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**Report to:** Planning Committee

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**Date of Meeting:** 11th July 2013

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**Subject:** Change of use of Industrial Premises to Waste Treatment Facility (Retrospective) at former Kilbagie Paper Mills, Kennet, FK10 4DY (Ref 13/00041/FULL)

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**Report by:** Keith Johnstone, Principal Planner

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## 1.0 Purpose

- 1.1. This is a report of handling on a planning application by Oran Environmental Solutions which seeks permission to treat waste within an existing building located on the site of the former mill at Kilbagie near Clackmannan. The application is retrospective since the applicant has been using the building to treat waste, although currently the treatment of waste has ceased pending the applicant obtaining planning permission and a waste management licence (WML) from the Scottish Environment Protection Agency (SEPA) following the expiry of a temporary licence in May 2013.
- 1.2. The report describes the proposal, considers the advice from consultees, the objections from third parties, the relevant planning history of the site and the planning policy issues associated with the development. Having regard to the issues raised by third parties and consultees, and the regulatory role of SEPA in managing the environmental impacts associated with the operation, it is concluded that the proposed development would accord with the Development Plan and relevant planning policies. Having had full regard to the issues raised by the neighbours, it is concluded that there are no other material considerations that would outweigh the Development Plan position and justify withholding permission. The application is therefore recommended for temporary approval, subject to the proposed conditions.
- 1.3. The application comprises a local development which would normally be determined under the Council's Scheme of Delegation by the Appointed Officer. However, the number and nature of the concerns raised by third parties, the interest expressed by local members and the retrospective nature of the application justify the application being determined by the Planning Committee rather than by the Appointed Officer.

## 2.0 Recommendation

- 2.1. It is recommended that the application is APPROVED subject to the following conditions:

1. The use of the building for the treatment of waste approved by this permission shall cease on 31st December 2014. After this date, the use of the building for this purpose shall cease and the site shall be cleared of any waste materials or liquids, plant or structures and the building reinstated to the satisfaction of the Council, as planning authority in consultation with the Scottish Environment Protection Agency.

2. This permission only authorises the use of the building annotated on the approved Site Plan, together with the associated ancillary plant and equipment adjacent to the building, for the treatment, handling and storage of waste materials, unless otherwise approved in writing by the Council, as planning authority. The external yard area adjacent to the building as annotated on the Site Plan shall not be used for these purposes unless otherwise agreed in writing by the Council, as planning authority.

3. Further to Condition 2 above, prior to the re-commencement of the use of the building for the treatment of waste, details of the location, size, surface finish and means of drainage of any areas required for the reception, parking and external storage of any vehicles or other means of carriage used to transport waste materials in connection with the use of the building shall have been submitted to and approved in writing by the Council, as planning authority. Thereafter, the development shall be carried out only in accordance with the approved details, unless otherwise agreed in writing by the Council, as planning authority.

4. All vehicles, trailers or other means of carriage containing either untreated waste materials or treated waste, travelling to and from the site shall remain covered or sealed at all times outside of the waste treatment building to which the permission relates, unless otherwise agreed in writing by the Council, as planning authority.

5. The development hereby approved shall be carried out in accordance with the measures contained in Section 5 titled "Short Term Mitigation Measures" contained in the supporting letter dated 15th October 2007 and approved by planning permission ref no 10/00049/FULL unless otherwise agreed in writing by the Council, as planning authority.

6. Any external lighting shall be designed, installed and maintained in accordance with the Institution of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light (GNROL 2005).

#### Reasons for Conditions

1. To allow the effectiveness of the licensing requirements to manage the waste treatment process and so support the proposed land use change to be reviewed by the planning authority and to provide an opportunity to bring all of the associated and ancillary activities under control through a single planning application.

2. To retain effective control over the use of the land in the interests of the amenity of the area.

3. To consider these details yet to be submitted and in order to retain effective control over the development in the interests of the amenity of the area.
4. To minimise the risk of odour nuisance.
5. In the interests of road safety.
6. To minimise the risk of light pollution.

