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**Report to Planning Committee Of 29th October, 2009**

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**Subject: Application For Outline Planning Permission - Development of a New Village, Comprising Houses, School, Business Units, Shops, Hotel, Golf Course, Leisure and Community Facilities etc, Forestmill (Ref: 06/00283/OUT)**

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**Prepared by: Ian Duguid, Development Quality Team Leader**

**Electoral Ward: Clackmannanshire East**

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**1.0 Purpose**

- 1.1. The purpose of this report is to update members on decision making on this planning application , ratify the decision to grant outline planning permission, agree the terms of conditions to be attached to that permission, and to note also the terms of a draft Section 75 Agreement between the Council and the applicant. These outcomes follow on from earlier decisions on the planning application, both by the Council and by Scottish Ministers.
- 1.2. For the purposes of the Planning etc. (Scotland) Act 2006 and subsequent regulations, this report, combined with the earlier report to the Council's Regulatory Committee on 26th April, 2007, represents the report of Handling on this planning application.

**2.0 Recommendation**

- 2.1. It is recommended that:-
- (i) The Committee notes the decision of Scottish Minister on 10th June, 2009 to revoke the call-in Direction on this planning application from 24th July 2007.
  - (ii) The Committee ratifies the decision of the Council's Regulatory Committee on 26th April 2007, and grants outline planning permission (planning permission in principle) for the village development as described in the masterplan accompanying the application.
  - (iii) The outline planning permission is approved subject to the conditions and reasons contained in Appendix 1 of this report.
  - (iv) The Council's reasons for deciding to grant outline planning permission accord with those listed in Appendix 2 of the report.

- (v) The outline planning permission is issued upon the conclusion of a Section 75 Agreement between the Council and the applicant, based upon the draft version of the agreement in Appendix 3 of this report, with the Committee authorising the Head of Development Services to finalise its terms for subsequent approval by full Council prior to registration.

### **3.0 Considerations**

- 3.1. In August 2006, an application for outline planning permission was submitted by Hermiston Securities for the development of a new village at Forestmill. The application had been preceded by a series of events, studies and development plan policy considerations and allocations. The planning application was accompanied by an Environmental Statement, which provided a detailed assessment of the environmental impacts of the development, and an indicative site plan showing a basic land use and road layout within a red line site boundary.
- 3.2. At its meeting on 26th April 2007, the Regulatory Committee considered a report from the Head of Development Services which described all the material considerations associated with the development, including the development plan position, proposals for restoration of the Meadowhill open cast coal site (OCCS) and representations from consultees, other organisations and members of the public. The committee decided that it was minded to grant outline planning permission, subject to agreed "Heads of Terms" relating both to conditions and a legal agreement. The Council proceeded to notify Scottish Ministers of the decision, as the proposal was deemed to be a significant departure from the Structure Plan.
- 3.3. The remainder of this report summarises the events and decisions to have unfolded since then, the implications for Council decision making on the application, and the development plan position.
- 3.4. Further Material Considerations

Having explained its reasons for deciding to grant planning permission for this development, the Council notified Scottish Ministers of its decision in May 2007. Three months later, Ministers decided that they wished to determine the application themselves, and duly issued a Direction, in which they explained that

"There was a need for thorough public scrutiny of this proposal which had no development plan support, and parties had not yet had an opportunity to take part in a fair and transparent ..... local plan review process."

- 3.5. The proposals were therefore to be the subject of a Public Local Inquiry, and following initial exchanges of correspondence and statements, a pre-inquiry meeting was held at Clackmannanshire Town Hall on 5th November 2007. The purpose was to agree arrangements for the Inquiry, information required in advance and scope of evidence. At that stage, the Reporter decided that additional environmental information was required beyond that contained in the Environmental Statement.

- 3.6. A consequential legal challenge from one of the seven objectors to the application lead Ministers to reconsider the approach taken by the Council in its determination of the application. Whereas the Council had decided that the principle of a village development within the boundary identified in the planning application could be agreed at this stage, with detailed "masterplan" proposals to be submitted as an initial stage of the clearance of reserved matters, the view taken was that further information was required as part of the outline application. By and large, this involved detailed descriptions of the various parts of the village, and an assessment of the varying environmental impacts. The applicants were therefore invited to supplement their application with this additional information, thereby offering the opportunity to bring forward masterplan proposals in advance of a final decision on the application.
- 3.7. A second aspect of the legal challenge concerned the relationship between the development proposals and a gas transmission pipeline which crosses the site. The applicant proposes to relay the pipeline in heavy walled pipe, and in its consultation response the Health and Safety Executive (HSE) advised having no objections to the overall development subject to further consideration on the detailed proposal at the reserved matters stage. At that time, the Council was unable to carry out an assessment of the proposal in the vicinity of the hazard, due to the lack of detailed proposals and the inability to identify the consultation distances that would apply to the pipeline after it is relayed in thicker pipe. Having now received the information necessary to conclude this exercise, we have been able to undertake a manual assessment of the proposed consultation zones in relation to the development types. This has generated a "Don't Advise Against" consultation response from HSE thereby demonstrating that the gas transmission pipeline need not prejudice the successful development of the village, based on current proposals.
- 3.8. In October 2008, the applicant responded to the Reporter's findings, and submitted:
- An amended Environmental Statement
  - A masterplan for a new sustainable village, illustrating much of the information which the Council anticipated receiving at the initial reserved matters stage. So despite the lengthy passage of time, this was a productive exercise, and one which would potentially help inform the inquiry process.
- 3.9. Due to the various changes in circumstances, the Reporter convened a second pre-inquiry meeting in February this year to agree fresh arrangements for the public inquiry and determine the narrowing scope of evidence. This timetabled an inquiry for August.
- 3.10. Throughout, or at key stages of this exercise, four notable events or changes in circumstances took place.
- (i) The 3rd Alteration to the Clackmannanshire and Stirling Structure Plan  
The Consultative draft Alteration was approved by Council in February 2007. It retained an area of search in East Clackmannanshire for 1000 - 1500 houses, including the potential of Forestmill to fulfil this strategy.

The Finalised version was submitted to Scottish Ministers in July 2008, and on 16th June 2009, ministerial approval of the Alteration gave explicit Development Plan Support for a settlement in East Clackmannanshire. This represented a significant shift in the development plan position.

