommend the most cautious approach is taken to the decision to develop the site.

- 8.42 There is only one flood free access/egress road connecting the site to higher ground at present. Although the current road is above the expected flood levels, it could potentially be surrounded by flood water and there are no additional emergency or pedestrian routes. A second road is proposed as part of the application and as recommended in the FRA, the minimum level of the access roads would be 5.00m AOD to ensure they are not at risk of flooding, now or in the future and this would be conditioned. SEPA also note that in relation to surface water management, effective operation of any systems could be vulnerable to high coastal water levels.
- 8.43 The Council's Flood Risk Management Team has also reviewed the Flood Risk Assessment submitted for the site and has recommended development and site access site levels to allow for future sea level rises and climate change with a suitable freeboard, with these matters to be secured by condition in line with the above recommendations presented by the applicant and SEPA.
- 8.44 The Council's Flood Risk Management Team has also reviewed the Drainage Impact Assessment and is satisfied with the high level strategy in terms of water quantity. Further groundwater monitoring is needed to inform the final design solution which must be designed to accommodate the 1 in 200 year plus climate change storm event, which may be challenging given the aforementioned ground level requirements and the flat nature of this site. It is also recommended that it needs to be demonstrated that: the drainage strategy is suitable in the event of a high groundwater table being encountered; runoff from the 1 in 200 year plus climate change storm event can be managed without flooding to roads or property; that Transport Planning agree the finalised drainage strategy; and the drainage network will be suitable for vesting and maintenance by Scottish Water. Conditions are therefore proposed to secure these matters with the finalised proposals either require be compliant with Sewers for Scotland 4 and be of a design capable for vesting by Scottish Water, albeit possibly with variation / waiver, or, any deviation from this would remain the developer's responsibility with the associated maintenance being subject to the prior approval of the Planning Authority.
- 8.45 It is a requirement to connect to the public sewer to meet the requirements of HwLDP Policy 65 and IMFLDP Policy 4. A separate planning permission (07/01186/FULIN) was granted for the development of a sewage pumping station and ancillary works. This infrastructure has been installed with waste water being pumped to the recently upgraded Ardersier Waste Water Treatment Works. As such, this element of the renewal application is no longer required and any forthcoming permission would exclude this element. Scottish Water has confirmed that there is currently capacity in its network to service the development.
- 8.46 On the basis of the EIA Report and consultation responses received, the proposals have been found as being capable of overall compliance with Scottish Planning Policy and HwLDP Policy 64, albeit design changes which may result in lower finished floor levels for the development and its associated access will not be acceptable in relation to flood risk. Based on the most up to date data, the development proposals avoid areas most susceptible to flooding, are serviceable in terms of the public water and waste water network and subject to detailed design can be acceptable in terms of drainage strategy.

## **Built and Cultural Heritage**

- 8.47 In its response to the application Historic Environment Scotland note that that the development parameters of the proposal have not changed from the planning permission to be renewed and that the proposal was previously assessed for its potential impacts on the historic environment. As no significant adverse impacts were previously identified, they are content that there is no need for an updated cultural heritage assessment.
- 8.48 With that said, assessing the proposal against the Historic Environment Policy for Scotland (HEPS) it is not considered that the proposal conflicts with its policies and principles due to the temporary nature of the development. Further when considering the location of the development the proposal does not conflict with the principles set out in Managing Change in the Historic Environment: Setting (2016, updated 2020).
- 8.49 The Council's Historic Environment Team has identified a small area in the south of the site which is considered to have archaeological potential. As such, a condition is required to undertake further archaeological survey and evaluation across this area of interest.

## **Amenity, noise, and air pollution**

- 8.50 In addition to the effects on habitat, there is some potential for construction related noise and activity impacts that could affect neighbours. The residential properties at Kebbuck Stone are the nearest neighbours at 125m west of the access road boundary, with the two other closes properties to the application site being at Carse of Ardersier, at around 275m - 375m south west of the application site. The applicant's assessment of the construction noise and vibration effects on these neighbours are reported to be negligible, nonetheless, mitigation to reduce the potential impact has been suggested. This include:
- the submission of a Traffic Management Plan to set out agreed prescribed access routes, hours of operation, maximum vehicle movements and monitoring arrangements;
  - adherence to British Standard 5228 best practice, including proper maintenance of equipment and the use of noise attenuation apparatus; and
  - liaison with neighbours on work schedule.
- 8.51 Powers for regulating construction noise exist within the Control of Pollution Act 1974; which enable Environmental Health to specify working hours where problems exist. Having said that, working hours, along with delivery hours can be controlled through a condition requiring approval of a Construction Environmental Management Plan (CEMP) on the basis that this mitigation has been offered. Provision of a Traffic Management Plan to assist in regulating activity on the public road network is also to be conditioned.
- 8.52 In terms of operational noise, EIA Report Section 10.07 states that noise generating sources which form part of the development, such as marina, boat yard, yacht club, sports pitches, visitor centre, shops, restaurants, primary school, community hall and health centre will be subject to separate planning applications, which will include, where required, a noise impact assessment. Provision of these detailed

assessments can be conditioned. In this respect, Environmental Health have sought that any future assessment be based on a comparison of a noise source against the current background baseline levels, and not future levels as more background noise levels are introduced through the phased build out of this development.

- 8.53 In respect of dust and air emissions, the CEMP shall address the management and control measures to be undertaken. The measures set out in the outline CEMP provided to date meet with Environmental Health's satisfaction with these measures to be in place prior to the commencement of development and remain for its duration.
- 8.54 Should the development be granted, a community liaison group should be set up to ensure that the community council and other stakeholders are kept up to date and consulted before and during the construction period.

### **Infrastructure provision (including education and health)**

- 8.55 The development is located within the Ardersier Primary School and Culloden Academy School Catchment Areas. The proposed development is anticipated to generate 585 primary school pupils and 254 secondary school pupils. These figures have been derived from the published Pupil Product Ratios in the Developer Contributions Supplementary Guidance. The impact on the school estate has been considered in the context of the published 2021 School Roll Forecasts.
- 8.56 This shows that from 2022/23 Ardersier Primary School will be over 90% capacity. It would then remain over 90% throughout the forecast period peak in 2033/34 at be more than 21 pupils over the 90% capacity threshold, equating to a 1 classroom extension requirement. As the proposed development is not programmed into the forecast it has been re-run to consider the impact of the development. It has been assumed that development could begin in 2024/25 and deliver 50 units each year until the end of the 15 year forecast period. This results in the school roll reaching 245 pupils by the end of this period, (133 pupils over the 90% capacity). As a result, major extension/new school rates are applicable to serve primary school needs within the Culloden Academy catchment area to mitigate the impacts arising from the development.
- 8.57 In addition, land is required within the proposed Master Plan for a primary school. The current Master Plan makes provision for a 2.7ha school site with an 0.3ha area for community uses. Based on a two-stream school with a capacity of 434 pupils requiring a 3ha schools site, the number of primary school pupils arising from the proposed development will necessitate the reservation of a 4ha primary school site. Land transfer of this school site is required at nil consideration to the Council prior to the occupation of the first house on site. A condition is therefore proposed to amend the Master Plan to accommodate this enlarged school site requirement with the land transfer to be secured by Section 75 legal agreement.
- 8.58 In terms of secondary provision, Culloden Academy is already over capacity and the Council is progressing plans for an extended or enlarged phased re-build of the school to meet educational demands and capacity issues as a result of new development. A new secondary school site is also reserved within the Inverness East Development Brief area. Developers are required to contribute at new school rates plus land costs.

- 8.59 The Inner Moray Firth Action Programme which accompanies the Inner Moray Firth Local Development Plan identifies the need for a new sports facility at the east of the City based at Inverness Campus. Given the scale of the proposals however a sports centre and a community hall are proposed to be delivered by the developer on site. Land for the delivery of these onsite facilities is required to be transferred to the Council at nil consideration and applications for these facilities are to be submitted prior to commencement of development within Phase 3 and facilities to be operational prior to occupation of any house within Phase 4. Facilities to be funded by developer and applications are to specify operator, management and maintenance arrangements.
- 8.60 There is also a lack of existing health infrastructure to serve the development. NHS Highland has advised that for a development of this scale, it will be necessary for a temporary mobile doctor's surgery to be provided prior to occupation of Phase 2. It is proposed that this service is subsequently re-located within the purpose built 'health centre'. Land for the health centre is again to be transferred to the Council or NHS Highland at nil consideration prior to occupation of first house in Phase 2 [Master Plan Site No. 8: Health Centre]. It is proposed by the Council that the temporary mobile facility is funded by developer with a permanent health centre to be funded by NHS Highland with these matters to be secured through a new Section 75 legal agreement.