## 2.2. Reasons for the Decision

1. The principle of the development is considered to accord with the Development Plan, the associated guidance contained in Scotland's Zero Waste Plan and the advice from SEPA.
2. The issues raised by the objectors could be satisfactorily or reasonably addressed subject to the proposed conditions or through the Waste Management Licence regime, including granting permission for an initial temporary period. Therefore these would not justify withholding planning permission.
3. The advice from consultees could be satisfactorily addressed subject to the proposed conditions or through the Waste Management Licence regime.
4. Having regard to the Development Plan position, the adequacy of the regulatory controls available to safeguard the amenity of the area, the historic industrial character of the site, there would not be sufficient material reasons to withhold planning permission.

## 2.3. Plans Relating to the Decision

1. Location Plan
2. Plan Showing Extent of Existing and Proposed Waste Management Facilities at Kilbagie

## 3.0 **Background to the Proposals**

3.1. The application seeks planning permission for change of use of an industrial building (annotated as Building B on the attached Plan) to a waste treatment facility which is located within the former Kilbagie Paper Mill near Clackmannan. The building would be used to treat sewage sludge and waste water from industrial and municipal waste facilities. The process can be summarised as follows;

- the mechanical mixing of waste and lime materials within the building to reuse as a fertiliser on agricultural land.
- Any liquid waste is dewatered at the building prior to treatment within a contained area. No waste is disposed of at the site. The treated waste is removed for use on agricultural land while any other residual materials or liquids are disposed of at an off-site disposal facility.

- The applicant has stated that approximately 6-8 loads would arrive per day. The normal working hours would be 0800-1700 Monday to Saturday unless in relation to an emergency situation.

3.2. The applicant owns the Kilbagie site and has used parts of the site for several years. The activities and relevant planning history are summarised below and depicted on the attached Location Plan;

(a) Permission granted (ref 10/00049/FULL) for partial change of use of an existing building (Annotated as Building A on the attached Plan) to treat waste. The permission was implemented but there was a fire incident at the building at the end of 2012 which destroyed the building. The applicant has continued the operation on adjacent land. SEPA require this material to be removed since it does not benefit from a WML and in April 2013 they served a formal notice on the applicant to remove the material. It is understood that the applicant has not complied with this notice. SEPA are considering their next steps to secure compliance with the notice. The applicant had confirmed to the Service that they would remove the material as required by the notice.

(b) The applicant began using another building (Annotated as Building B on the attached Plan) to treat waste without the benefit of planning permission. The Service advised them that permission was required for the change of use of the building and this retrospective application is seeking to remedy this. The applicant had a mobile plant WML to treat the waste but this has expired. The applicant has ceased treating waste within the building and has submitted an application to SEPA for a permanent WML which would also be required before the treatment operation could re-commence.

(c) The applicant has recently sited portacabins for office accommodation next to the entrance to the site. These do not have planning permission. Most of the other industrial buildings have been demolished by the applicant. Some of these areas are being used to store vehicles or equipment associated with their business.

#### 4.0 Consultations

4.1. Roads and Transportation advise that the site is served by a private road which accesses the A977 within part of Fife Council's area. Comment - *Fife Council was consulted on the application but has not submitted any comments on the application. We are satisfied that the development would not result in any significant increase in the frequency or type of traffic using the access road. The applicant has complied with the requirements of the 2010 permission as they relate to the use of the junction with the A977. Conditions are proposed to ensure the applicant continues to comply with any ongoing requirements.*

4.2. Environmental Health have raised no objection to the application but have made the following comments;

- the use could operate on a 24 hour basis and while they are not aware of any previous complaints regarding noise, consideration should be given to regulating operating hours. Comment - *Given the historic industrial use of the Kilbagie site, the absence of any planning*

*restrictions on hours of operation for industrial use or in relation to previous permissions for waste treatment uses at the site, and the applicant's assurance on non emergency operations, it is considered that it would not be reasonable or justifiable to regulate the hours of operation for the proposed development.*

- they have received previous complaints about odour from the Killbagie site. These appear to be mainly caused by management/operational issues and these could best be controlled by SEPA under the WML which is required before works can re-commence. Comment - *this re-affirms the primacy of the WML regime for environmental protection.*