(ii) Planning Application Representations

The original planning application was subject to the normal publicity arrangements. This attracted a total of 25 representations, 22 of which were objections to the development. At the time of the first pre-inquiry meeting, a total of seven individual or representative groups indicated their intention to participate in the inquiry. With the passage of time and submission of additional information, this number had dropped to three by the time of the second pre-inquiry meeting.

(iii) Emerging Planning Reform

As part of the Government's commitment towards sustainable economic growth, it has identified a range of initiatives and changes to the planning system that will collectively aim to deliver planning reform. The Government itself has recognised the need for different and more effective ways of working, clarifying roles and responsibilities and ensuring that participation is relevant and proportionate. To that end, the Government has scaled back the amount of planning advice and has issued a revised Notification Direction that will reduce the numbers of cases that require to be notified to Scottish Ministers.

(iv) The Economy

The economic downturn has had a major impact on the development industry. The Government has consequently recognised the need for local planning authorities to work with developers on major regeneration projects to examine the scope for flexible arrangements in the delivery of plan-led projects. The recession is therefore a material consideration of a village development of this scale.

- 3.11. These foregoing changes led to a helpful series of communications between the Council and the Government's Planning Service. In June this year, this resulted in a decision from Scottish Ministers to revoke the Direction relating to the Forestmill application. The effect of this allows Clackmannanshire Council, as planning authority, to proceed to determine the planning application. Notwithstanding the measure of potentially abortive work undertaken by officers in preparation for the public inquiry, it was reassuring that Ministers had recognised the changes in circumstances, particularly associated with the Structure Plan, and allowed the application to be decided at a local level.

### 3.12. Further Representations

The Public Local Inquiry process is an opportunity for objectors to expand on representations submitted on the original planning application. Following the decision of Scottish Ministers to revoke the call-in Direction, the Council has received a further representation from one of the three parties referred to in paragraph 3.10 (ii) above (Robinson Associates acting on behalf of Lord and Lady Balfour of Burleigh). The comment, and our response, are summarised below:-

(i) There has been a downturn in house building rates, and it will take many years before the Government's pre-recession targets will be met. Comment: *We agree with this observation. However, this is not a reason for not granting planning permission. It may affect timescales for implementation and will necessitate projected completion figures until 2017 in the Local Plan Alteration. However, it remains imperative that we secure sufficient land for future development in the longer term and provide for sustainable economic growth.*

(ii) The Council must obtain assurances that the foregoing economic circumstances will not prejudice the restoration of the former Meadowhill OCCS. Comment: *This aspect of the development was, and remains, an early phase of the overall development. Timescales may be affected, but phasing remains unchanged.*

(iii) Lack of baseline information and compliance with survey methods associated with bats, birds and vegetation. Comment: *A condition of the planning permission requires further assessment work on the biodiversity and habitat value of the site. The information provided by the applicant was deemed to be sufficient to retain the most important habitats. Scottish Natural Heritage have no objections to the submission in this respect.*

(iv) Terminology used in the Environmental Statement is imprecise, and conclusions are not always evidence based. Comment: *The terms used and techniques for measuring biodiversity can vary. As a Council, we need to comply with the Nature Conservation (Scotland) Act 2004 and further the conservation of biodiversity. Notwithstanding clarity in some terminology and some modest deficiency in transparency and evaluation, the development, taking into account the proposals for Meadowhill, will have a positive impact on biodiversity, bringing benefits for the existing and new population.*

(v) Unsubstantiated speculation regarding the impact of clear felling on biodiversity. Comment: *Significant tree felling will be necessary to form the proposed golf course. Compensatory replacement planting represents an integral part of the village masterplan.*

3.13. The remainder of this report describes the terms of the decision, as recommended in Section 2 above.

### 3.14. The Terms Of the Proposed Decision

Planning Conditions - The original recommendation to grant planning permission included a summary of conditions. In the intervening period, these have been developed and refined into a finalised form by this Service, originally for recommendation to the Reporter in the event that she was minded to grant planning permission, but now for inclusion in the decision by the Council. They take account of the survey information that has been prepared and submitted, the amended Environmental Statement and the content of the masterplan document which members are now being invited to approve. The proposed conditions (with reasons) comprise Appendix 1 of this report. Survey information still to be provided is itemised in condition 2, while conditions 3, 4 and 6 describe the content of future proposals. The concept masterplan comprises a range of proposals and illustrative material; condition 5 reinforces the obligation to comply with the proposals for Meadowhill shown in figure 10 thereof, which is consistent with the amended restoration proposals separately approved by the Council for that redundant site.

### 3.15. Section 75 Agreement

Government guidance on the use of Planning Agreements in Circular 12/1996 ensures that the terms of any agreement associated with this application:-

- Serve a planning purpose and are principally related to the use and development of land;
- Deal exclusively with the development to be approved, or provisions necessary for the development to be implemented in accordance with the terms of the application;
- Are related in nature, scale and in kind to the development to be approved.
- Are necessary to allow the development to proceed in a planned manner, adhering to the principles set out in the planning application;
- Include financial provisions reasonably required to facilitate the development;
- Are reasonable and necessary to ensure that the project adheres to the environmental and sustainability objectives which underpin the development and persuade the Council and the development ought to be approved.

3.16. In parallel with the public inquiry process, officers from the Council have been working with the applicant in an effort to ensure that the proposed Section 75 Agreement fulfils these tests and, ultimately, ensures a village development that adheres to the principles of a sustainable community, while at the same time delivering the essential and related social and environmental benefits of the project. In summary, the key components of the Agreement provide delivery mechanisms for the funding and timeous implementation of the restoration of the Meadowhill OCCS, the primary school, the hotel, leisure and community facilities.

The Agreement also prescribes arrangements for affordable housing, the implementation and management of landscape spaces and waste management facilities. We also propose that the Agreement provides the framework for establishing a community chest, which would provide a financial foundation for community projects run by a development trust. All these arrangements are consistent with the masterplan submission.

3.17. Appendix 3 comprises a draft finalised version of the planning agreement, which Members are invited to note. Subject to officers concluding negotiations with the applicants on any final amendments that may materialise it is intended to report to Council on the final version prior to registration.

### 3.18. Conclusions

3.19. We ultimately welcomed the decision of Scottish Ministers to withdraw the Direction on this planning application, and return it to the Council for decision. Notwithstanding its major significance to Clackmannanshire in contributing to the sustainable growth of the area, the planning issues are now of local rather than national interest. The masterplan proposals to have emerged from the process are a major step forward and commitment on the part of the applicant to develop a planned sustainable community.

