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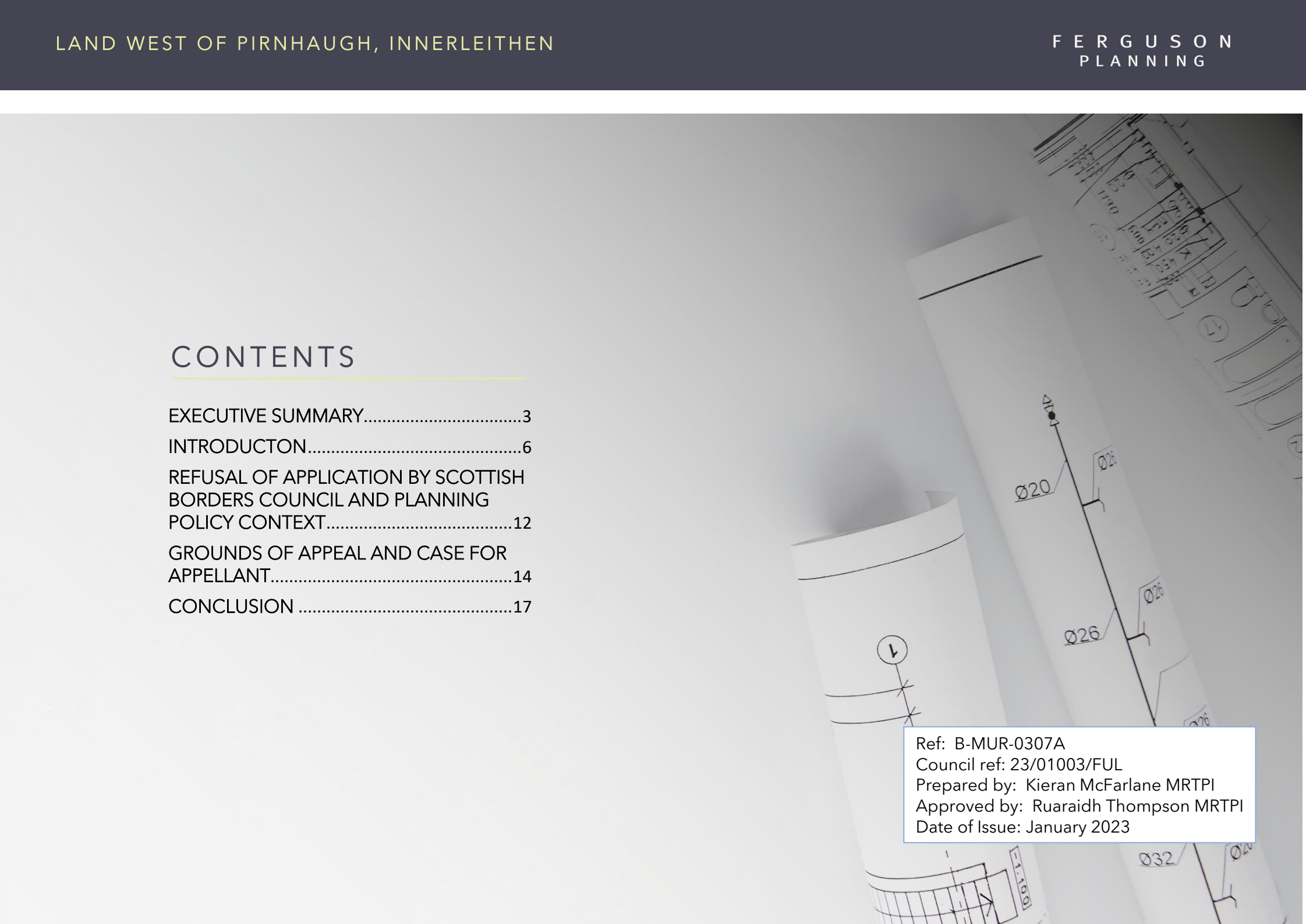
LAND WEST OF PIRNHAUGH, INNERLEITHEN, EH44 6JX

MR MURRAY CAMPBELL

JANUARY 2024

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Ref: B-MUR-0307A
Council ref: 23/01003/FUL
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LAND WEST OF PIRNHAUGH, INNERLEITHEN
EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

This Statement is submitted on behalf of Mr Murray Campbell (the Appellant) against the decision by Scottish Borders Council to refuse Planning Permission for a commercial storage facility comprising 30 no. storage containers with associated works at Former Gas Works, Princess Street, Innerleithen on 14th November 2023 (reference 23/01003/FUL). All Core Documents (CD) are referenced in Appendix 1.