4.3 SEPA has made the following comments on the application;

- based on the information on the proposed activity and the history of the site, SEPA is satisfied that in principle, the development is capable of being consented under the regulatory regime.
- the proposed activity is inherently odorous and any WML would require measures to minimise odour. Such measures would include; the operation of extraction and odour abatement equipment at all times when odorous waste is present; all odorous waste is kept within the building; and any waste spills are cleaned up quickly. These should ensure that any emission of offensive odour would be infrequent. However, there would be potential for odours to be detected outwith the site boundary. Since May 2012 under the mobile plant WML, SEPA has received 59 separate odour complaints relating to the treatment of waste at the building. Their investigations of the complaints indicated that the problems were results of poor management of the site and failure to comply with the approved working plan such as uncovered skips of waste being stored outside the building, failure of odour abatement plant and the doors of the building being open during the delivery or treatment of waste. SEPA has asked the applicant to address these breaches of the Licence and is still considering further formal enforcement action. Comment - *the planning process must not seek to regulate aspects of development that are properly and effectively controlled through other regulatory processes. We are therefore satisfied that the waste management licensing regime is the correct and principal mechanism for safeguarding environmental protection associated with the use.*
- they object to the application on the grounds of lack of information in respect of the surface water drainage arrangements for waters arising from hardstanding areas. Comment - *although the application site includes an existing hardstanding area, the applicant has confirmed that the proposed waste treatment activity would take place within the building and waste would not be treated or stored outside the building. On the basis that a condition is attached only approving the use of the building and the external bunded tank storage facilities, it is considered that permission could not be reasonably withheld in response to SEPA's objection since the development would not materially change the use of or drainage pollution risks associated with the existing areas of hardstanding.*

4.4 Fife Council was consulted but has not submitted comments on the application.

## 5.0 Representations

5.1. The application had to be advertised in the local press since the development comprises a class of development which requires to be advertised. There are no notifiable neighbours (the nearest house outwith the Kilbagie complex is approximately 350 metres from the building to which the application relates).

5.2. A total of 18 objections have been received in response to the application, most of which were received outwith the statutory publicity period. Details of the objectors are provided below:

- Clackmannan Community Council
- Kincardine Community Council
- Colin Moir, Ambleside Heaven, Kilbagie
- Dawn Redburn and Russell + Aitken both on behalf of Tillicoultry Quarries Ltd, Tulliallan
- Margaret Gardiner, 2 Craighton Cottages, Kennet Pans
- Paul Millar, North Carse House, Kilbagie
- Wallace Menzies, Tulliallan House, Tulliallan
- Ronald Cameron, 1 Woodend Cottages, Kennetpans
- Tim Fisher, 1 Craighton Farm Cottage, Clackmannan
- James Adam, Craighton Farm, Clackmannan
- Ian and Joan Menzies, The Moss, Tulliallan
- Paul Danielson, West Lodge, Tulliallan
- James Cuthbertson, Broadcarse Farm, Clackmannan
- James Turnbull, Meadowend Farm, Kennet
- John Nealon, 2A Broomknowe Drive, Kincardine
- Mr and Mrs Cuthbertson, The Hemmil, Broadcarse Farm, Clackmannan
- Robert Ramsay, Windyhill Farm, Tulliallan

5.3. The main concerns raised by objectors can be summarised as follows:

a. The treatment of sewage sludge at the site has created significant odour nuisance. The smell can be detected up to 3/4 of a mile away. Nearby residential and office properties have to keep their windows closed, and residents cannot use their garden when the smell is strong, and SEPA has acknowledged in its response that odour could not be totally eliminated beyond the site boundary. *Comment: The treatment of sewage sludge is an inherently odorous activity. A key issue in determining the planning application is whether such an activity could be carried out at the site without having an unacceptable impact on the existing standards of amenity of neighbours. SEPA has advised that they have received complaints relating to the operation which they have investigated and which has resulted in SEPA requiring remedial action to ensure compliance with the mobile plant WML conditions. However, SEPA has also advised that the principle of the development is capable of being consented and indicated that compliance with the Site Working Plan approved as part of the mobile WML would be sufficient to minimise the likelihood of offensive odours from the site. Having considered the advice from SEPA and Environmental Health and the concerns from objectors, we have reached the following conclusions regarding odour:*

- *When odour nuisance has occurred, it has largely been due to failure to comply with the approved Site Working Plan; either due to management or plant failures. This reflects the advice from SEPA.*
- *The applicant's compliance record is not grounds to withhold planning permission. The critical question is whether the proposed use is acceptable or not in land use planning terms rather than the track record of the applicant, although it is acknowledged this may be frustrating from the objectors' perspective.*
- *The site comprises a large former industrial complex where a degree of environmental impact such as noise, activity or odour would be expected and could occur given the lawful use of the site*
- *Subject to compliance with any relevant controls, the site is relatively well located for uses such as waste treatment given its historic use, its separation from any settlements or communities and its proximity to the main transport network*
- *It would not be necessary or appropriate to duplicate the environmental controls, including odour, as part of any planning permission which would otherwise be contained as part of any WML granted by SEPA.*