#### **Other Material Considerations**

- 8.61 The Council's records indicate that the site has an historic use as a Fabrication Yard, which may have resulted in land contamination. Site investigation work has already been undertaken at this site previously for former planning applications, however, given the time that has lapsed since the last assessment of the site, information should be reviewed in relation to the current proposals and updated accordingly in line with current guidance and legislation. A condition is therefore proposed to secure a scheme to deal with any remaining contamination, and, if required, monitoring measures.
- 8.62 There are no unresolved objections with regard to aviation interests, however given the sites proximity to Inverness Airport, conditions are required including: a bird hazard and landscape management plan to mitigate the potential for bird strike and a construction and operational lighting scheme to ensure the site is not confused with aeronautical ground lights, or results in glare. A further condition is also necessary to secure HIAL's prior approval for the erection of any construction cranes and limits on the height of boats utilising the moorings will need further consideration under a future Marine Management Plan.

#### **Non-material considerations**

- 8.63 None

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

- 8.64 a) Contributions to the delivery of enhanced Primary Education capacity within the Culloden Academy Secondary School catchment (£7,359 per house or £4,171 per flat);



- b) Transfer of land to The Highland Council for the delivery of a new primary school on site;
- c) Contributions to the delivery of enhanced Secondary Education capacity to serve the needs of the Culloden Academy catchment, whether this be spent within the existing catchment or an adjacent catchment, providing the spend mitigates the impact of the development (£3,482 per house or £1,875 per flat);
- d) Contributions to land costs to aid the delivery of enhanced Secondary Education capacity to serve the needs of the Culloden Academy catchment (£91 per house or £52 per flat);
- e) Transfer of land to The Highland Council for a sports centre and a community hall and applicant to fund physical delivery of facilities;
- f) Applicant to fund physical delivery of temporary mobile doctor's surgery and transfer of land to The Highland Council or NHS Highland for a health centre, with permanent facility to be funded by NHS Highland;
- g) Minimum of 25% affordable housing to be delivered on-site within each phase of development;
- h) Contingency sum for Transport Scotland's / applicant's option of non-physical delivery of road upgrades should A96 dualling not have been delivered prior to occupation of Phase 2 – 419<sup>th</sup> home (£3,117,131);
- i) School and public transport route subsidy to serve the development (£350,000);
- j) Bus stop provision with real time information (£58,000);
- k) Green network physical provision on site and contribution towards the delivery of a footpath connection between site and Ardersier (£468,000); and
- l) Applicant to fund the finalisation and implantation of an Access Management Plan and Marine Management Plan, including the informing, justification, drafting, processing, successful enforcement and review of those bye-laws along with any other statutory obligations required.

8.65 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 may be refused under delegated powers.

## **9. CONCLUSION**

9.1 The proposal is to renew the planning permission in principle for the use of this site for a mixed use Master Plan. It could have a significant role in developing the A96 corridor and serve the Inner Moray Firth Housing Market area, as well as provide space for quayside businesses, and leisure attractions including a marina, all of which would be supported in time by the dualling of the A96. If successful, the proposal would bring substantial economic and employment benefits to the immediate area.

9.2 A number of changes in both local planning and government policy have occurred since the original grant of planning permission in principle. In addition, the position in respect of marine conservation within the Moray Firth has evolved and new designations have emerged in respect of seal haulout sites and a proposed Special Protection Area. The site has also recently received planning permission in principle

for competing industrial use, with the proposed mixed use Master Plan being promoted by the applicant as suitable alternative development option.

- 9.3 These matters have all been considered by the applicant in the EIA Report and associated addendums submitted in support of the application. Consultees, NatureScot and SEPA in particular, highlight that subject to new conditions, as well as the re-imposition of the conditions of the former planning permission in principle, and the mitigation contained within the EIA Report, that their interests can be largely safeguarded.
- 9.4 SEPA has however highlighted that the proposal could still potentially be at long term future flood risk despite the proposals meeting current Scottish Planning Policy flood risk requirements. Such future flood risks are however based on scenario modelling for a range of climate change related sea level changes which may, or may not, influence future planning policy. SEPA and the Council's Flood Risk Management Team are not therefore objecting to the proposals subject to conditions.
- 9.5 Without mitigation significant adverse effects have also been found in specific relation to the bottlenose dolphin interest of the Moray Firth SAC, and seal interest of the Dornoch Firth and Morrich More SAC and the bird interests of the Inner Moray Firth SPA. RSPB, the adjacent Ministry of Defence landowner, as well as the Council's Access Officer have similarly raised concerns with impacts on existing neighbouring land uses, bird and other important habitats. These matters can however be mitigated through careful consideration through the finalisation of an enforceable Access Management Plan and Marine Management Plan mitigate these adverse effects. Significant supporting infrastructure to serve the development would also be required, notably in terms of education provision, healthcare, community facilities, and transportation provision, albeit that these constraints can be largely overcome through the specified updated developer contribution requirements, but may require further local authority / government upfront funding to enable successful and timely delivery.
- 9.6 The renewal of this planning permission is therefore a finely balanced decision, and given the current dual allocation nature of the Development Plan, as well as competing alternative potential industrial uses for the site, it is recommended that any renewal be time limited to a two year period in order to coincide with the next stage of the emerging Inner Moray Firth Local Development Plan.
- 9.7 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the current 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: There is a risk to this development as a result of climate change, however this can be mitigated based on current knowledge. Electric vehicle charging will be secured within the development.

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, it is recommended that planning permission be **GRANTED**, subject to the conclusion of a section 75 legal agreement the following:

### Conditions and Reasons

1. Planning Permission in Principle is hereby granted for a maximum of 1,950 homes, a hotel with health club and conference facilities, a 400 - 500 mooring marina with associated boat yard and yacht club, retail and restaurant facilities, community and education facilities including a primary school, community hall and health centre, landscaping and open space throughout the development, including play areas, an adventure playground and playing fields, car parking for the residents, marina and visitor parking, nature conservation zones, including new water features; and upgrading of the existing services infrastructure, internal road network, all to be carried out in accordance with the EIA Report, FEI I and FEI II and the approved Master Plan (Dwg No: WHAM/PA/1.12\_D) except as otherwise provided for and amended by the terms of this approval.

The development to progress in accordance with the Master Plan's five sequential phases or in sub-phases as may be approved in writing by the Planning Authority. Residential unit numbers shall not exceed the Master Plan maximum limits set for each phase. A sub-phase means any part of any phase of development the subject of an Approval of Matters Specified in Conditions issued by the Planning Authority following an application in that behalf, or otherwise subject of any equivalent planning approval following an application in that behalf.

**Reason:** To clarify the terms of this planning permission in principle and to ensure that the development proceeds in an appropriate manner and that necessary elements of the development are provided at the appropriate stages.

2. No development shall commence within each phase, or sub-phase, until an application, or applications, as they relate to or are relied upon by that phase or sub-phase has been submitted to and approved by the Planning Authority

in respect of the following matters, insofar as they relate to the details of the proposed development taking full account of the approved Master Plan and other relevant national and local policy and guidance related to the matters set out below:

- a. submission of an amended Master Plan to remove the bridge crossing the spit and provision of further land for a primary school;
- b. submission of an 'Area Development Brief' for each principal phase of the development has been submitted to and approved by the Planning Authority in advance of the submission of any other application(s) for the approval of matters specified in conditions for that particular phase. Each Area Development Brief shall be produced using the principles set out in the Master Plan and shall include the following:
  - i. Conformity with principles and vision of the Master Plan;
  - ii. Place-making, public realm;
  - iii. Character and design including material palette and a design code;
  - iv. Public art strategy;
  - v. Transportation, access, active travel and connectivity;
  - vi. Drainage, sustainable drainage and the water environment;
  - vii. Landscaping and open space; and
  - viii. Phasing, implementation and integration.

Thereafter each application within each phase or sub-phase shall accord with the terms of the relevant Area Development Brief and the phasing strategy to be approved under Condition 1 of this planning permission in principle.

- c. the siting, design and external appearance of all buildings and other structures which shall be no more than five storey (15-20m) in height at the quayside, with the exception of a 25m high hotel building at this location, and no more than three storeys (10m) in height elsewhere across the site;
- d. with the exception of residential uses, the amount of floorspace and area of each land use, adhering to the Master Plan's site areas for each land use and trip rates assessed within the EIA Report;
- e. energy strategy detailing sustainable design considerations;
- f. finalised Access Management Plan;
- g. finalised Marine Management Plan;
- h. construction and operational environmental management details;
- i. means of access to the site for all modes of transport;
- j. layout of the site, in accordance with Designing Streets principles with the road layout including:
  - i. road hierarchy;
  - ii. typical form of the routes forming the hierarchy;
  - iii. junction layouts and design with projected traffic figures supported by traffic modelling;
  - iv. junction and forward visibility requirements;
  - v. junction spacing both within the development and on the spine road;
  - vi. vehicle tracking at junctions and standard radii;

- vii. details of bus routes and bus stops inclusive of bus swept paths;
- viii. details of provision for cyclists and pedestrians with junctions and crossing designed to facilitate active travel;
- ix. provision for disabled users following consultation with the Inverness Access Panel;
- x. safer routes to school;
- xi. external lighting;
- xii. service vehicles access; and
- xiii. details of the location and type of service strips within the intended adoptable road boundary;
- k. site travel plan, travel park, provision of car parking and covered cycle parking, electric vehicle charging and refuse management;
- l. landscaping, including a bird hazard management plan, public open space, boundary treatments, management and maintenance;
- m. coastal erosion management plan;
- n. flood risk measures including existing and proposed site levels with fall arrows and finished floor levels;
- o. surface water drainage systems, including access for maintenance, across the phase or sub-phase, how it relates to the surface water drainage strategy for the site as a whole and management and maintenance arrangements of said infrastructure;
- p. water and waste water connections to the public network;
- q. technical working group and community liaison group ongoing engagement; and
- r. planning compliance monitoring.