The Appellant is seeking Planning Permission for a commercial storage facility comprising 30 no. storage containers together with associated works on a vacant brownfield site at land west of Pirnhaugh, Innerleithen.

The application site comprises of an existing hard surface which benefits from a security fence topped with barbed wire. The land levels are laid flat into a useable yard.

The site is accessed from an existing private way adjacent to the north-east of the site. The private way extends approximately 55 metres south-east of Princes Street and is wide enough for two vehicles to pass.

During the course of the Application's determination, the following consultee responses were received from Council Officers and external consultees:

- Roads - No objection
- Flood Officer -Objection
- SEPA - objection in principle
- Contamination - No objection

Reason for Refusal

In the Report of Handling (dated 13th November), the principle of the proposed development was agreed and factors relating to amenity, ecology, visual impact, road and pedestrian safety, contamination and services were found to be acceptable (or could be agreed through condition) and in accordance with the Policies of NPF4 and SBLDP. The proposals were found to be in accordance with Policies PMD5 and ED5 of the Local Development Plan and Policy 9 of NPF4.

The application was refused on concerns only relating to Flood Risk, therefore the grounds of the Appellant's appeal will respond to relevant policies that provide guidance on flooding and directly related matters.

One reason was cited for the refusal of the Application, this stated.

"The development would be contrary to Policy IS8 of the Local Development Plan 2016 and Policy 22 of National Planning Framework 4 in that it would be sited within a flood risk area and would potentially lead to increased flood risk affecting surrounding properties, thus putting the safety of persons at risk, and risking damage to property. Furthermore, the proposal would, by having such flood implications, fail to account for and adapt to climate change risks, to the detriment of neighbouring properties and public safety, thus conflicting with Policies 1 and 2 of National Planning Framework 4. Other material considerations do not outweigh these policy conflicts and the resulting harm that would potentially arise from the development."

It is the position of the Appellant, as set out within this statement that the proposed development would not constitute a high-risk development that is vulnerable to flooding nor would it materially increase the probability of flooding elsewhere. The proposal represents a use on a brownfield site that would be of equal vulnerability to flooding as the existing use. Therefore, the proposal is in compliance with Policy IS8 of the SBLDP and part (iii) of NPF4 Policy 22. The proposed development would not increase the risk of surface water flooding any further than the current situation, nor reduce the functional flood plain given the existing hardstanding onsite. The proposed development would therefore also not conflict with Policies 1 and 2 of NPF4.

The appointed Planning Officer sets out in the Report of Handling that the proposed development would not represent a public safety risk and instead is fundamentally a commercial risk taken by the Appellant.

The committee, having considered the detail contained within the Planning Application package, together with the information set out herein, are respectfully requested to allow the Notice of Review and grant Planning Permission.