*Compliance with the terms of the Licence would ensure that the risk of odour nuisance, or other environmental impacts, could be satisfactorily minimised. In this regard, therefore, the odour nuisance is not a barrier to the change of use of the industrial premises to waste treatment.*

- b. The treatment of waste at the site has resulted in nuisance to residents from flies, litter and vermin. This could affect public health. *Comment: SEPA and Environmental Health have both advised that they are investigating this issue which may be related to the waste management activities associated with Building A annotated on the attached plan. Again, this issue could be effectively addressed by compliance with the appropriate WML regulations.*
- c. The site is an eyesore. *Comment: The proposed waste treatment activity would take place within an existing building. It would not in itself result in an unacceptable impact on visual amenity. The alleged eyesore is a probable reference to the outside storage of waste which the applicant has confirmed is being removed. We have discussed with the applicant its use and intentions for the wider Kilbagie site, given other parts appear to be in use in connection with its waste management activities. This could allow consideration of any measures to reduce visual impact, although it is recognised that the site is a former industrial complex.*
- d. The applicant is oblivious to complaints by neighbours or the controls regulated by SEPA. They appear unable to operate responsibly nor are fit and proper to operate this type of facility and for these reasons permission should either not be granted or should not be permanent until they have demonstrated they can comply. *Comments: The track record or compliance record of the applicant would not constitute material planning reasons to justify withholding permission. We have recommended that permission be granted for a temporary period albeit primarily to ensure that the applicant reviews and brings forward proposals to regulate waste management activities across the whole of Kilbagie site. This would also provide the applicant with an opportunity to demonstrate its ability to operate within the environmental controls in force.*
- e. SEPA has been ineffective in regulating the operation. *Comment: SEPA has investigated any complaints received and they have or are taking action to remedy breaches of control. The treatment of waste has ceased following the expiry of the temporary licence.*
- f. The development could result in pollution to nearby watercourses or the River Forth. There is a drainage pipe from Kilbagie which outfalls into the River Forth. *Comment: The proposed activity would take place within a building and any residual liquids should be removed from the site for disposal elsewhere. Subject to the proposed condition restricting the use of the external yard area, we are satisfied that the proposal would not present a significant pollution risk to the nearby watercourses.*
- g. The applicant has not installed effective management measures to prevent unacceptable environmental impacts. *Comment: While the evidence indicates that many of the complaints have arisen due to failure in management to comply with the Site Working Plan, the Plan includes a range of measures which would minimise the risk of odour or other impacts if complied with. This includes the installation of an odour abstraction system which directs air within the building through*

*carbon filters before being emitted to the environment. SEPA have stated that the mitigation measures which would be required by a WML should be sufficient to minimise unacceptable odour nuisance from the site.*

- h. The application should be determined by the Planning Committee.  
*Comment: The Service has referred the application to Committee to determine the application although it is a Local Development. The Service also confirmed its availability to attend a meeting to discuss the proposals in response to an invitation from Clackmannan Community Council although a meeting was subsequently not arranged.*

## **6.0 Development Plan Position**

- 6.1 The application requires to be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 6.2 The site includes an existing building on brownfield land which is located within countryside as defined in the adopted Clackmannanshire Local Plan. The most relevant Development Plan policies related to the application are considered to be:

- Clackmannanshire and Stirling Structure Plan ENV13 (Waste Management Interim Policy) - the policy required proposals to be assessed against a number of criteria until such time as the Area Waste Plan was prepared. *Comment: The Policy was an interim policy and is no longer considered relevant to the determination of the application. The Area Waste Plan has since been replaced by the National Waste Management Plan.*
- Clackmannanshire Local Plan Policy EN4 (Water Resources) - the policy requires the application of SUDS principles to surface water management within development. *Comment: This issue has been satisfactorily addressed in the response to SEPA's comments in para 4.3 above.*
- Clackmannanshire Local Plan Policy EN15 (Planning and Environmental Protection) - the policy states that the Council will; adopt the 'precautionary principle to pollution control"; adopt effective joint working principles with other enforcing agencies; and require developers demonstrate that any environmental protection matter has been evaluated and considered, so that the neighbourhood is not unacceptably affected. *Comment: Following consultation with SEPA and Environmental Health, we are satisfied that adequate controls and measures to ensure the amenity of neighbours and the surrounding environment could be satisfactorily protected are available and enforceable.*
- Clackmannanshire Local Plan Policy EN18 (Development in the Countryside) - the policy contains a number of criteria which development should satisfy, including a locational need, compatibility