3.20. The Service is confident that the proposed terms of the planning permission, allied to the planning agreement, provides the Council with the appropriate regulatory framework for moving forward from here and contributing to national and development plan policy objectives.

## 4.0 **Resource Implications**

### 4.1. *Financial Details*

5.2 The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate.

### 5.3 *Staffing*

None.

## 6.0 **Exempt Reports Only - Reasons for Exemption**

6.1. Report not exempt.

## 7.0 **Declarations**

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

### (1) **Our Priorities 2008-2011**

- The area has a positive image and attracts people and businesses
- Our communities are more cohesive and inclusive
- People are better skilled, trained and ready for learning and employment
- Our communities are safer
- Vulnerable people and families are supported
- Substance misuse and its effects are reduced
- Health is improving and health inequalities are reducing
- The environment is protected and enhanced for all
- The Council is effective, efficient and recognised for excellence

(2) **Council Policies** (Please detail)

Relevant Policies of the Clackmannanshire Development Plan

**8.0 Equalities Impact**

- 8.1** Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations? **YES**  **NO**

**9.0 Legality**

- 9.1** In adopting the recommendations contained in this report, the Council is acting within its legal powers.

<b>APPROVAL/SIGNATURE</b>	<b>DATE 07.10.09</b>
(Signed S Bell) <b>Head of Service:</b>	



**REPORT TO PLANNING COMMITTEE (to accompany all reports to Council or Committee)**

**To: Head of Administration and Legal Services, Greenfield, Alloa FK10 2AD**

**Report author: Ian Duguid**

**Service: Development and Environmental Services**

**Report title: Application For Outline Planning Permission - Development of a New Village, Comprising Houses, School, Business Units, Shops, Hotel, Golf Course, Leisure and Community Facilities etc, Forestmill (Ref: 06/00283/OUT)**

**Date of meeting: 5th November 2009**

**It is recommended that the attached report be:**

1. **Given unrestricted circulation**
2. **Taken in private by virtue of paragraph \_\_\_ of schedule 7A of the Local Government (Scotland) Act 1973**

**List any appendices attached to this report (if there are no appendices, please state 'none')**

1. **Proposed conditions of planning permission**
2. **Reasons for planning application decision**
3. **Draft Finalised version of Section 75 Agreement**
- 4.

**List the background papers used in compiling this report . If you have completed a sustainability checklist please add this to your list (if there are no background papers please state 'none')**

1. **Report to Regulatory Committee 26th April 2007**
2. **Minutes of Pre Inquiry Meeting**
3. **Letter of representation from Robinson Associates**
4. **Clackmannanshire Development Plan, Structure Plan 3rd Alteration and Finalised Local Plan Alteration.**

**Nb. All documents listed must be kept available by the author for public inspection for four years from the date of the meeting at which the report is considered**



## **APPENDIX 1**

### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

#### **OUTLINE PLANNING APPLICATION FOR A NEW VILLAGE, SOUTH AND EAST OF FORESTMILL (REF: 06/00283/OUT)**

#### **PROPOSED CONDITIONS OF OUTLINE PLANNING PERMISSION**

1. (a) Before any works start on site or within each respective phase of development, the written approval of Clackmannanshire Council (the Council) as Planning Authority shall be obtained for the details of the siting, design and external appearance of all buildings, the means of access and landscaping, including future maintenance (Matters Specified in Conditions (MSC)).  
  
(b) Particulars of the MSC referred to in item (a) above shall be submitted for consideration by the Planning Authority, and no work shall begin until written approval has been given.  
  
(c) Application for approval of all MSC shall be made to the Council as Planning Authority within three years of the date of this permission.  
  
(d) The development hereby permitted shall begin within 5 years from the date of this permission, or within 2 years from the date of approval by the Planning Authority of the last of the MSC to be approved.
2. Further to Condition 1, first and subsequent applications for the approval of MSC shall be accompanied by:-
  - (a) A detailed Flood Risk Assessment of the proposed development, undertaken in accordance with SEPA Policy 41 and associated Technical Flood Risk Guidance . This shall be undertaken on the basis of a 1 in 200 year return period event plus 20% allowance for Climate Change. This assessment work will have specific regard to the safeguarding of the existing floodplain, the conveyance of water through and from the site into the Black Devon river system, protection of existing properties from increased flood risk and a clear definition of freeboard allowance in relation to the proposed works.
  - (b) A Drainage Impact Assessment prepared in accordance with the advice contained in "Drainage Assessment - A Guide for Scotland" and proposals prepared in accordance with "Sustainable Urban Drainage Systems - Design Manual for Scotland and Northern Ireland". These will include connections to existing infrastructure and upgrading thereof, the provision of on-site filtration and attenuation facilities, design for biodiversity, incorporating a series of ponds ,swales and appropriate planting, timescales for implementation and arrangements for future maintenance.

(c) A full tree survey of all trees within and adjacent to the site, recording the species, position, height, crown spread and condition of all trees, to be carried out by a qualified arboriculturalist.

(d) A Phase 2 Intrusive Investigation to assess the nature, extent and type of contaminated material within the site, the assessment to be carried out in accordance with BS 10175 and CLR 11; and a remediation scheme to ensure that the site is fit for its proposed use in accordance with the foregoing standard, to include:-

(i) Methodology and timescales for remediation works.

(ii) Remediation targets.

(iii) Measures to be employed to deal with unexpected or not primarily identified contaminated material during development.

(iv) Measures to deal with contamination within and off site.

(v) Details of post remediation validation scheme.

(vi) Details of any monitoring or progressive decontamination on site.

(vii) Post remediation conceptual model.

(e) A Site Waste Management Plan for the development, construction and post development phases of the proposed village, produced with reference to the Council's Supplementary Advice Note - Managing Waste in Housing and Commercial Developments. The plan shall detail measures for waste minimisation, separation, re-use and recycling, identifying storage and collection requirements/facilities Including centralised facilities and composting.

(f) An archaeological field evaluation report supported by a programme for the recording and preservation of any features or artefacts of interest discovered as a consequence of this work, including measures planned to safeguard and/ or retain such features as an integral part of the village development.

(g) A scheme for protecting the proposed houses within developable areas from noise from nearby road traffic to be prepared in accordance with the guidance in PAN 56, Planning and Noise.

The development shall thereafter proceed in accordance with the requirements of any approval of MSC issued by the Council unless subsequently otherwise agreed in writing by the Council, as Planning Authority.