**Reason:** Planning permission is granted in principle only and these specified matters must be approved prior to development commencing within each phase or sub-phase.

3. No development shall commence until the approved Master Plan (Dwg No. WHAM/PA/1.12\_D) has been amended as follows:
  - a. the land identified as a primary school site measuring 2.7ha (Site 14) shall be increased in size to 4ha; and
  - b. the bridge crossing the spit shown on the Master Plan is not hereby approved and shall be removed.

The amended Master Plan shall be submitted for the prior written approval of the Planning Authority with all subsequent application for matters specified in conditions to accommodate these amendments.

**Reason:** In order to clarify the terms of this permission and to safeguard sufficient land for the purposes of primary school provision, with the increase land requirements reflective of the anticipated pupil product ratio for the development, the latest school roll forecast and in accordance with the Developer Contributions Supplementary Guidance.

4. There shall be no development until a design code that informs the detailed design of all buildings on the site has been submitted for the written approval

of the Planning Authority. Thereafter, the development shall proceed in accordance with the approved design code.

**Reason:** In order to achieve consistent and high quality detailed design in the interest of visual amenity.

5. Any details pursuant to Condition 2 shall include a scheme for the inclusion of public art within the development. The scheme shall include:
- a. detailed design of public art provision including, but not limited to, provision of interpretation related to the history of the area;
  - b. locations of any and all public art provision;
  - c. the management and maintenance of any and all public art provision; and
  - d. a timetable for implementation.

Thereafter, the approved scheme shall be implemented in accordance with the timescales contained in the approved scheme and maintained in perpetuity.

**Reason:** To ensure the delivery of a development with a unique identity which facilitates the creation of place.

6. No development shall commence within any phase or sub-phase of the development until a finalised Access Management Plan (AMP) pursuant to Condition 2 has been submitted to and has been approved in writing by the Planning Authority, in consultation with NatureScot and the Ministry of Defence. The AMP shall include details of public access rights, footpaths and cycle ways and lighting existing, during construction and upon completion of the development. Information on temporary or permanent diversion or closure shall also be set out. The plan shall detail:
- a. all existing paths, tracks and rights of way and any areas currently outwith or excluded from statutory access rights;
  - b. any areas proposed for exclusion from statutory access rights, for reasons of privacy, disturbance or curtilage in relation to proposed buildings or structures;
  - c. measures to protect and avoid disturbance to the designated common seal haul out site at Whiteness Sands and common seal interest of the Dornoch Firth and Morrich More SAC, the bird interests of the Inner Moray Firth SPA, and to avoid trampling and erosion on the sensitive shingle and saltmarsh features present on the Whiteness Head SSSI; informed by the most recent information on marine mammal and bird abundance and distribution at the time as well as the latest information on their vulnerability to disturbance and visitor pressure;
  - d. measures to preserve Ministry of Defence interests including the Fort George live firing range; additional mitigation measures are required such as: educational signage, physical barrier fencing, bunds or water features, sentry, flags, and local informative newsletters;
  - e. all paths and tracks proposed to be constructed for use by walkers, riders, cyclists, all-abilities users etc and how these will integrate with

existing or proposed networks. Details shall include but not be limited to:

- i. pedestrian access to any and all core paths;
- ii. construction details of all paths, inclusive of material finishes and drainage details; and
- iii. details of the construction type and delivery of any bridges;
- f. any diversion of paths, temporary or permanent proposed for the purposes of the development;
- g. links to the Highland Council's core paths and green network frameworks; and
- h. measures to secure implementation, monitoring and enforcement, underpinned by bye-laws.

The agreed AMP shall be implemented prior to the first occupation of the development and thereafter the provision shall remain in perpetuity with any amendments to be subject to the prior approval of the Planning Authority.

**Reason:** To ensure that the development is adequately connected with existing and proposed pedestrian and cycle routes and to accord with the Land Reform (Scotland) Act 2003 and in the interest of avoiding disturbance to the designated common seal haul out site at Whiteness Sands and common seal interest of the Dornoch Firth and Morrich More SAC, the bird interests of the Inner Moray Firth SPA, and to avoid trampling and erosion on the sensitive shingle and saltmarsh features present on the Whiteness Head SSSI, as well as in the interest of maritime safety, aviation safety and preservation of the Fort George live firing range.

7. No development shall commence within any phase or sub-phase of the development until a finalised Marine Management Plan (MMP) pursuant to Condition 2 has been submitted to and has been approved in writing by the Planning Authority, in consultation with NatureScot, Marine Scotland, Transport Scotland – Ports and Harbours Branch, Ministry of Defence and the Highland and Islands Airport Authority. The finalised MMP shall include:
- a. measures that effectively avoided adverse impacts on the Moray Firth SAC, including but not limited to, provision for marina mooring leases, a sea ranger, a marine chart, a research programme and a monitoring scheme;
  - b. details of proposed maximum number, size and height of boats utilising the marina, with any future increases being subject to the findings of ongoing monitoring which demonstrates that any such increase would not have an adverse impact on the integrity of the Moray Firth SAC;
  - c. provision for regular review informed by the most recent information on marine mammal and bird abundance and distribution at the time as well as the latest information on their vulnerability to disturbance and visitor pressure;
  - d. a scheme or protocol for managing potential marine interactions within the Ministry of Defence bye-law area to the west of the site with the inclusion of further mitigation measures to prevent encroachment into the sea danger area when the ranges are live. Such measures may include, but are not limited to: signage, buoys, marshals, a potential

- temporary physical barrier close to the marina on firing days or requirements for no sails to be used out to a certain point; and
- e. measures to secure implementation, monitoring and enforcement, underpinned by bye-laws.

The agreed MMP shall be implemented prior to the operation of the marina and thereafter the provision shall remain in perpetuity during its use with any amendments to be subject to the prior approval of the Planning Authority.

**Reason:** In the interest of avoiding disturbance to the qualifying bottlenose dolphin interest of the Moray Firth SAC, the designated common seal haul out site at Whiteness Sands and common seal interest of the Dornoch Firth and Morrich More SAC, and the bird interests of the Inner Moray Firth SPA, as well as the maritime safety, aviation safety and preservation of the Fort George live firing range.

8. No development shall commence until an updated Construction Environmental Management Plan has been submitted to, and approved by, the Planning Authority in consultation with NatureScot, SEPA and other appropriate consultees as appropriate. The document shall include provision for:
  - a. an updated Schedule of Mitigation (SM); highlighting mitigation set out within each chapter of the Environmental Impact Assessment Report (EIAR), within the EIAR Further Environmental Impact II, and the conditions of this consent;
  - b. processes to control / action changes from the agreed SM;
  - c. A Construction Method Statement, noting that impact piling shall not be used as a method for quay wall construction, with any piling activity to be restricted to vibropiling.
  - d. a Bird Protection Plan (BPP) and Species Protection Plans, with associated survey and monitoring requirements to be agreed by the Planning Authority, in consultation with NatureScot and RSPB. This must be informed by a further pre-construction ecological survey for legally protected species which must be carried out at an appropriate time of year for the species, at a maximum of 12 months preceding commencement of construction, and a watching brief must then be implemented by the Ecological Clerk of Works (EcoW) during construction. A communication plan must be provided to ensure all contractors are aware of the possible presence of protected species frequenting the site and the laws relating to their protection. This plan must detail a notification and stop the job commitment requirements.
  - e. a Habitat Management Plan that shall detail:
    - i. biosecurity plan including protection of water bodies from marine non-native species and minimise the risk of spreading freshwater invasive species;
    - ii. spit habitat protection, enhancement and access management measures;
    - iii. alternative high-tide roost sites exist on Whiteness Sands and on the Moray Firth side of the dunes;



- iv. marine mammal protection;
- v. biodiversity action plan;
- vi. mitigating action programme;
- vii. environmental education strategy;
- f. pollution prevention plan;
- g. dredging plan prior to construction of marina;
- h. dust management plan designed to protect neighbouring properties and sensitive habitats and protected species from dust arising from this development.
- i. construction noise and vibration mitigation plan;
- j. surface water management; and
- k. site waste management plan.

The development shall proceed in accordance with the approved Construction Environmental Management Plan which shall be updated, as necessary, for each phase and/or sub-phase and approved by the Planning Authority in consultation with NatureScot and SEPA. Any further mitigation measures approved by the Planning Authority shall thereafter be implemented for the duration of construction works within the phase(s), or sub-phases, to which they relate.