with the character of the area, no adverse impact on road safety, and no harm to the amenity of adjacent land users. *Comment: The proposal relates to an existing building on a brownfield site which was last used for industrial purposes. The principle of development has already been established. The proposal would accord with the other criteria and the policy would be complied with.*

- Clackmannanshire Local Plan Policy EN25 (Waste Management) - the policy supports proposals which reduce demand for landfill where this would safeguard the environment and the amenity of local residents. Proposals should accord with the Area Waste Plan. *Comment: The Area Waste Plan has been replaced by the National Waste Management Plan which includes Scotland's Zero Waste Plan. This is discussed in Section 7.0 below. We have concluded that the proposal would accord with the requirements of this Policy.*
- Clackmannanshire Local Plan Policy J38 (Kilbagie) - this site specific policy allocates the site for business and industry uses and the Development Guideline supports the re-use or redevelopment of the former paper mill. *Comment: The proposed waste management use is considered to accord with the objectives of this Policy.*

6.3 Our assessment concludes that the application largely accords with the relevant Development Plan policies and is considered to comply with the Development Plan.

## 7.0 Other Material Considerations

7.1 The objections received from the Community Councils, local residents and others have been considered and addressed in Section 5.0 above. It is concluded that the issues raised would not justify withholding permission for the reasons given, notwithstanding the number of complaints about odour. The current application has to be determined on its own planning merits and the Service consider that the proposed use would be compatible with the surrounding area subject to compliance with the relevant regulatory controls. Nevertheless, we acknowledge the public concerns expressed through the planning process, and the ongoing licensing arrangements. In the circumstances, an initial temporary consent will provide the Council with confidence that management arrangements can be concluded in a manner that supports the land use change, remedies the unauthorised deposit of waste material following the fire damage to building A (which is being addressed by SEPA) and also provides the opportunity to bring all of the associated and ancillary activities under control through a single planning application.

7.2 The objection from SEPA relates to surface water drainage arrangements alone and we have concluded that it would not be reasonable to withhold permission on these grounds as discussed in the final bullet point in paragraph 4.3 above. SEPA has not objected to the principle of using the site for the treatment of the waste stream. There are no objections from the other consultees.

- 7.3 Scottish Planning Policy provides locational guidance on waste management facilities. It indicates that existing industrial site are appropriate for many waste management installations. However, planning authorities need to consider buffer zones between houses. A 250 metre buffer may be appropriate for outdoor processes or treatment facilities. At Kilbagie, the process will take place inside a building, which is located around 350 metres from the nearest house outside Kilbagie itself. There is a house at Kilbagie served by the same access which is approximately 155 metres from the building.
- 7.4 The proposal has been considered against the guidance in the Scottish Government's Zero Waste Plan which forms part of the National Waste Management Plan. The proposal is considered to accord with a number of its key provisions including; supporting the provisions of the waste hierarchy; the need to provide a range of facilities to achieve the targets to reduce landfill and increase recycling; achieving proximity of facilities to waste needs and; the locational criteria for identifying and assessing suitable waste management facilities.
- 7.5 In conclusion, it is considered that there are not sufficient material considerations to outweigh the Development Plan support for the proposal and to justify withholding permission.

## 8.0 Sustainability Implications

8.1 None.

## 9.0 Resource Implications

9.1 Financial Details

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

9.3 Finance have been consulted and have agreed the financial implications as set out in the report. Yes

## 10.0 Exempt Reports

10.1 Is this report exempt? Yes  (please detail the reasons for exemption below) No

## 11.0 Declarations

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

(1) **Our Priorities** (Please double click on the check box )

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)

None

**12.0 Equalities Impact**

12.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes  No

**13.0 Legality**

13.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

**14.0 Appendices**

14.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

None

**15.0 Background Papers**

15.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes  (please list the documents below) No