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LAND WEST OF PIRNHAUGH, INNERLEITHEN
INTRODUCTON

INTRODUCTION

- 1.1. This Statement supports a Notice of Review of the delegated decision by Scottish Borders Council to refuse to grant Planning Permission for a commercial storage facility comprising 30 no. storage containers together with associated works on land west of Pirnhaugh, Innerleithen.
- 1.2. The application site comprises of an existing hard surface which benefits from a security fence topped with barbed wire. Site levels are laid flat into a useable yard. A portion of the north of the site is fenced off separately. The site is currently vacant and is regarded as being brownfield land.
- 1.3. The site lies in the south portion of Innerleithen. The site stands opposite the Electricity Distribution Site to the north-east. The Pirnhaugh View residential parcel lies a short distance to the south-east. The main residential area of Innerleithen extends to the north-west along Princes Street, visible in **Fig.1**. The Leithen Water flows past the site to the south-west circa 25 metres distance.
- 1.4. The site is accessed from an existing private way adjacent to the north-east of the site. The private way extends approximately 55 metres south-east of Princes Street and is wide enough for two vehicles to pass. In their consultation response to the planning application, the Roads Planning Service expressed their ability to support the proposal.
- 1.5. The site lies inside the Development Boundary defined for Innerleithen. The site does not sit in any Conservation Area. There are no Listed Buildings on-site or anywhere within a 200-metre radius of the site.
- 1.6. There are no environmental or ecological designations that cover the site. The Leithen Water is covered by a Special Area of Conservation, which sits fully beyond the site not closer than 25 metres. The Site of Special Scientific Interest (SSSI) designation that covers the River Tweed sits within 275 metres of the site.
- 1.7. The site has evidently been developed previously. The hardstanding that remains in situ existed historically and was associated with the previous gas works on site. The local extract of the 1955 Ordnance Survey Map has been identified that shows cylindrical development on-site, immediately south of the (at that time) active railway, visible in **Fig.2**.
- 1.8. The proposal is for the erection of a commercial storage facility comprising 30 no. storage containers together with associated works on land west of Pirnhaugh, Innerleithen.
- 1.9. This centres on the formation of a commercial yard fronted by storage containers to the north-east and south-west within the existing and pre-established boundaries of the site, as seen in **Fig.3**. Storage containers of standard dimensions will be placed upon concrete bases and let out for the use of small businesses. While the site benefits from security fencing with a locked gate, each individual container would also be locked separately.
- 1.10. Useable space in the interior of the yard shall provide for parking, turning, and loading. While occupiers shall have reasonable use of their unit, activities beyond storage and loading shall be restricted to those ancillary and necessary to the main business - occupiers will not be permitted to conduct their primary operations throughout the day from a storage container on-site.

- 1.11. Access to the site shall be provided for using the existing arrangements along the private way adjacent to the north-east. It is anticipated that the majority of traffic shall be accounted for in the morning (0800 - 0900) and evening (1600 - 1700), with the traffic volume in the morning being the higher of the two. Altogether little impact will be created on the private way particularly outside the morning peak. It is expected that the scenario in which all containers are accessed on the same day will not occur. The level of development proposed is too low for the site to become an active hub which requires daily access for all occupiers.
- 1.12. The market targeted by the proposal is small businesses with a requirement for small scale storage on a secure site. It is expected that this will largely attract tradesmen, small sole trader (work from home) businesses, and other small businesses with a requirement to own or use additional equipment which isn't often used (e.g. shops, beauty therapists, groundworks firms etc.). It is considered that the proposal shall draw the majority of its customers from Peeblesshire (especially Innerleithen, Walkerburn, and Peebles).
- 1.13. Economically, the objective of the proposal is to enable local businesses to continue trading successfully by having access to conveniently located and competitively priced storage capacity. In this regard, the proposal could be understood as primarily aimed at supporting businesses to maintain existing employment with creating additional employment an important secondary aim.
- 1.14. The remainder of this Statement considers the site context and relevant planning policy, before evaluating the accordence of the appeal proposal with the National Planning Framework 4, the Local Development Plan and other material considerations.