3. The application or applications for the approval of MSC described in Condition 1 above shall be shown on or include:-

(a) A Site Layout Plan at a minimum scale of 1:500 showing the position of all buildings, public utility and energy infrastructure, roads,

footpaths, parking areas, public and private spaces, walls, fences, children's play facilities, landscaping and public art.

(b) Plans and elevations of the houses, school, community halls and other leisure facilities, business centre, garden centre, shops, public house, restaurant, hotel and golf clubhouse, showing the dimensions and type and colour of external materials.

(c) Details of existing and finished ground levels and finished floor levels, in relation to a fixed datum (preferably Ordnance Survey) and including levels immediately adjacent to the site.

(d) A Construction Method Plan or plans that contain the arrangements to minimise the environmental and road safety impact of construction activity and all vehicle movements on the adjacent public road network, during the construction phase or phases of the development. The plan will include community liaison arrangements.

4. Further to Condition 1, the first application for approval of MSC shall include the following proposals:-

(a) A scheme of structure planting with an advanced planting programme as described in Section 6, Masterplan of the New Sustainable Settlement Strategy: Forestmill, Alloa and dated October 2008, to be designed in relation to the relevant sections of the Local Biodiversity Action Plan. The scheme shall comprise:-

(i) Existing woodland and other trees and hedgerows to be retained.

(ii) The type, number and location of proposed native trees and shrubs.

(iii) An assessment of the biodiversity, habitat value and implications of the scheme along with detailed proposals for Biodiversity Enhancement.

(iv) A revised plan showing the removal of the Parklands House in the south eastern corner of the site and identification of an acceptable buffer along the SSSI boundary.

(v) Timescales for phased implementation.

(vi) Arrangements for future maintenance.

(b) A specification and plan(s) of strategic roads and footpaths, including:-

(i) Roundabout and other road junctions on the A977 and Fearn Road.

(ii) The access road from the A977 to the village centre, generally as shown in blue on Figure 11, Strategic Connections - Local Context of

the New Sustainable Settlement Strategy: Forestmill, Alloa and dated October 2008, including public transport access, lay-bys and turning facilities to the commercial and village centres.

(iii) Traffic management measures along Fearn Road, from its junction with the A977 to the eastern site boundary and along Brucefield Lane and Aberdona Road.

(iv) Plans and a specification of work for all off road footpaths and cycleways.

(v) Pedestrian crossing facilities at Castlebridge Business Park and elsewhere along the A977, including connections to the National Cycle Route on the east side of the A977 and Gartmorn Dam Country Park.

(c) A Phasing Plan, identifying in plan and written form the varying components of the village development, including ground preparation and remediation, all buildings and land uses, structures, roads and footpaths, landscaping and public utility works, describing the timescales or other criteria/events for the commencement and completion of the respective phases of work. This will generally adhere to the indicative phasing plan in Section 7, Project Phasing, of the New Sustainable Settlement Strategy: Forestmill, Alloa and dated October 2008.

(d) A strategy for the provision of public art as an integral part of the village development.

(e) A detailed and approved programme of works to repair, enhance and interpret the Category B Listed Forest Mill Weir and associated historic lade within the development site.

(f) Details of the engineering works required for the relaying of the gas pipeline specifically in relation to the ecological and landscape impacts.

5. Further to Conditions 1 and 3 above, the development hereby approved shall be implemented generally in accordance with figure 10, "Concept Master plan with Meadowhill Quarry Restored" of the New Sustainable Settlement Strategy: Forestmill, Alloa and dated October 2008.

6. Further to Conditions 1 and 3, the Scheme of Landscaping within each developable area as identified in Figure 20, Developable Area and Density Analysis of the New Sustainable Settlement Strategy: Forestmill, Alloa and dated October 2008. shall include:-

(i) Existing trees and hedges to be retained.

(ii) The type, number and location of proposed native trees and shrubs.

(iii) The scope to create central integrated areas of landscaped public open space within each housing sector (village greens).

- (iv) Timescales for implementation.
  - (v) Arrangements for future maintenance.
7. All roads and footpaths within the village shall be constructed in accordance with the Council's Development Roads Guidelines and Specification and related Government guidance on road and footpath design.
  8. Before any works start on each respective phase of development, protective fencing shall have been erected around all trees to be retained as part of the development, in accordance with BS 5837(2005). The fencing shall be inspected by a representative of the Council, and shall remain in place for the duration of the construction work within each respective phase.
  9. No construction work shall take place and no construction vehicles or equipment shall operated outwith the hours of 0800-1800 hours Monday to Friday, 0800-1300 hours on Saturday, and at no time on Sundays or local Bank Holidays, unless otherwise agreed in writing by the Council.

### **Reasons**

1. In order to comply with the Town and Country Planning (Scotland) Act 1997.
2. This additional information is required to that provided with the Environmental Statement, but can only be provided in conjunction with detailed proposals.
3. This permission has been granted in outline only. No detailed proposals have been approved beyond those shown indicatively on the master plan.
4. This permission has been granted in outline only. No detailed proposals have been approved beyond those shown indicatively on the master plan.
5. In order to ensure that the Reserved Matters comply with the development that has been approved as part of this planning permission.
6. This permission has been granted in outline only. No detailed proposals have been approved beyond those shown indicatively on the master plan.
7. In the interests of road and pedestrian safety.
8. In order to ensure that trees are properly protected during the construction phase of the development.

9. In order to safeguard the amenity of nearby residents during the construction phase of the development.



## **APPENDIX 2**

### **OUTLINE PLANNING APPLICATION FOR A NEW VILLAGE, SOUTH AND EAST OF FORESTMILL (REF: 06/00283/OUT)**

#### **REASONS FOR DECISION TO GRANT PLANNING PERMISSION**

1. The development accords with the Clackmannanshire and Stirling Structure Plan 3rd Alteration approved by Scottish Ministers on 16th June, 2009.
2. The development contributes to the Structure Plan Strategy of "Working Towards Sustainable Development".
3. The proposals are consistent with the Local Plan aspiration for the development of a sustainable settlement at Forestmill. Equally, the development meets a range of Development Plan policy criteria for sustainable development in relation to transport, renewable energy, energy efficiency, waste management/recycling, access to community/business/education facilities.
4. The applicant's proposals will secure the restoration of the former Meadowhill opencast coal site as an early phase of the village development.
5. There are no other material considerations identified by other parties that outweigh the development plan position.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