Clackmannanshire Local Plan

Scotland's Zero Waste Plan

PAN 51 "Planning, Environmental Protection and Regulation"



PAN 63 "Waste Management Planning"

Scottish Planning Policy

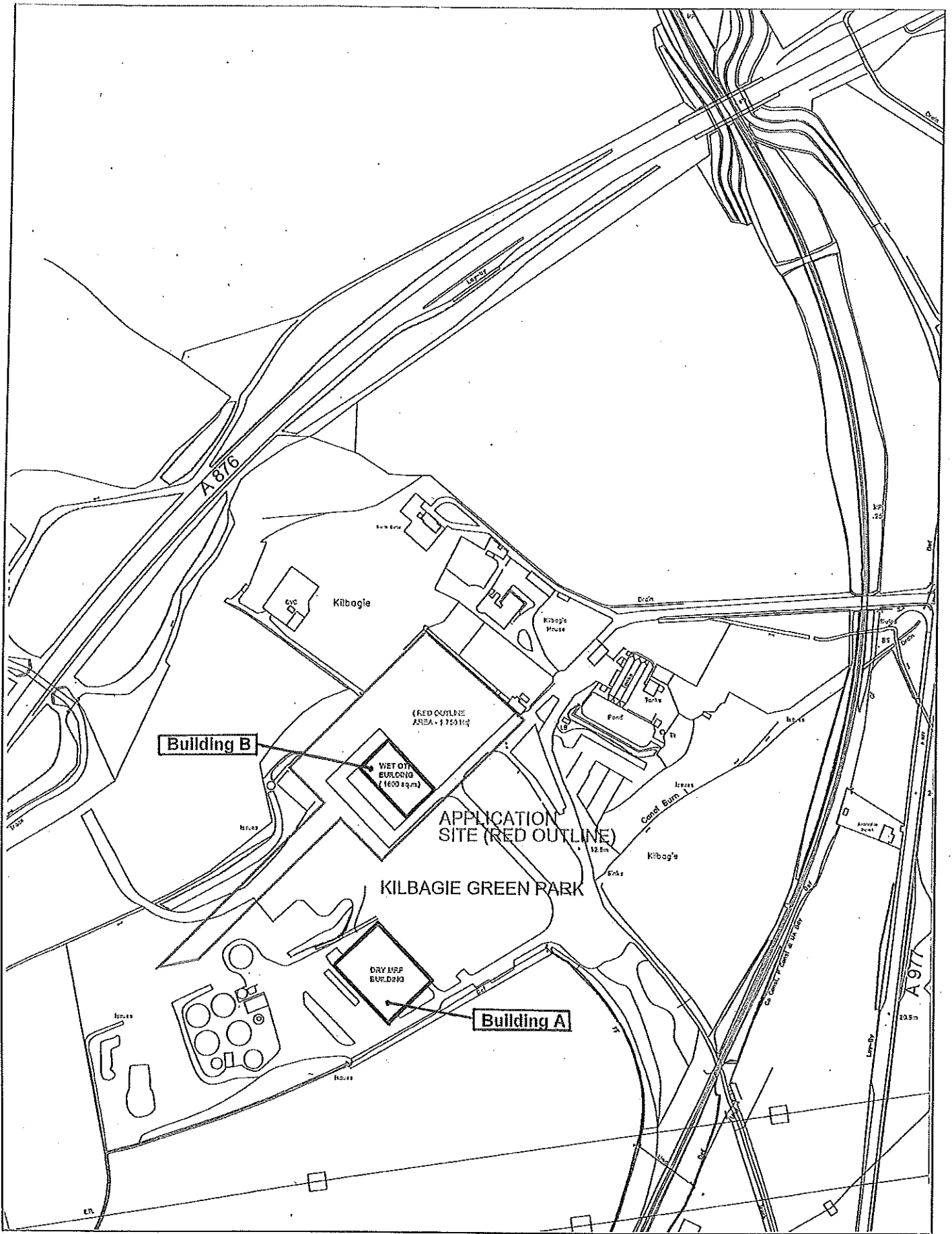
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N  
  
 Date:  
 01-Jul-2013

**13/00041/FULL - Kilbagie Paper Mills, Kennet**  
**Change Of Use Of Industrial Premises To Waste Treatment Facility**  
 Ward: Clackmannanshire East

OS Grid Ref: NS 92 89

Scale: Not to scale

**Clackmannanshire Council**  
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