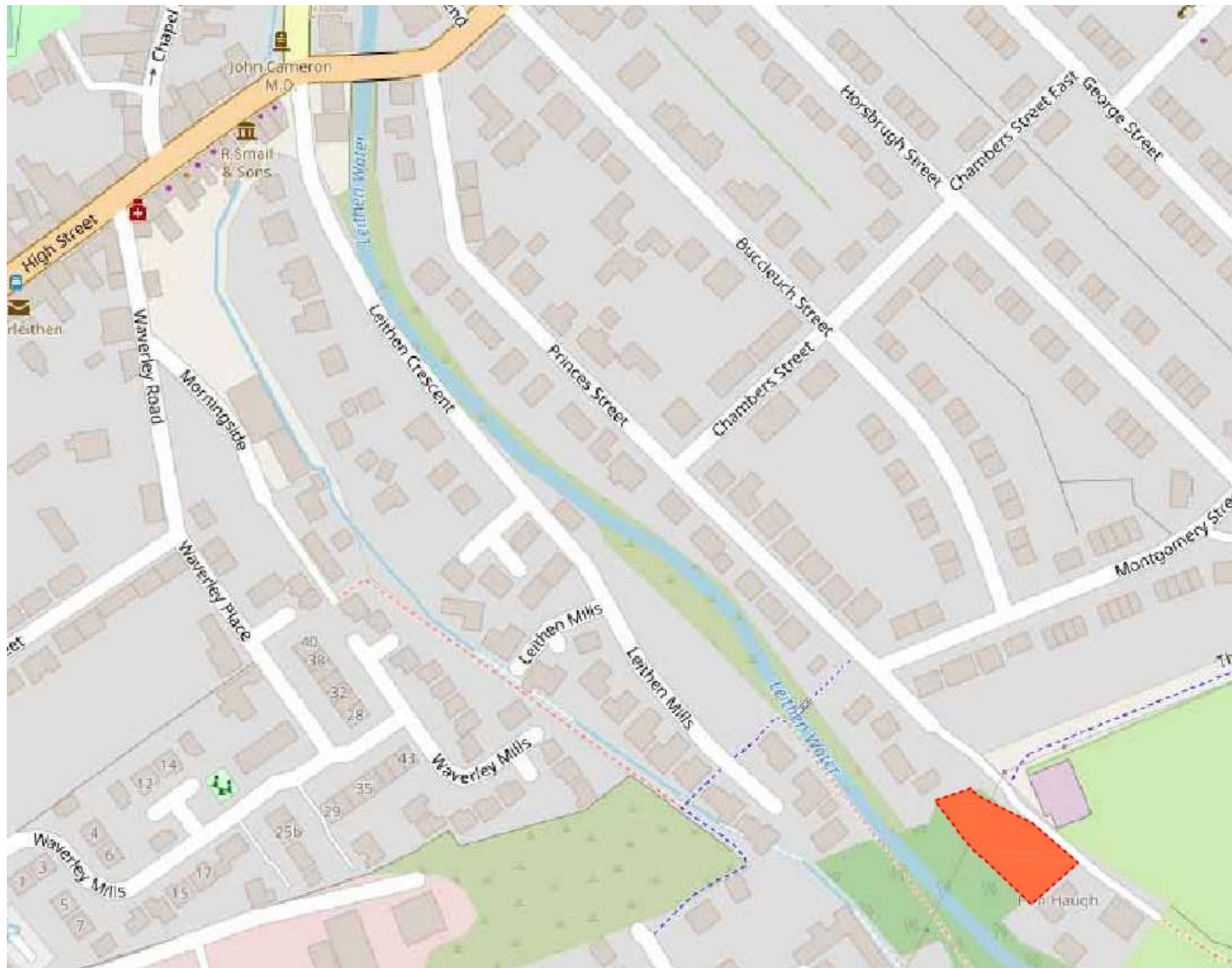


Fig 1: Extract from MDC-0148-L(-1)101 Site Location Plan.
(Source: MacKenzie Design Company Architecture).