SECTION 75

PLANNING AGREEMENT

BETWEEN

CLACKMANNANSHIRE COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994, and having their main office at Greenfield, Alloa, (who and whose successors are hereinafter referred to as "**the Council**") **OF THE FIRST PART** and

HERMISTON SECURITIES LIMITED incorporated under the Companies Acts (Company No SCO27075) and having their Registered office at Muir House, Belleknowes Industrial Estate, Inverkeithing, Fife, KY11 1HY (who and whose successors and assignees are hereinafter referred to as "**the Developers** ") **OF THE SECOND PART**

ALAN RAMSAY, MARY HUTCHISON RAMSAY, ROSEMARY McFARLANE RAMSAY and HECTOR RODERICK RAMSAY, all residing at Fearn Farm, Forest Mill and ALAN GEORGE RAMSAY residing at 5 Lothians View, Rosyth, as partners of the firm of R M RAMSAY & SON, having a place of business at Fearn Farm, aforesaid (who and whose successors are hereinafter referred to as "**Ramsay**") **OF THE THIRD PART** and

G R SUPPLIES LIMITED a company incorporated under the Companies Acts (Company Number SC157793) and having its Registered Office at Leslie Park House, Headswood, Denny, FL6 6BW (who and whose successors in title are hereinafter referred to as "**GR**") **OF THE FOURTH PART**

**WHEREAS**

- 1 The Council is the planning authority for the local government area of Clackmannanshire for the purposes of the Town and Country Planning (Scotland) Act 1997 and The Local Government etc (Scotland) Act 1994 as amended.
- 2 On 4<sup>th</sup> August 2006 the Developers applied under Reference Number 06/00283/OUT ("the Outline Planning Application") to the Council for outline planning permission for the Development as hereinafter defined;
- 3 GR are the owners of the Meadowhill Site as hereinafter defined
- 4 The Developers and Ramsay are the owners of the Forestmill Site as hereinafter defined;
- 5 The Council is a heritable creditor in the Meadowhill Site having a standard security over it registered in the Land Register of Scotland on 21st December 2006;
- 6 The Developers are a heritable creditor in the Meadowhill Site having a standard security over it registered in the Land Register of Scotland on 13<sup>th</sup> July 2006; and

- 7 The Council is minded to grant outline planning permission subject to the conclusion of an agreement between the Council and the Developers under section 75 of the Town and Country Planning (Scotland) Act 1997

THEREFORE the Council, the Developers, Ramsay and GR DO HEREBY AGREE AS FOLLOWS:-

## **1 Definitions**

In this Agreement, unless the context otherwise requires or admits, the following expressions shall have the following meanings:-

- 1.1 "Affordable Housing" means housing made available at a cost below full market value, to meet an identified need. It includes social rented housing, some private sector rented accommodation, shared ownership housing and subsidised housing for sale.
- 1.2 "Carbon Footprint" means the total amount of greenhouse gases produced to directly and indirectly support human activities usually expressed in equivalent tons of carbon dioxide (CO<sub>2</sub>).
- 1.3 "Community Facilities" means such social and community facilities to form part of the Development, as shall be agreed by the Developers with the Council.
- 1.4 "Community Site[s]" means the site [or sites] identified for the Community Facilities in the Masterplan.
- 1.5 "Community Contribution" means the sum of £[ ] which sum shall increase from the date of last execution of this Agreement until the date on which it is paid to the Council in accordance with the Building Cost Information Service – Tender Price Index for New Works
- 1.6 "Development" means the proposed new village means approximately 1250 residential units, primary school, business units, retail units, hotel, golf course, leisure and community facilities with associated landscaping, open space, infrastructure and access roads pursuant to the Outline Planning Application.
- 1.7 "Design Code" means a code setting out the broad means parameters with reference to which the Developer will secure uniform standards of design quality, character of design, building materials, density of development and site layout within the Forestmill Site.
- 1.8 "Sustainability Plan" means the plan that sets out the means by which the Developer will ensure that the Carbon Footprint of the Forestmill Site is minimised both during construction and thereafter.
- 1.9 "The Sustainable Design and Construction Framework" means the Framework prepared by Clackmannanshire Council dated July 2007.
- 1.10 "Forestmill Site" means the land at Gartgreenie, Forestmill to which the Outline Planning Application relates, comprising two distinct parcels of land, linked by the existing settlement of

Forestmill extending in total to approximately 199.3 hectares and shown delineated in red on the Plan No 1 annexed to this agreement and comprising (One) the subjects owned by the Developer and registered in the Land Register of Scotland under title numbers CLK. ], and (Two) those subjects owned by Ramsay and held under option by the Developers, being part of the subjects more particularly described in and disposed by Disposition in their favour dated [ ] and recorded in the Division of the General Register of Sasines for the County of Clackmannan on [ ];

- 1.11 "Travel Plan" means a plan that sets out the measures to be introduced by the Developers to ensure and/or encourage the utilisation of sustainable modes of transport to and from the Forestmill Site.
- 1.12 "Meadowhill Site" means the land in the ownership of GR, formerly the site of open cast operations, at Forestmill, Clackmannanshire being (One) 55.73 hectares of land at Gartknowie Farm, being the subjects registered in the Land Register of Scotland under title number FFE 15332 and (Two) 71.4 hectares at Meadowhill Farm being the subjects registered in the Land Register of Scotland under title number CLK 4139 both areas of land being shown outlined in blue on Plan No 2 annexed to this agreement.
- 1.13 "Maintainable Areas" means the landscaped areas, areas of open space, woodland, and areas of biodiversity value identified in the Masterplan as areas requiring protection, maintenance and/or enhancement.
- 1.14 "Management Plan" means a management plan that provides (as appropriate) for the provision, protection, enhancement and maintenance of the Maintainable Areas.
- 1.15 "Masterplan" means the overall Masterplan for the Development as approved by the Council.<sup>1</sup>
- 1.16 "GR Agreement" means the agreement between the Developers and GR relating to the Meadowhill Site dated 5<sup>th</sup> July 2006 and recorded in the Books of Council and Session on [ ]
- 1.17 "Meadowhill Application" means the application lodged by the Developers with the Council on 1st August, 2006 under reference 06/00270/FULL.
- 1.18 "Meadowhill Permission" means the planning permission issued by the Council pursuant to the Meadowhill Application on 10th October, 2008.
- 1.19 "Option" means the option granted by GR in favour of the Developers relating to the grant of servitude rights to enable the restoration of the Meadowhill Site pursuant to the GR Agreement.
- 1.20 "Option Notice" means a notice in as near as may be, the form of the Notice comprising part 1 of the Schedule to the GR Agreement.