**Reason:** To protect the environment and amenity from the construction of the development, and in the interest of avoiding disturbance to the qualifying bottlenose dolphin interest of the Moray Firth SAC, the designated common seal haul out site at Whiteness Sands and common seal interest of the Dornoch Firth and Morrich More SAC, and the bird interests of the Inner Moray Firth SPA.

9. There shall be no Commencement of Development unless the Planning Authority has approved in writing the terms of appointment by the applicant of an independent Ecological Clerk of Works (EcoW) in consultation with NatureScot and SEPA. The terms of appointment shall:
  - a. impose a duty to monitor compliance with the ecological and hydrological commitments provided in the Environmental Impact Assessment Report, Further Environmental Information, and other information lodged in support of the application including but not limited to the Construction and Environmental Management Plan (CEMP), the Marine Management Plan (MMP), and the Access Management Plan (AMP) and other plans approved (“the EcoW Works”);
  - b. require the EcoW to report to the applicant’s nominated construction project manager any incidences of non-compliance with the EcoW Works at the earliest practical opportunity;
  - c. require the EcoW to submit a report quarterly to the Planning Authority, or more frequently at the further written request of the Planning Authority, summarising progress with the development and environmental works undertaken on site;
  - d. have power to stop to the job / activities being undertaken within the development site when ecological interests dictate and / or when a breach or potential breach of environmental legislation occurs to allow

- for a briefing of the concern to the applicant's nominated construction project manager; and
- e. require the EcoW to report to the Planning Authority any incidences of non-compliance with the EcoW Works at the earliest practical opportunity.

The EcoW shall be appointed on the approved terms throughout the period from pre-construction survey work ahead of the Commencement of Development and throughout any period of construction activity.

**Reason:** To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.

10. No development shall commence on site until a detailed scheme setting out how existing water and wetland habitats, identified in the submitted habitat survey within the EIA Report "Technical Appendix 7.2: 'The Habitats and Vegetation (NVC) of the Proposed Ardersier Residential Development', will be protected, managed and enhanced, has been submitted for the prior approval of the Planning Authority in consultation with SEPA. Any works proposed within 250m of habitats identified as moderately groundwater dependent ecosystems should be subject to a detailed site-specific risk assessment. The scheme thereafter shall be implemented in full.

**Reason:** In order to protect groundwater dependent ecosystems.

11. No development shall commence on site until a scheme for provision of aviation lighting on any tall structures and/or equipment required during construction and operation of the development has been submitted to, and approved by, the Planning Authority, in consultation with Highlands and Islands Airports Limited and the Ministry of Defence. The development shall proceed in accordance with the approved scheme which shall be updated, as necessary, for each phase and/or sub-phase, and approved by, the Planning Authority in consultation with Highlands and Islands Airports Limited and the Ministry of Defence.

**Reason:** In the interest of aviation safety.

12. No development shall commence within any phase, or sub-phase, until a Construction Traffic Management Plan for that phase, or sub-phase, has been submitted to, and approved by, the Planning Authority. The plan shall include, inter alia, prescribed access routes, hours of operation, maximum vehicle movements and monitoring arrangements. The plan shall be implemented in accordance with any timescales contained therein. All construction traffic shall access/egress the site via the A96(T) and U2218 McDermotts Road only.

**Reason:** In the interest of amenity and road safety. To minimise interference with the safety and free flow of the traffic on the trunk road. To mitigate

detrimental effects on the A96(T) following an increase in traffic volumes during the period of construction.

13. No development shall commencement within any phase, or sub-phase, until details of measures taken to a) minimise the use of raw materials, b) reduce waste materials and c) to re-use or re-cycle materials where appropriate on site, has been submitted for the prior approval of the Planning Authority. The Design and layout shall demonstrate a minimal approach to earth moulding, excavation, re-contouring and general disturbance to land. Thereafter, once agreed, the details shall be implemented as approved. No work relating to land raising shall take place until a risk assessment of the use of materials for the land raising has been submitted to, and agreed in writing by, the Planning Authority in consultation with SEPA in order to demonstrate that the use of any dredged material or any imported material to site does not contain dangerous substances, as defined by The Special Waste Regulations 1996.

**Reason:** In order to comply with the Council's sustainability design standards and in order to ensure that the dredged or any other imported material is suitable for re-use.

14. No development shall commence until a scheme to deal with potential contamination on site has been submitted to and agreed in writing by the Planning Authority. The scheme shall include:
  - a. 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 submitted to and agreed in writing by with the Planning Authority, and undertaken in accordance with PAN 33 (2000) and British Standard BS 10175:2011+A2:2017 Investigation of Potentially Contaminated Sites – Code of Practice;
  - b. 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;
  - c. measures to deal with contamination during construction works;
  - d. in the event that remedial action be required, a validation report that will validate and verify the completion of the agreed decontamination measures;
  - e. in the event that monitoring is required, monitoring statements shall be submitted at agreed intervals for such time period as is considered appropriate by the Planning Authority.

No development shall commence until written confirmation has been received that the scheme has been implemented, completed and, if required, monitoring measurements are in place, all to the satisfaction of 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.

15. No development or work (including site clearance) shall commence until a programme of work for the survey, evaluation, preservation and recording of any archaeological and historic features affected by the proposed development/work, including a timetable for investigation, 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.

16. No part of the development shall be occupied until an Operational Environmental Management Plan has been submitted to, and approved by, the Planning Authority in consultation with SNH and SEPA. The Plan shall include pertinent details of ongoing operational mitigation measures arising from the Construction Environmental Management Plan, Access Management Plan and Marine Management Plan, as well as operational requirements specified in all other conditions of this permission. The development shall proceed in accordance with the approved Operational Environmental Management Plan which shall be updated, as necessary, for each phase and/or sub-phase and approved by the Planning Authority in consultation with SNH and SEPA. Any mitigation measures and improvements approved by the Planning Authority must be enacted prior to the first occupation of any development within the phase/phases, or sub-phases, to which they relate.

**Reason:** In the interest of avoiding disturbance to the qualifying bottlenose dolphin interest of the Moray Firth SAC, the designated common seal haul out site at Whiteness Sands and common seal interest of the Dornoch Firth and Morrich More SAC, and the bird interests of the Inner Moray Firth SPA, as well as the maritime safety, aviation safety and preservation of the Fort George live firing range.

17. There shall be no occupation of any phase or sub-phase of the development until a Noise Assessment has been submitted to, and agreed in writing by, the Planning Authority to demonstrate that the noise arising from plant or equipment will not exceed Noise Rating Curve 20 within any neighbouring noise sensitive property or that the rating level of noise will not exceed the background level by more than 5dB(A) as determined in accordance with BS4142:2014. For the avoidance of doubt, any reference to noise sensitive property includes new properties arising from this development and background level should use the current background levels recorded prior to the commencement of any development on site.

**Reason:** In order to safeguard the amenity of neighbouring noise sensitive properties and occupants.

18. No development shall commence within Phase 1 until an updated Transport Assessment has been submitted for the prior written approval of the Planning Authority, in consultation with Transport Scotland and the local Roads Authority, unless the January 2020 traffic data remains less than years old.

Thereafter, any resultant additional mitigation measures must be implemented.

**Reason:** To ensure that sufficient capacity remains on the road network to accommodate the scale of the development and that Transport Assessment undertaken remains valid and up to date.

19. No development shall commence within any phase, or subsequent phase or sub-phase, until the provisions of the approved Master Plan, associated Transport Assessment, and subsequent Area Development Brief(s) have been reviewed, with a Transport Statement outlining progress with the development and detailing the transportation provisions proposed for the next phase(s) of development, being submitted for the prior written approval of the Planning Authority, in consultation with Transport Scotland and the local Roads Authority.

**Reason:** In order to be fully appraised of development progress, identify finalised infrastructure and transportation requirements for future phases of development.

20. The number of residential homes hereby permitted shall not exceed 1,950 and no development shall commence beyond Phase 1 (defined as a maximum of 418 residential homes) until either:
- a. details (which may include evidence from Transport Scotland) have been submitted to and approved by the Planning Authority to confirm that the Trunk Roads Authority has completed the upgrading and realignment of the A96(T) Inverness to Nairn (including Nairn Bypass) section of the A96 Dualling programme; or
  - b. a Transport Assessment for development beyond Phase 1 has been submitted to the Planning Authority and that any trunk road mitigation measures necessary to offset the impact of this on the existing trunk road network have thereafter been implemented in accordance with a timescale identified by the Transport Assessment to the satisfaction of the Planning Authority, in consultation with Transport Scotland.

**Reason:** To ensure that: the scale of development does not exceed that assessed by the supporting Transport Assessment; that the scale and operation of the proposed development does not adversely affect the safe and efficient operation of the trunk road network; and to ensure that the scale of development beyond Phase 1 is supported by a Transport Assessment.