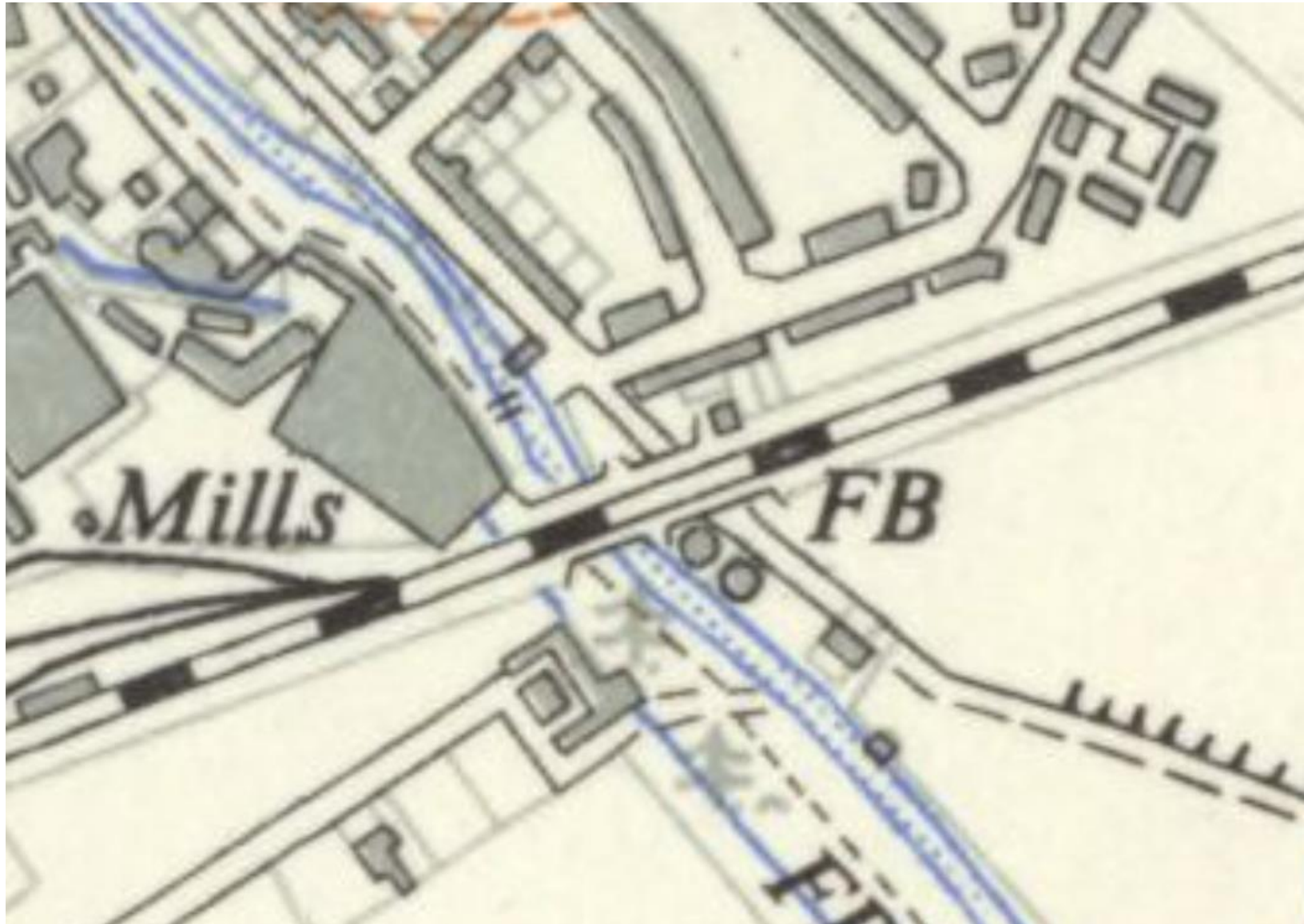


Fig 2: Local extract from Ordnance Survey Map 1955.