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<sup>1</sup> This will be amended in the event that the Masterplan is approved by the Reporter.

- 1.21 "Outline Planning Permission" means such outline planning permission as may be issued pursuant to the Outline Planning Application, following on execution of this Agreement.
- 1.22 "Phase(s) of Development" means a phase(s) of development identified in the Phasing Plan.
- 1.23 "Phasing Plan" means such Phasing Plan as may be approved by the Council in respect of the Development.<sup>2</sup>
- 1.24 "Primary School" means a building, and associated external spaces, of appropriate size and design to provide for the nursery and primary educational needs of the residents of the Development in accordance with Scottish Government and Education Authority requirements and guidance.
- Minimum requirements -
- \* Capacity 210.
  - \* Nursery Class.
  - \* 12 Teaching Spaces + 2 half classes.
  - \* Computing Room
  - \* Library
  - \* Gym + changing facilities.
  - \* Dining hall.
  - \* Assembly.
  - \* Office.
  - \* Staff room
  - \* Sundries
  - \* External play space.
  - \* Car Parking.
- 1.25 "Primary School Contribution" means the sum of £[ ] which sum shall be increased in accordance with the Building Cost Information Service – Tender Price Index for New Works from the date of commencement of this Agreement until the date on which it is paid to the Council.
- 1.26 "Primary School Site" means the site for the Primary School identified in the Masterplan.
- 1.27 "Restoration Plan" means the plan for the implementation of the restoration and remediation of the Meadowhill Site approved pursuant to the Meadowhill Application.
- 1.28 "Trigger Notice" means the Trigger Notice referred to in the GR Agreement.

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<sup>2</sup> This will be amended if the phasing plan is approved by the Reporter

## **2 Interpretation**

- 2.1 In this agreement words importing only the singular number shall include the plural number and vice versa and words importing any particular gender shall include masculine, feminine, and neuter gender.
- 2.2 In this Agreement any reference to a statute or order shall include any statutory extension or modification and re-enactment of such statute or order, and any regulations made thereunder.

## **3 Successors in Title**

- 3.1 The provisions of this Agreement shall be enforceable against successors in title (to the extent of remaining to be implemented at any given time).

## **4 No Breach of Hermiston Agreement**

- 4.1 The Developers and GR agree that by entering into this Agreement neither of them will be taken to be in breach of Clause 9.3 of the GR Agreement.

## **5 Phasing**

- 5.1 The Development will proceed solely in accordance with the Masterplan and the Phasing Plan. Except by agreement of the Council, no development on any subsequent Phase of Development may be commenced prior to the completion of the development on the preceding Phase of Development.

## **6 Restoration of the Meadowhill Site**

- 6.1 Within [ ] of the date of issue of the Outline Planning Permission, the Developers will serve the Option Notice and the Trigger Notice on **GR**. On receipt of the Option Notice and the Trigger Notice, GR will allow the Developers to exercise the Option and the Developers shall exercise the Option in accordance with the GR Agreement.
- 6.2 No development may take place on the Meadowhill Site until the Developers have delivered to the Council a restoration bond (in terms to be approved by the Council, acting reasonably) that secures sums sufficient at any given time during the period of restoration to cover the full cost of such part of the restoration of the Meadowhill Site in accordance with the Restoration Plan, that may at that time remain to be carried out.
- 6.3 The first phase of development on the Forestmill Site (the enabling infrastructural works phase) shall not commence until the Developers have commenced Phase 1 of the Restoration Plan to the reasonable satisfaction of the Council.

- 6.4 The second phase of development on the Forestmill Site (the first 250 houses) shall not commence until the Developers have completed Phase 1 of the Restoration Plan and commenced Phase 2 of the Restoration Plan. Thereafter the Developers shall not carry out any further development on the Forestmill Site beyond the second Phase until they have implemented the Restoration Plan to the reasonable satisfaction of the Council.
- 6.5 After the issue of the Outline Planning Permission, GR will not apply for any further grants of planning permission, or extensions of temporary planning permission for the extraction of material from the Meadowhill Site, nor seek to have the Council issue any such grants of planning permission, or extension of temporary planning permissions.

## **7 Primary School**

- 7.1 The Primary School Site will be identified in the Masterplan.
- 7.2 No development may be commenced in any Phase of Development subsequent to the Phase of Development in which the Primary School is required to be constructed, unless the Developers have paid the Primary School Contribution to the Council.
- 7.3 The Developers will convey the Primary School Site to the Council on request by the Council. The site will be conveyed at nil consideration. The Developers will use reasonable endeavours to complete the conveyance of the Primary School Site to the Council within 3 months of receiving the Council's request.
- 7.4 In the event of the Developers paying the Primary School Contribution to the Council, the Developers (subject to the completion of all other development in the Phase of Development in which the Primary School is to be constructed), may proceed to commence development in the subsequent Phase of Development notwithstanding the Primary School not having been constructed at that time.

## **8 Environmental Sustainability**

- 8.1 The Developers will use all reasonable endeavours to minimise the Carbon Footprint of the proposed development of the Forestmill Site. To this end the Developers will produce for the approval of the Council a Sustainability Plan. The Sustainability Plan will take account of the Council's Sustainable Design and Construction Framework. No development may commence on the Forestmill Site until the Sustainability Plan has been approved by the Council, who shall be obliged to act reasonably in the matter. The Council may require the implementation of the Sustainability Plan to be carried out in accordance with the Phasing Plan.
- 8.2 The Council agrees that in approving the Sustainability Plan it will seek advice from the Carbon Trust or other sustainability specialists and that it will act reasonably, in the light of that advice in deciding whether the Plan should be approved.



- 8.3 The Developers will prepare a Travel Plan for the approval of the Council. No development may be commenced on the Forestmill Site until the Travel Plan has been approved in writing by the Council (acting reasonably).