21. No development shall commence within Phase 2 or any subsequent phase or sub-phase until either:
- a) a plan showing the extent of the modifications proposed on the A96(T), necessary to mitigate the full development, has been submitted to and approved by the Planning Authority in consultation with Transport Scotland and the local Roads Authority. The Plan shall detail the following modifications which require to be implemented prior to the occupation of Phase 2 of the development:

- i) upgrade the existing A96(T) / B9092 priority junction to a roundabout junction;
  - ii) upgrade the existing A96(T) / Barn Church priority junction to a roundabout junction;
  - iii) upgrade the existing A96(T) / Retail Park roundabout junction; and
  - iv) upgrade the existing A96(T) variable standard sing carriageway in both directions to dual carriageway between the A96(T) / B9092 junction and the A96(T) / Retail Park roundabout junction; or alternatively,
- b) a financial contribution has been provided towards the cost of all road infrastructure modifications indicated above with this contribution intended to provide additional capacity on the A96(T).

**Reason:** To increase capacity of the existing junctions and the Trunk Road Network to facilitate development in the event that the A96 dualling works have not been sufficiently progressed.

22. There shall be no occupation of any phase until the main access road to the site shall be brought up to a standard capable of adoption by The Highland Council and be suitable for use by busses. The following improvements must be incorporated: traffic calming, provision for walkers and cyclists, priority at junction with B9092 to be reviewed and junction appropriately modified; the minor road link to the A96 upgraded as necessary.

**Reason:** In the interest of road safety.

23. No development shall commence on site until, details of an alternative access to the site via the local road network for emergency vehicles has been submitted for the prior written approval of the Planning Authority. Thereafter, the agreed access shall be completed and available for use prior to the occupation of the first residential home on site.

**Reason:** In the interest of road safety.

24. No development shall commence on site until a Travel Plan, which sets out proposals for reducing dependency on the private car, has been submitted to, and approved in writing by, the Planning Authority. The Travel Plan shall include:

- a. measures for extending and/or increasing the frequency of the existing local bus services(s);
- b. a scheme for the location, design and installation of real time information bus stops within 400m of all residential development within the site with the internal road layout and bus stops being delivered ahead of the occupation of each phase of the development;
- c. a scheme for the design and implementation of safe routes to school;
- d. details for the management, monitoring, review and reporting of these measures; and
- e. details of the duration of the Travel Plan.

The approved Travel Plan shall be implemented from the date of first occupation of any part of the development and updated for each phase and/or sub-phase as may be the case. Any mitigation measures and improvements approved by the Planning Authority must be enacted prior to the first occupation of any development within the phase, or sub-phase, to which they relate.

**Reason:** To be consistent with the requirements of Scottish Planning Policy (SPP) and the principles set out in the Transport Assessment, and introduce satisfactory ways of meeting sustainable transport requirements.

25. There shall be no occupation of any phase or sub-phase of the development until a detailed Travel Pack for the relevant phase or sub-phase, which sets out options for residents and businesses for reducing dependency on the private car, has been submitted to, and approved in writing by, the Planning Authority. The Travel Pack shall be provided to each property and premises within the relevant phase or sub-phase on first occupation of each property.

**Reason:** In order to reduce dependency on the private car, to encourage greater use of public transport and active travel.

26. Any details pursuant to Condition 2 shall show car parking spaces and covered cycle parking provided and formed in accordance with The Highland Council's Roads and Transportation Guidelines for New Developments prior to first occupation of the element of the development to which it relates, thereafter being maintained for this use in perpetuity.

**Reason:** to ensure that adequate safe and secure parking is provided for use by the public.

27. Any details pursuant to Condition 2 shall include and be informed by a scheme detailing the provision electric vehicle charging points. The scheme shall include:
- a. identification of locations for communal electric vehicle charging points serving premises and flatted residential developments in the associated phase or sub-phase and located in communal parking areas and these charging point locations are to be made available to The Highland Council or other public body for the installation of the charging point infrastructure;
  - b. the provision of infrastructure, defined as the provision of cabling from the consumer unit within the property to an external point, to allow charging of electric vehicles within the curtilage of each house in each phase or sub phase, where the house has in-curtilage car parking provision;
  - c. a timescale for implementation for infrastructure within each phase or sub phase; and
  - d. outline details explaining how electric vehicle charging infrastructure can be used with this information to be contained within Travel Packs required by Condition 25.

The approved scheme(s) shall be implemented in line with the approved timescales.

**Reason:** To facilitate the move toward the reduction in reliance of petrol and diesel cars.

28. Any details pursuant to Condition 2 shall be informed by and include a Waste Management Strategy for each phase or sub-phase. This shall detail the approach to sustainable waste management in the operational of all aspects of development with identification of bin stores, bin collection points, and refuse vehicle collection routes in each phase or sub-phase.

**Reason:** In the interests of amenity, to manage waste and prevent pollution.

29. Any details pursuant to Condition 2 for any phase or sub-phase shall include details scheme of hard and soft landscaping works and a bird hazard management plan. Details of the scheme shall include:

- a. all earthworks and existing and finished ground levels in relation to an identified fixed datum point;
- b. a plan showing existing landscaping features and vegetation to be retained, informed by Arboricultural Impact Assessment and Method Statement in accordance with BS5837:2012 (Trees in Relation to Design, Demolition and Construction, or any superseding guidance prevailing at that time);
- c. The location and design, including materials, of any proposed walls, fences, gates, seating and other landscaping features, within each open space including 1:20 scale plans showing the detail of the feature;
- d. The location, type and design, including materials product name and specification, of any proposed play equipment and associated safety features (if required), including 1:20 scale plans, within each open space;
- e. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities;
- f. all landscaping shall be so designed to take account of the Civil Aviation Authority publication, Safeguarding of Aerodromes Advice Note 3: Potential Bird Hazards from Amenity Landscaping and Building Design. The bird hazard and landscape management plan must include details of:
  - i. monitoring of any standing water within the site temporary or permanent;
  - ii. drainage details including SUDS;
  - iii. management of any flat/shallow pitched/green roofs on buildings within the site which may be attractive to nesting, roosting and "loafing" birds;
  - iv. earthworks;
  - v. reinstatement of grass areas;
  - vi. maintenance of planted and landscaped areas, particularly in terms of spacing, height and species of plants that are allowed to grow;



- vii. control and disposal of waste and putrescible waste; and
- viii. signage deterring people from feeding the birds.
- g. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works. All planting, seeding or turfing as may be comprised in the approved plans shall be carried out in the first planting and seeding seasons following the commencement of the development, unless otherwise stated in the approved plans. 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.

Thereafter, landscaping works and bird hazard and landscape management plan shall be carried out in accordance with the approved scheme and completed as approved by the Planning Authority with the provisions of the bird hazard and landscape management plan to remain in force in perpetuity, with any amendments to be subject to the prior written approval of the Planning Authority.

**Reason:** In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site and in the interest of aviation safety.

- 30. No development or any works shall commence until a suitably qualified Landscape Consultant has been appointed by the developer. Their appointment and remit shall first be approved in writing by the Planning Authority. For the avoidance of doubt, the Landscape Consultant shall be appointed as a minimum for the period from the commencement of the development until the completion of the approved landscaping work within any given phase Their remit shall, in addition to any functions approved in writing by the Planning Authority, include:
  - a. ensuring that the approved Landscape Plans are implemented to the agreed standard;
  - b. ensuring compliance with the measures contained within the Construction Environmental Management Plan;
  - c. ensuring that all landscaping has taken account of potential bird hazards in terms of aviation safety; and
  - d. the preparation of Certificates of Compliance for each stage of work involved in the development, which shall be submitted to the Planning Authority upon completion of the stage to which they relate.

No development or any works shall commence until details of each stage of work to be overseen by the Landscape Consultant (including a general description of the type and extent of work to be carried out within that stage) have been submitted to, and approved in writing by the Planning Authority.

- 31. Any details pursuant to Condition 2 for any phase or sub-phase shall include details, including full specifications, for the layout, design and construction of green spaces, outdoor sports and recreation facilities that comply with, or exceed, the Highland Council's adopted standards contained within 'Open Space in New Residential Development' for that phase shall be submitted to

and agreed in writing by the Planning Authority. Thereafter, the agreed scheme shall be implemented as approved.

**Reason:** In the interests of amenity and to ensure that open space and recreational facilities are in accordance with Council standards.

32. There shall be no occupation of any phase or sub-phase of the development until a scheme for the maintenance in perpetuity of all on-site green spaces and/or woodland and/or sports facilities, features or parts of the development that are not the exclusive property of any identifiable individual home owner or business, 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 Highland Council or Scottish Water for that phase of sub-phase, has been submitted for the prior written approval of the Planning Authority. The agreed scheme, which shall accord with the Highland Council's adopted standards contained within 'Open Space in Residential Development', shall be implemented thereafter.

**Reason:** In the interests of amenity and to ensure that communal infrastructure on the site are maintained in accordance with the Council's standards.

33. No development shall commence until details of the management of the spit and quayside shall be submitted for the prior written approval by the Planning Authority, following consultation with NatureScot and SEPA. Once agreed, the management plan shall be implemented as approved.

**Reason:** In order to achieve appropriate management of the Whiteness head SSSI and ensure that the development is protected from coastal erosion.