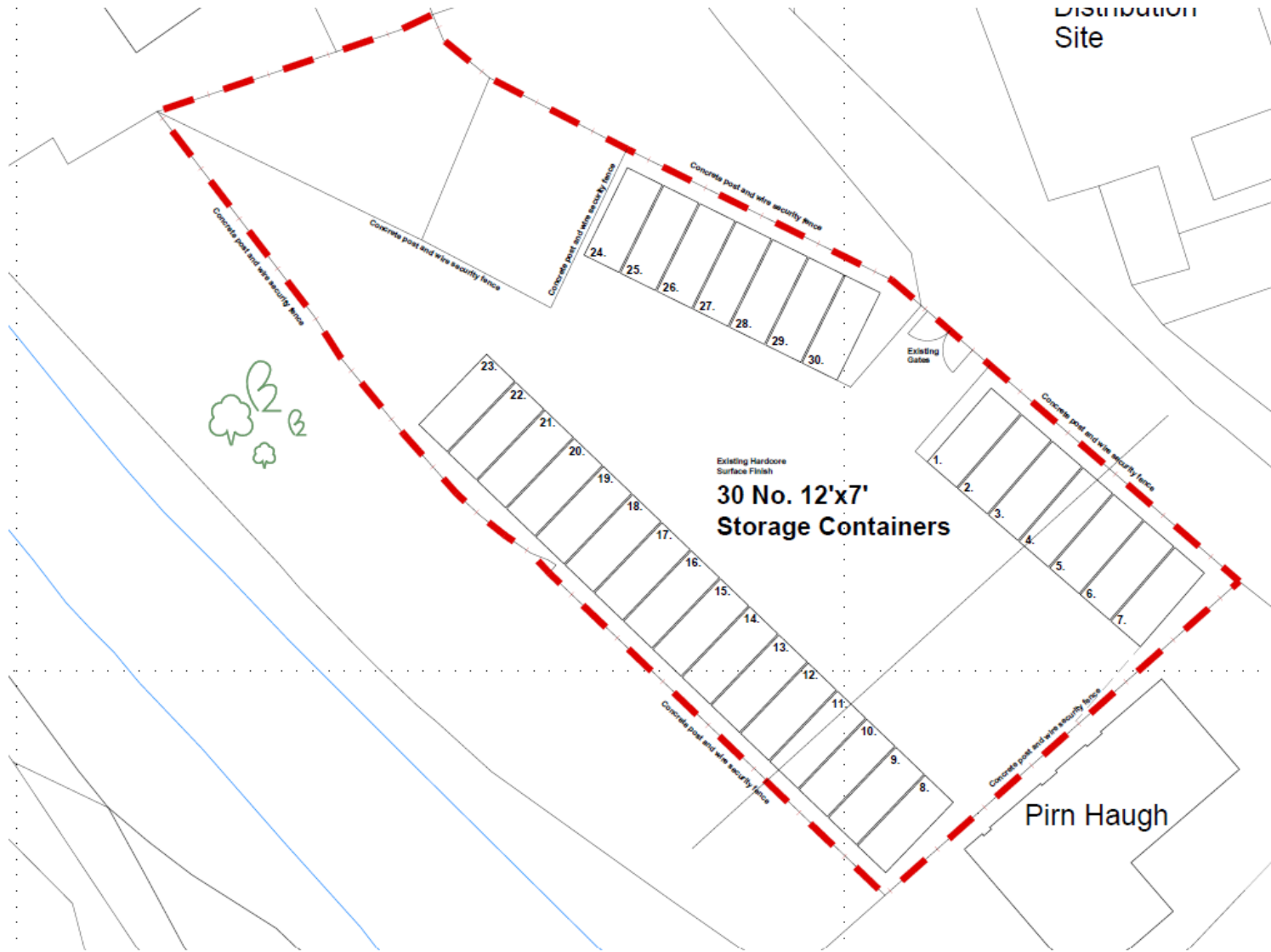


Fig 3: Extract from MDC-0148-L(-1)151 Site Block Plan.
(Source: MacKenzie Design Company Architecture).

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LAND WEST OF PIRNHAUGH, INNERLEITHEN
REFUSAL OF APPLICATION BY SCOTTISH
BORDERS COUNCIL AND PLANNING
POLICY CONTEXT

REFUSAL OF APPLIATION BY COUNCIL AND PLANNING POLICY CONTEXT

- 2.1 Planning Application 23/01003/FUL was refused on 14th November 2023. The Decision Notice (CD9) cited one reason for refusal, as set out below:

“The development would be contrary to Policy IS8 of the Local Development Plan 2016 and Policy 22 of National Planning Framework 4 in that it would be sited within a flood risk area and would potentially lead to increased flood risk affecting surrounding properties, thus putting the safety of persons at risk, and risking damage to property. Furthermore, the proposal would, by having such flood implications, fail to account for and adapt to climate change risks, to the detriment of neighbouring properties and public safety, thus conflicting with Policies 1 and 2 of National Planning Framework 4. Other material considerations do not outweigh these policy conflicts and the resulting harm that would potentially arise from the development.”