## **9 Hotel, Leisure, Recreation, and Sports Facilities and Golf Course**

- 9.1 The Developers will use all reasonable endeavours to secure that the hotel, leisure, recreation and sports facilities, and the golf course identified on the Masterplan are developed in accordance with the Phasing Plan, subject always to account being taken of the market conditions prevailing from time to time. Prior to development commencing on any part of the Forestmill Site the Developers will submit to the Council full details of their marketing strategy and any other proposals the Developers intend to implement to secure the construction or provision of these components of the Development. The Developers will be obliged to amend the said marketing strategy and other proposals to take account of any changes required by the Council, acting reasonably.
- 9.2 The Developers will provide the Council with reports at six monthly intervals detailing progress made by them in respect of the said marketing strategy and other proposals. The first report will be delivered to the Council no later than six months after development first commences on the first Phase of the Forestmill Site. The Developers will implement any changes to the said marketing strategy and other proposals required by the Council, acting reasonably, in the light of the information contained in any such reports.
- 9.3 The discharge by the Developers of the obligations incumbent on them in terms of this Clause will not affect in any way the requirement set out in Clause 5 of this Agreement that the Development will proceed solely in accordance with the Phasing Plan.

## **10 Community Facilities**

- 10.1 The nature of the Community Facilities to be provided as part of the Development will be determined by the Council in consultation with the Developers and also with the residents within the Forestmill Site and within the existing village of Forestmill. The Community Facilities will be constructed in accordance with the Phasing Plan.
- 10.2 The Community Site[s] will be identified in the Masterplan.
- 10.3 Unless the Community Facilities have been provided by the Developers, no development may be commenced in any Phase of Development subsequent to the Phase(s) of Development in which the Community Facilities are to be provided unless the Developers have paid the Community Contribution to the Council.
- 10.4 The Developers reserve the right either to convey the Community Site[s] to the Council or alternatively to such other community body or charitable trust which may be more appropriate in light of the nature of the agreed Community Facilities. The site[s] will be conveyed at nil consideration. If the Developers agree to convey the Community Site(s) to the Council, the

Developers will use reasonable endeavours to complete the conveyance of the Community Site[s] site to the Council within 3 months of receiving the Council's request.

- 10.5 In the event of the Developers paying the Community Contribution to the Council, subject to the completion of all other development in the Phase(s) of Development in which the Community Facilities are to be provided, they may proceed to commence development in the subsequent Phase(s) of Development notwithstanding the Community Facilities not having been constructed at that time.

## **11 Affordable Housing**

- 11.1 The Developers agree that there will be provision of affordable housing within the Forestmill Site amounting to not less than 22% of the total number of residential units permitted on the Forestmill Site. The provision of affordable housing will accord with the requirements of the Phasing Plan and the Masterplan, which will set out the methods to be agreed by the Developers and the Council for delivery of such Affordable Housing on the Forestmill Site.

## **12 Management of Landscaped Areas, Open Space and Woodland**

- 12.1 The Developers will prepare the Management Plan for the approval of the Council, acting reasonably, and will provide to the Council an estimate of the costs of implementing the requirements of the Management Plan. The Management Plan will set out the basis upon which the Maintainable Areas will be managed following their formation by the Developers.
- 12.2 The Developers will be obliged to make arrangements for the future management, maintenance and upkeep of the Maintainable Areas according to the Management Plan to the reasonable satisfaction of the Council, and make payment of such capital sum(s) as may be necessary to provide for such future provision, to such parties as may have accepted the responsibility for such provision (whether the Council themselves or such other organisation or body).
- 12.3 No development shall commence on the Forestmill Site until (a) the Management Plan has been approved by the Council, acting reasonably (b) the Council has agreed the estimate of the cost of implementing the requirements of the Management Plan and (c) the Developers have delivered to the Council a bond (in terms acceptable to the Council) ensuring that in the event of the Developers defaulting in the implementation of the Management Plan (or any of the requirements thereof), the Council will be put in funds sufficient to remedy the Developer's default.
- 12.4 The bond referred to in Clause 12.3 above will not contain any provisions that limit the entitlement of the Council to enforce its rights under the Bond on more than one occasion not arising from the same default on the part of the Developers.

### **13 Design Code**

- 13.1 The Developers will submit a Design Code for all built development on the Forestmill Site. No development may be commenced on any part of the Forestmill Site until the Design Code has been approved in writing by the Council, acting reasonably. All built development on the Forestmill Site will accord with the requirements of the Design Code. The Design Code may be varied from time to time subject to the Council's approval but it may not be departed from until the Council has agreed in writing to any variations to the Code.

### **14 Health Impact Plan**

- 14.1 The Developers will commission an analysis of the Health Impacts that are likely to arise from the Development and will prepare a plan to minimise the adverse health impacts that are identified by the analysis. No development will commence on any part of the Forestmill Site until the plan has been approved by the Council, acting reasonably. The Developers agree to implement the plan in accordance with any reasonable timescales required by the Council.

### **15 Local Employment Initiative**

- 15.1 Contemporaneously with the execution of this agreement the Developers will enter into a Local Employment Agreement.

### **16 Waste Management Plan**

- 16.1 The Developers will prepare and submit to the Council a detailed proposal for the management of waste arising from the Development. No development shall commence on any part of the Forestmill Site until the Developers' waste management proposals have been approved by the Council, acting reasonably. The Developers agree to implement the approved waste management proposal in accordance with any timescales required by the Council.

### **17 Competency**

- 17.1 If any provision(s) contained in this agreement is held in any proceeding to be a provision(s) that cannot be competently included in or enforced under an agreement concluded under the said section 75 such provision(s) shall be enforceable to the same extent and effect as if this Agreement was an agreement in common form between the parties.

### **18 Severability**

- 18.1 If any provision of this Agreement is held in any proceeding to be incompetent or unenforceable then all other provisions of this Agreement will remain valid and enforceable.

## **19 Amendment**

- 19.1 This Agreement may be amended between the Council and the Developers and their successors in title to the Forestmill Site or any part or parts thereof and between the Council and GR and their successors in title to the Meadowhill Site or any part or parts thereof, provided that any amendment is registered in the Land Register of Scotland.

## **20 Agreement Inconsistent with Planning Permission**

- 20.1 If subsequent to the execution of this Agreement planning permission is granted in terms of the Act for development on the Forestmill Site and the conditions or any of them of any such planning permission are inconsistent with any provision of this Agreement then the Council and the Developers shall enter into a minute or minutes of variation to remedy any such inconsistency and register such minute(s) in the Land Register of Scotland.

## **21 Not to Dispose of interest**

- 21.1 The Developers, Ramsay and GR shall not assign, burden, convey, dispone, lease nor in any other way deal with their respective interests in the Forestmill Site or the Meadowhill Site prior to the registration of this Agreement in the Land Register of Scotland. The Developers, Ramsay and GR warrant that as at their date of execution of this Agreement they have not entered into an agreement to dispose of or otherwise deal with their respective interests in the Forestmill Site or the Meadowhill Site or any part or parts thereof.