34. Any details pursuant to Condition 2, including site and finished floor levels, shall demonstrate that:
- a. there shall be no development, including any landraising or road construction within the application site boundary on land which is shown shaded on Dwg No. 672065-016 entitled '1 in 200 year return period fluvial and coastal flood extents' provided at Appendix 1 of the Flood Risk Assessment by Envirocentre dated March 2020;
  - b. all ground levels outside buildings but within the curtilage of all 'highly vulnerable' development as defined in SEPA's Land Use Vulnerability Guidance must be higher than the absolute minimum level of 4.84m AOD as recommended in the above Flood Risk Assessment;
  - c. all ground levels outside buildings but within the curtilage of all 'most vulnerable' development as defined in SEPA's Land Use Vulnerability Guidance must be higher than the absolute minimum level of 4.99m AOD as recommended in the above Flood Risk Assessment;
  - d. the minimum finished floor level for all 'highly vulnerable' and 'most vulnerable' development as defined in SEPA's Land Use Vulnerability Guidance must be above 5.00m AOD as recommended in the above Flood Risk Assessment; and

- e. the minimum level of the two vehicle access routes into the development must be above 5.00m AOD as recommended in the Flood Risk Assessment.

**Reason:** In the interest of public safety and to reduce the risk of flooding.

- 35. No development shall commence until full details of surface water drainage provision within a relevant phase or sub-phase and how the drainage of a specific phase will relate to surface water management of the site as a whole, has been submitted to, and approved by, the Planning Authority, in consultation with SEPA. The scheme shall include, but not be limited to: the provision of calculations that demonstrate that a 1 in 200 year plus climate change storm event will be managed within the site without flooding to properties or critical roads; demonstrate compliance with the latest CIRIA SUDS manual; provision of amenity and ecological benefits, a contribution and connectivity to the overall site's green/blue infrastructure; and a contribution to minimisation of water use by development. Thereafter, only the approved details shall be implemented and all surface water drainage provision for the relevant phase or sub-phase shall be completed prior to the final occupation of the relevant phase or sub-phase.

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

- 36. There shall be no occupation of any phase or sub-phase of the development until details of the relevant person or party responsible for the maintenance of the on-site surface water drainage system have been provided to the Planning Authority. For the avoidance of doubt, the surface water drainage system should be capable of being vested by Scottish Water or another responsible authority. Should any part of the system not be capable of being vested, this shall remain the responsibility of the developer and be maintained in line with the scheme to be approved by the Planning Authority under Condition 35.

**Reason:** To ensure that the surface water drainage system is maintained by an appropriate party and that the party responsible for maintenance can be easily identified should any issue arise.

- 37. There shall be no occupation of any phase or sub-phase of the development until suitable connections for the properties to be occupied have been to the public water and waste water network.

**Reason:** To ensure that the water and sewerage infrastructure is provided timeously.

- 38. No development shall commence on site until detailed proposals for regular liaison between the site and Highlands and Islands Airports Limited, or its successors, and the Ministry of Defence, on construction and operation activity at the site has been submitted to, and approved by, the Planning Authority. The agreed proposals shall be implemented.

**Reason:** To ensure that Highlands and Islands Airports Limited and the Ministry of Defence are aware of construction and operational activity that may affect the safety of Inverness Airport and Fort George live firing range.

39. No development shall commence on site until a community liaison group has been established by the developer, in collaboration with The Highland Council and local Community Council(s). The group shall act as a vehicle for the community to be kept informed of project progress and, in particular, should allow advanced dialogue on the provision of all mitigation measures and to keep these under review. The liaison group shall be maintained for the duration of construction activity on each phase.

**Reason:** To assist with the provision of mitigation measures to minimise the effects on road users, including pedestrians, and neighbouring occupiers.

40. No development shall commence on site until the Planning Authority has approved in writing the terms of appointment by the applicant of an independent and suitably qualified environmental consultant to assist the Planning Authority in monitoring compliance with the planning permission and conditions attached to this consent. The terms of Planning Monitoring Officer (PMO) appointment shall:
- a. impose a duty to monitor compliance with the planning permission, conditions attached to this consent and terms of the associated Section 75 legal agreement;
  - b. require the PMO to submit a quarterly report the Planning Authority summarising works undertaken on site include details of property completions; and
  - c. require the PMO to report to the Planning Authority any incidences of non-compliance with the planning permission and conditions attached to this consent at the earliest practical opportunity.

The PMO shall be appointed on the approved terms throughout the period from the Commencement of Development to completion of development, with the Planning Authority to be kept informed of any periods of non-activity during which the reporting frequency may be amended at the prior written approval of the Planning Authority.

## **REASON FOR DECISION**

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

## **Reasoned Conclusion**

With the exception of the natural heritage – marine and terrestrial effects of the development, the Council is in agreement with the findings of the Environmental Impact Assessment Report and Further Environmental Information, that the development is unlikely to give rise to any new or other significant adverse impact

on the environment. The Council has found that significant adverse effects are likely to arise in close proximity, both during construction and operation of the development. These effects would however be sufficiently localised and would not occur to an unacceptable degree. The Council is also satisfied that all other environmental effects of this development can be addressed by way of mitigation. The Council has incorporated the requirement for a schedule of mitigation within the conditions of this permission. Monitoring of construction and operational compliance has been secured through Conditions 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 24, 29, 30, 32, 33, 36, 38, 39 and 40 of this permission.

### **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION**

The Highland Council hereby makes the following Direction under Section 59(5) and (7) 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 planning permission in principle must be made no later than whichever is the latest of the following:-

#### **For Phase 1**

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

#### **For Phase 2-5**

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

From the date of the requisite approval of any matters specified in conditions applicable to that phase (or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained), whichever is the later, unless that phase of the development to which the permission relates is begun before that expiration.

### **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 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.

### **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 NatureScot 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 NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>

Signature: David Mudie

Designation: Area Planning Manager – South

Author: Peter Wheelan – Planner, Strategic Projects Team

Background Papers: Documents referred to in report and in case file.

Relevant Plans:	Plan 1	Site Location Plan	Dwg No: CA4393/721, Rev A
	Plan 2	Illustrative Master Plan	Dwg No: WHAM/PA/1.12_D
	Plan 3	Phasing Plan	Dwg No: WHAM/PA/1.06_D



## **Appendix 1 – Letters of Representation Received by The Highland Council**

None.

## Appendix 2 – Section 75 Legal Agreement Heads of Terms

	COMPLETE FOR LEGAL AGREEMENTS AND UPFRONT PAYMENTS				REQUIRED FOR LEGAL AGREEMENTS ONLY				
Type	Contribution	Rate (per house)	Rate (per flat)	Total Amount (per home)*1	Index Linked <sup>1</sup>	Base Date*2	Payment Trigger*3	Accounting Dates*4	Clawback Period*5
<b>Schools<sup>2</sup></b>									
Primary – Build Costs	Major extension / new school rate - Ardersier Primary School catchment. Spend to be tied to enhancing primary school capacity within the Culloden Academy Secondary School catchment providing the spend mitigates the impact of the development.	£7,359	£4,171	N/A – house/flat mix not specified	BCIS	Q2 2018	TOC/CC	Apr/Oct	15
Primary – Land Costs	Onsite provision of a 4ha school site. Land, to be transferred to THC at no consideration, capable of accommodating 585 pupils. (1,950 houses x 0.3 PPR = 585 pupils. A 2-stream school, 434 pupils, requires a 3ha site; therefore: 3/434 x 585 = 4.04ha. Note: Former S75 states a 2.7ha site for school and 0.3ha for community uses and therefore Master Plan to ne amended accordingly.	N/A	N/A	N/A	N/A	N/A	Land transfer prior to occupation of first house	N/A	15
Secondary – Build Costs	Major extension / new school rate - Culloden Academy catchment. Spend to be tied to serve the need of the catchment, whether this be spent within the existing catchment or an adjacent catchment, providing the spend mitigates the impact of the development.	£3,482	£1,875	N/A – house/flat mix not specified	BCIS	Q2 2018	TOC/CC	Apr/Oct	15

<sup>1</sup> If the contribution is to be used towards infrastructure projects involving building e.g. new school, new cycle route etc BCIS ALL IN TENDER will be the index, if it doesn't involve building then another appropriate index may need to be chosen with the agreement of Team Leader