Local Development Plan

- 2.2 Policy IS8 of the Scottish Borders Local Development Plan (SBLDP) details the circumstances in which new houses will be considered acceptable. The relevant part of Policy IS8 is copied below:

“Within certain defined risk categories, particularly where the risk is greater than 0.5% annual flooding probability or 1 in 200 year flood risk, some forms of development will generally not be acceptable. These include:

- a) *Development comprising essential civil infrastructure such as hospitals, fire stations, emergency depots etc., schools, care homes, ground-based electrical and telecommunications*

- equipment unless subject to appropriate long term flood risk management strategy;*
b) *Additional built development in undeveloped and sparsely developed areas.*

National Planning Framework 4

- 2.3 One of the six overarching spatial principles of NPF4 is to support rural revitalisation. This takes the form of encouraging sustainable development in rural areas, recognising the need to grow and support urban and rural communities together.
- 2.4 *Policy 1: Tackling the climate and nature crises* of National Planning Framework 4 (NPF4) sets out that when considering all development proposals, significant weight will be given to the global climate and nature crises.
- 2.5 *Policy 2: Climate mitigation and adaption* seeks to encourage, promote and facilitate development that minimises emissions and adapt to the current and future impacts of climate change.
- 2.6 *Policy 22: Flood risk and water management* intent is to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding. The policy sets out that proposals at risk of flooding will only be supported where they are for the redevelopment of an existing site for an equal or less vulnerable use.
- 2.7 These policies are the pertinent material consideration in the determination of the appeal proposal, as established within the reason for refusal within the Council’s Decision Notice (CD9).

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LAND WEST OF PIRNHAUGH, INNERLEITHEN
GROUNDS OF APPEAL AND CASE FOR
APPELLANT

GROUNDS OF APPEAL AND CASE FOR APPELLANT

- 3.1 The decision of the Planning Authority to refuse the Application is challenged on the basis of the grounds of appeal as set out below. It is the submission of the Appellant that the proposal accords with the relevant adopted policy of National Planning Framework 4, the Local Development Plan and that there are no material considerations which justify the refusal of the application.
- 3.2 In the Report of Handling (dated 13th November), the principle of the proposed development was agreed and factors relating to amenity, ecology, visual impact, road and pedestrian safety, contamination and services were found to be acceptable (or could be agreed through condition) and in accordance with the Policies of NPF4 and SBLDP.
- 3.3 The appointed Officer in their report stated: *“The proposed use of the site would generally be supported by Policies PMD5 and ED5 of the Local Development Plan 2016, and Policy 9 of National Planning Framework 4, in general principle.”*
- 3.4 The application was refused on concerns solely related to Flood Risk, therefore the grounds of appeal will relate to the relevant policies as noted in the reason for refusal, which are:
- NPF4 Policy 1
 - NPF4 Policy 2
 - NPF4 Policy 22
 - Scottish Borders LDP Policy IS8
- 3.5 During the course of the applications determination, the following consultee responses were received from Council Officers and external consultees:

- Roads - No objection
- Flood Officer - Objection
- SEPA - Objection in principle
- Contamination - No objection

3.6 Grounds of Appeal: The decision to refuse planning permission is challenged on the basis that:

- **The proposed development would not constitute a high-risk development that is vulnerable to flooding nor would it materially increase the probability of flooding elsewhere, so therefore the proposal accords with the relevant part of Policy IS8 of the SBLDP.**
- **NPF4 Policy 22 (iii) allows for the redevelopment of an existing site, for an equal or less vulnerable use. The proposal represents a use on a brownfield site that would be of equal vulnerability to flooding as the existing in accordance with this policy.**
- **The proposed development would stand on top of the existing hardstanding which would not be increased in area and therefore would not increase the risk of surface water flooding any further than the current situation. The proposed development would therefore not conflict with Policies 1 and 2 of NPF4.**

- 3.7 The site is a former gas works, and as such is considered to be brownfield in nature. The proposals do not seek to increase the amount of hardstanding on the site and will make use of the existing, which has been present on the site for a significant time.
- 3.8 There are no new buildings proposed, and as the containers are not fixed to the ground, there are no foundations required. The

containers will be moveable and will stand on top of the hardstanding; therefore they would not increase the risk of surface water flooding any further than the current situation, nor reduce the functional flood plain. The proposals are therefore considered to not represent a risk to public safety.