## **22 Legal Fees and Stamp Duty**

- 22.1 The Developers shall bear the cost of any Stamp Duty, Registration Dues and the cost of obtaining one extract for each of the parties to this Agreement. In addition the Developers shall pay the Council's reasonably incurred legal expenses (together with any VAT payable in respect thereof) in connection with the preparation, negotiation and finalisation of this Agreement to a maximum of £

## **23 No Prejudice to Statutory Powers of the Council**

- 23.1 Nothing in this Agreement shall prejudice the rights and powers of the Council under the Town and Country Planning (Scotland) Acts or any other enactment.

## **24 Discharges**

- 24.1 On performance by the Developers of the various obligations referred to in this Agreement, the Developers shall be entitled to require the Council to execute and deliver to them within 14 days of request a partial discharge(s) or a full and final discharge of this Agreement at the Developers' expense, capable of registration in the Land Register of Scotland.

**25 Arbitration**

25.1 Any dispute between the parties hereto shall hereto be referred to the decision of an Arbiter to be appointed by the parties in dispute or failing agreement by the President if the Law Society of Scotland on the application of any such party to said dispute and the decision of such Arbiter (including any award of expenses) shall be final and binding on the parties,

**26 Jurisdiction**

26.1 This Agreement shall be construed in accordance with the Laws of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish Courts.

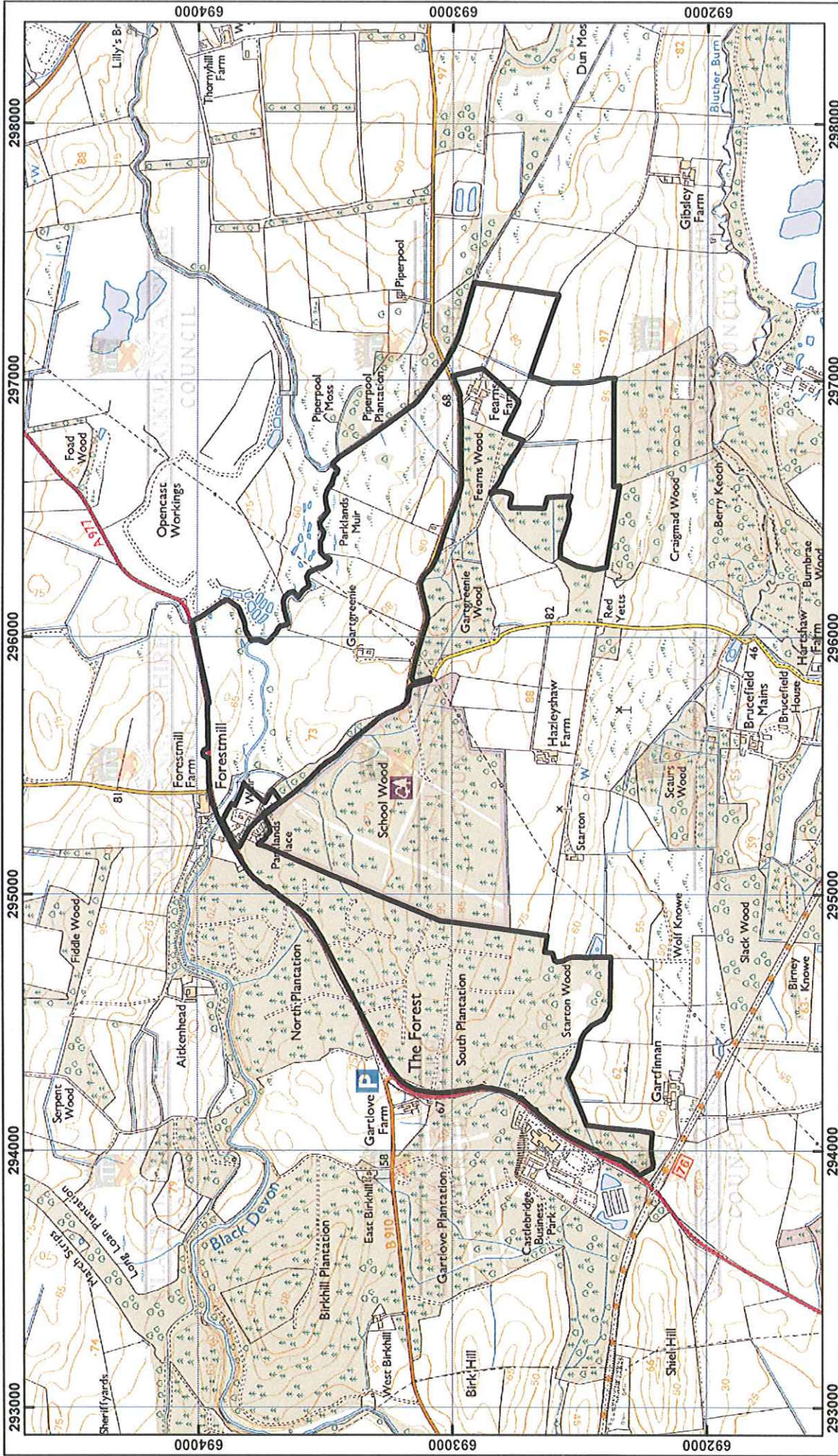
**27 Commencement**

27.1 This Agreement shall take effect and be enforceable from the date of commencement of development by the Developers, pursuant to the implement of such consents as may be issued by the Council to them following the issue of the Outline Planning Permission. In the event that the Outline Planning Permission is allowed to lapse without having been implemented then the Developers will be entitled to call on the Council to grant a full discharge of this Agreement within 14 days of having validly requested same.

**28 Registration for Preservation and Execution**

28.1 The parties hereto consent to the registration of this Agreement in the Books of Council and Session for publication as well as for preservation.

This document is executed as follows:-



Date:  
14-Oct-2009

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Ward: Devon and Clackmannan North



OS Grid Ref: NS99SW

Scale: 1:20,000

**06/00283/OUT - Land To South And East Of A977, Forestmill**  
**Development of a Village, Comprising Houses, School, Business Units, Shops, Hotel, Golf Course, Leisure and**  
**Community Facilities with Associated Roads, Footpaths, Other Infrastructure, Open Space and Landscaping**



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