<sup>2</sup> Indicate whether or not 1 bed houses/flats are exempt

Secondary – Land Costs	Land costs based on new school within the Inverness East Development Brief Area	£91	£52	N/A – house/flat mix not specified	N/A	N/A	TOC/CC	Apr/Oct	15
<b>Community Facilities</b>									
Onsite Delivery – Sports Facilities & Community Hall	Physical delivery of sports centre and a community hall. Land, to be transferred to THC at no consideration, located at Master Plan Site No. 6: Sports Centre and No. 17 - Community Hall. Applications for facilities to be submitted prior to commencement of development within Phase 3 and facilities to be operational prior to occupation of any house within Phase 4. Facilities to be funded by developer and applications to specify operator, management and maintenance arrangements.	N/A	N/A	N/A	N/A	N/A	Land transfer prior to occupation of first house	N/A	15
Onsite Delivery – Doctor's Surgery (temporary) and Medical Centre	Physical delivery of a temporary mobile doctor's surgery prior to first occupation of Phase 2 (specification to be agreed by NHS). This service shall then be re-located within the purpose built 'health centre'. Land for health centre to be transferred to THC / NHS at no consideration prior to occupation of first house in Phase 2 [Master Plan Site No. 8: Health Centre]. THC's suggested approach is subject to further consultation with NHS as they have confirmed the need for developer contributions towards the provision of up to 2 doctor's surgeries / at least three additional consulting rooms and support space, to service the site. Temporary mobile facility is to be funded by developer with a permanent health centre to be funded by the NHS.	N/A	N/A	N/A	N/A	N/A	Land transfer prior to occupation of first house	N/A	15

<b>Affordable Housing</b>									
On-site provision <sup>3</sup>	25% provision required. 1,950 homes proposed x 0.25 = 487.5, (488 homes).	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Agreement for Delivery Needed	No – THC's Housing Service have stated that 25% affordable housing provision must be delivered within each phase and that the former S75's staggered approach is no longer acceptable. THC Housing Services have also confirmed a £30,000 sum per housing unit shortfall is required for contingency purposes.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Transport</b>									
A96 Connectivity Contribution	A96 protocol Clause 11 in the former S75 to be retained and updated. Contingency sum for Transport Scotland's / applicant's option of non-physical delivery of upgrades specified in former Condition 44 to be index linked using BCIS All-In TPI. The former S75 max. of £3M, less £0.6m arising from Clause 5, 6 and 7 = £2.4M at [Q4 2007 (251) and is to be indexed to DCSG's Q2 2018 Basedate (326) = $326/251 = 1.29880 \times £2.4M = \underline{£3,117,131}$ .  Trigger for financial payment or physical delivery to be prior to occupation of Phase 2, the 419 <sup>th</sup> home.	N/A	N/A	N/A	BCIS	Q2 2018	Prior to occupation of Phase 2 – 419 <sup>th</sup> house	N/A	N/A
School and Public Transport	Subsidised bus route required for Phase 1 of development (for the first 5 years of development as per DCSG requirements). Frequent bus services will be required from the onset of the occupation of properties subsidised at the developer's expense to reflect the build-up of demand due to the phasing	N/A	N/A	N/A	BCIS	Q4 2020	Prior to occupation of any housing, and annual payment thereafter for first 5 years of development	Apr/Oct	15

<sup>3</sup> Indicate whether a penalty payment due for late delivery (and, if so, what it is based upon).

	of the project. THC Transport Services, in consultation with Stagecoach, have confirmed that a 6 days a week daytime service extension would be required to serve both residents and pupils arising from Phase 1, adding one bus to the vehicle requirement to the Inverness – Ardersier service to Nairn. Initial cost estimate for this is £70,000 per annum x 5 years = £350,000.								
Bus Stops	One bus stop with real time info per phase. 5 stops x £10,100 per stop + £1,500 each for maintenance = £11,600 (Total = £58,000). Provision as per DCSG requirements.	N/A	N/A	N/A	BCIS	Q2 2018	Prior to occupation of any housing within each phase	N/A	15
Other Transport Infrastructure	All onsite internal road / street infrastructure, traffic signalisation, wayfinding, lighting, EV charging, communal parking etc. is to be physically delivered by the developer with this being covered by conditions, rather than the S75.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Green Infrastructure</b>									
Open Space	Onsite provision at 40sqm per person, including outdoor sports and recreation facilities.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Green Network	A96 Coastal Trail to be developed between Inverness and Nairn as per Green Networks SG. Financial contribution per house is in addition to physical provision within the application site boundary.  Contribution in Green Networks SG is £172 per house, to be index linked using the BCIS All-In TPI from Q1 2013 (234) to Q2 2018 DCSG Basedate (326) = $326/234 = 1.3932 \times £172 = £240$ per home, equating to <u>£468,000</u> for the development.	£240	£240	£240	BCIS	Q2 2018	Prior to commencement of development.	Apr/Oct	15



<b>TOTAL</b>	<p>Primary School: £14,350,050</p> <p>Secondary School: £6,789,900</p> <p>Secondary School Land: £177,450</p> <p>A96: £3,117,131</p> <p>Bus Services: £350,000</p> <p>Bus Stops: £58,000</p> <p>Green Networks Coastal Trail: £468,000</p> <p><b>Total = £22,193,400</b></p> <p><b>Total Per Home = £11,381</b></p> <p><u>Total Assumptions:</u></p> <ul style="list-style-type: none"> <li>- Based on 100% of development being housing (introduction of any flats reduces the school contributions as per DCSG).</li> <li>- Community facility &amp; healthcare onsite physical provision cost not included.</li> <li>- A96 upgrade contingency is not included / called upon.</li> <li>- AMP and MMP costs are not accounted for.</li> <li>- Public art, public realm, onsite street infrastructure and open space is provided for on-site and is factored.</li> </ul>								

## **Appendix 3 – Appropriate Assessment**

Mixed use masterplan for residential and leisure development including housing, marina, boat yacht club, visitor centre, nature conservation zones and hotel with supporting community facilities and sewage treatment plant (Renewal of Planning Permission in Principle 12/04225/S42 and 05/01294/OUTIN)

20/00484/PIP

### **CONSIDERATION OF PROPOSALS AFFECTING EUROPEAN SITES**

Moray Firth SAC

Dornoch Firth and Morrich More SAC

Inner Moray Firth SPA

The status of Moray Firth SAC, Dornoch Firth and Morrich More SAC and Inner Moray Firth SPA means that the requirements of the Conservation (Natural Habitats, & c.) Regulations 1994 as amended (the 'Habitats Regulations') or, for reserved matters the Conservation of Habitats and Species Regulations 2017 as amended apply.

This means that where the conclusion reached by the Council on a development proposal unconnected with the nature conservation management of a Natura 2000 site is that it is likely to have a significant effect on those sites, it must undertake an Appropriate Assessment of the implications for the conservation interests for which the areas have been designated. The need for Appropriate Assessment extends to plans or projects out with the boundary of the site in order to determine their implications for the interest protected within the site.

This means that the Council, as competent authority, has a duty to:

- Determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- Determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- Make an Appropriate Assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal after having ascertained that it will not have an adverse effect on the integrity of the sites. If this is not the case and there are not alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature.



## **Screening of Likely Significant Effects**

It is evident that the proposal is not connected with or necessary to site management for conservation, hence further consideration is required. The proposed development has the potential to have a likely significant effect on the qualifying interests due to impacts arising from construction and operation of the Proposed Development. The Council is therefore required to undertake an appropriate assessment of the implications of the proposal on the above named European designated sites.

## **APPROPRIATE ASSESSMENT**

While the responsibility to carry out the Appropriate Assessment rests with the Council, advice contained within Circular 6/1995 is that the assessment can be based on the information submitted from other agencies. In this case, the Appropriate Assessment is informed by information supplied by NatureScot, the applicant and various published information.

### **Moray Firth SAC, Dornoch Firth and Morrich More SAC and Inner Moray Firth SPA**

In its response to the Council of 16 November 2020, NatureScot advised that the proposal is likely to have a significant effect on the qualifying interest (bottlenose dolphin) of the Moray Firth SAC, and the qualifying interest (common seal) of the Dornoch Firth and qualifying bird interests of the Inner Moray Firth SPA. These effects relate to disturbance from both the construction and operational phases of the proposal.

Their advice is set out below:

*“In our view, the proposal will not adversely affect the integrity of the sites. This is based on our understanding that a robust and enforceable Access Management Plan and Vessel Movement Plan will be secured through a Section 75 Planning Agreement, as was the case when the application was originally granted planning permission in 2008.*

#### **Access Management Plan**

- *The applicant has provided a refreshed AMP for the proposal. This updates the previous AMP submitted in 2008. The current plan recognises the designated seal haul out site at Whiteness Sands. In common with the former AMP, this latest Plan sets out a framework and measures for managing access once the proposal is in place. However, it does not specify how the framework and measures will be implemented, monitored and enforced. In 2008, the need to secure a robust and enforceable AMP was achieved through the Section 75 Planning Agreement. This required the Plan to be underpinned by bylaws and it specified that the AMP must be in place and agreed "prior to the occupation of the housing development on the Development Site". We understand that these same provisions will be in place for the current proposal. If this is not the case then please let us know and we will advise further.*

#### **Vessel Movement Plan**

- *The applicant has also provided a refreshed VMP. This updates the VMP submitted in 2008 and includes information on recreational boat users based on interviews and projections from other marinas. In our response to the original application in 2008 we stated that the VMP should be enshrined within the Section 75 Planning Agreement. This bound the applicant and the Harbour Authority to mitigation measures that effectively avoided adverse impacts on the Moray Firth SAC. Specifically the*

*measures included provisions for marina mooring leases, a sea ranger, a marine chart, a research programme and a monitoring scheme. The Section 75 Planning Agreement also restricted the number of boats allowed to use the marina to a level agreed by The Highland Council, in consultation with ourselves, with numbers only permitted to increase once monitoring showed that such an increase would not have an adverse impact on the integrity of the SAC. The VMP must be in place and agreed prior to the marina becoming operational. We understand that these same provisions will be in place for the current proposal. If this is not the case then please let us know and we will advise further.*

*We recognise that the development may not be operational for some time therefore the final AMP and VMP should take into account the most recent information on marine mammal and bird abundance and distribution at the time as well as the latest information on their vulnerability to boat presence and visitor pressure.”*

### **Highland Council Appraisal of the Proposal**

- The proposal is not directly connected with or necessary to site management for conservation;
- The proposal is likely to have a significant effect on the aforementioned sites either individually or in combination with other plans or projects; and therefore;
- An Appropriate Assessment of the implications (of the proposal) for both sites in view of each site’s conservation objectives is provided below.

The impacts on the Moray Firth SAC, Dornoch Firth and Morrich More SAC and Inner Moray Firth SPA are considered for the proposed construction and permanent operation of the proposed development. The applicant has undertaken an Environmental Impact Assessment Report (EIAR), FEI I and FEI II which considers disturbance and loss of habitat caused by the proposed development in relation to bottlenose dolphin, common seal and bird interests and their associated habitat. Potential adverse impacts, a number of which could be long term, include:

- visual and noise disturbance, particularly during construction, including underwater noise;
- contamination to the water environment from accidental pollution incidents;
- water pollution from vessels;
- spread of invasive non-native species;
- increased number of people and vehicles has the potential to cause recreational damage and disturbance to habitats;
- movement of boats and people out of the marina and past the end of Whiteness Head and the mud- and sand-flats could cause visual disturbance and cause a collision risk;
- lighting disturbance; and
- pet ownership disturbance, habitat loss and disease transfer.

Mitigation measures to manage the development’s impacts are set out within the EIA Report and associated FEI I and FEI II. The mitigation measures set out within these documents are to be secured by condition and notably, a finalised Access Management Plan and Marine Management Plan, as well as finalised Construction and Operational Environmental Management Plans containing: a Habitat Management Plan (which must make provision for spit habitat protection, enhancement and access management measures), a commitment to avoid impact piling, and a Bird Protection Plan and Species Protection Plans with associated survey and monitoring requirements.

As a result of the mitigation measures set out, no adverse effects on any of the three designated site's integrity can be concluded for the qualifying species including bottlenose dolphin, common seal and bird interests. The appointment of an ECoW is also to be conditioned to advise on the implementation of the aforementioned suit of environmental management documents, with the provisions of the Access Management and Marine Management Plan to be secured by Section 75 Legal Agreement and enforced through buy-laws.

The mitigation measures set out within the EIA Report, the conditions and through legal agreement, should be sufficient to address any significant risk and avoid an impact on the integrity of the designated sites and their qualifying features.

Overall, it can be therefore concluded that while likely significant effects have been identified, there will not be an adverse effect on site integrity of the Moray Firth SAC, Dornoch Firth and Morrich More SAC and Inner Moray Firth SPA providing the mitigation set out within the appropriate assessment are applied.

LEGEND:

- = PLANNING RED LINE BOUNDARY
- = HRO LIMITS OF JURISDICTION



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PORT OF ARDELSIER

Project:

ARDELSIER PORT

Drawing

PLANNING RED LINE BOUNDARY  
& HRO LIMITS OF JURISDICTION

Drawing No.

CA4393/721

Drawn By

BT

Date 23/04/13

Scale 1:10000 @ A1

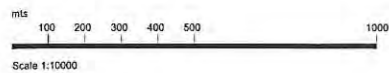
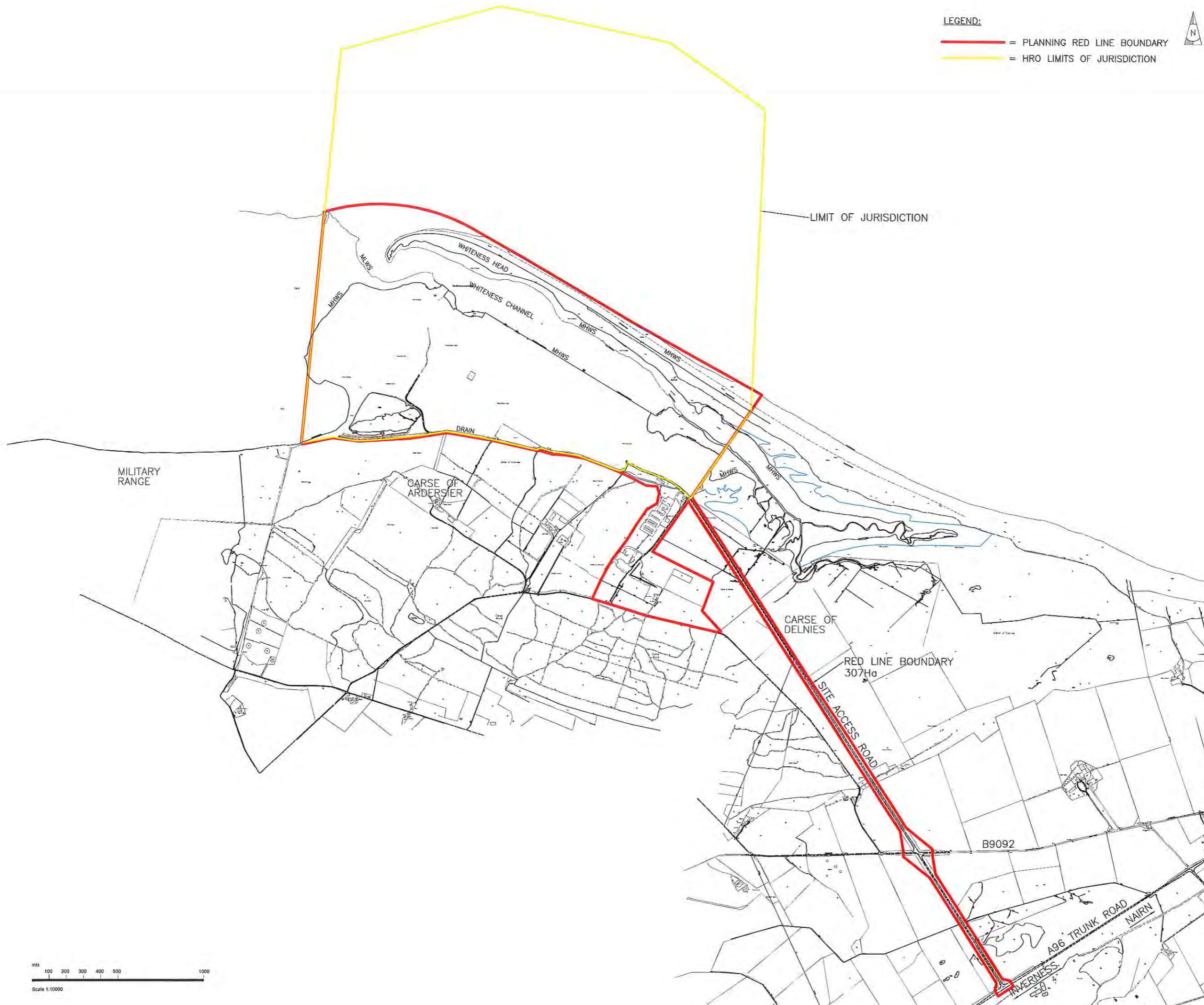
Rev. A

Revisions

Date By

A	07/08/13	NW
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MHWS line updated in line with survey.



drawing key\_

- 1 Harbour
- 2 Seafront neighbourhood
- 3 Hotel and leisure facilities
- 4 Seafront Promenade
- 5 Marina (up to 500 berths)
- 6 Sports centre
- 7 Shops and restaurants
- 8 Health centre
- 9 Market square/winter boat storage
- 10 Yacht club
- 11 Chandlery
- 12 Mid links
- 13 Live/work units
- 14 Primary school
- 15 Shops and restaurants
- 16 Village square
- 17 Community hall
- 18 Visitor centre
- 19 Pedestrian-bicycle bridge
- 20 Salt marsh
- 21 Salt marsh edge neighbourhood
- 22 Wetlands
- 23 Coastal path from Nairn
- 24 Main approach from A96
- 25 Forest neighbourhood
- 26 Freshwater Lagoon
- 27 Dunes
- 28 Dunes edge neighbourhood
- 29 Sand and shingle spit
- 30 Moray Firth









WHITENESS MASTERPLAN  
ILLUSTRATIVE MASTERPLAN

December 2005



drawing key

-  Phase 1 – 418 Units – Start on site 2023
-  Phase 2 – 473 Units – Start on site 2028
-  Phase 3 – 498 Units – Start on site 2033
-  Phase 4 – 431 Units – Start on site 2038
-  Phase 5 – 130 Units – Start on site 2043
-  Hotel Phase – to be built in accordance with market demand