- 3.9 The Appellant's position remains that the proposal is not a use that is vulnerable to flooding. No one would reside on-site and the site would not be anyone's regular place of work, and would instead be used for irregular and quick pick up / drop offs. The site would not be used to store equipment or other goods required for the response to a flooding event. The Appellant is prepared to accept a condition requiring that goods required for the response to a flood event cannot be stored on-site, including reflecting this in tenants' contracts and informing interested parties in writing before a lease is agreed.
- 3.10 The "Policy Intent" set out in relation to Policy 9 of NPF4 states that "reuse of brownfield, vacant, and derelict land" will be encouraged, promoted, and facilitated. On this basis we do not agree with SEPA that a precautionary approach is appropriate or even consistent with adopted policy. This context is significantly strengthened by the fact that the proposal does not represent a public safety risk.
- 3.11 Rather it is considered that the proposal accords with adopted local and national planning policy (including flooding) and represents sustainable development that reuses a brownfield site to provide commercial storage space without creating a public safety risk. While it is accepted that the development is not risk-free; the Appellant accepts it is their own commercial risk for which neither SEPA nor the Council are responsible.
- 3.12 The view that the proposed development doesn't represent a public safety issue was also supported by the Planning Officer who in their decision stated: "It is accepted that the siting of storage containers within this site is, fundamentally a commercial risk taken both by the

owner and the users of the containers. Provided the containers are affixed to the ground, and the commercial risk is understood, then its vulnerability is not considered determinative."

- 3.13 We wish to highlight a Planning Permission (21/00987/FUL) for a similar development that was granted in Peebles. The Flood Officer in this instance describes the site as being at risk of a similar flood event (0.5% annual risk) and offered no objection and instead suggested advice that the work is undertaken at the Appellant's commercial risk. The flood officer in this case, suggested that the containers were either pinned to the ground or interlocked together to prevent them being washed downstream (email on portal of 1 Oct 2021). The Appellant would also consider this option if this alleviated the Flood Officers concerns.
- 3.14 It is therefore considered that the proposed development would not constitute a high-risk development that is vulnerable to flooding nor would it materially increase the probability of flooding elsewhere. The proposal represents a use on a brownfield site that would be of equal vulnerability to flooding as the existing use. Therefore, the proposal is in compliance with Policy IS8 of the SBLDP and part (iii) of NPF4 Policy 22. The proposed development would not increase the risk of surface water flooding any further than the current situation, nor reduce the functional flood plain given the existing hardstanding onsite. The proposed development would therefore not conflict with Policies 1 and 2 of NPF4.

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LAND WEST OF PIRNHAUGH, INNERLEITHEN
CONCLUSION

CONCLUSION

- 4.1 The Notice of Review, supported by this Statement, respectfully requests that the Council overturns the decision to refuse Planning Permission for Application 23/01003/FUL and grant consent for the erection of a commercial storage facility comprising 30 no. storage containers with associated works at the Former Gas Works, Princes Street, Innerleithen.
- 4.2 The application site comprises of an existing hard surface which benefits from a security fence topped with barbed wire. It is a brownfield site having formally accommodated a gas works. The land levels are laid flat into a useable yard.
- 4.3 The site is accessed from an existing private way adjacent to the north-east of the site. The private way extends approximately 55 metres south-east of Princes Street and is wide enough for two vehicles to pass.
- 4.4 The proposed containers will be accommodated on the existing hardstanding so will therefore not require any additional foundations. The proposed use is not considered to be high-risk as it will not require anyone to reside on site and visits would likely be infrequent and quick.
- 4.5 It is considered that the proposed development would not constitute a high-risk development that is vulnerable to flooding nor would it materially increase the probability of flooding elsewhere. The proposal represents a use on a brownfield site that would be of equal vulnerability to flooding as the existing use. Therefore, the proposal is in compliance with Policy IS8 of the SBLDP and part (iii) of NPF4 Policy 22. The proposed development would not increase the risk of surface water flooding any further than the current situation, nor reduce the functional flood plain given the existing hardstanding onsite. The proposed development would therefore not conflict with Policies 1 and 2 of NPF4.
- 4.6 The Committee is respectfully requested to allow the appeal and grant planning permission.

Appendix 1 - CORE DOCUMENTS

The following drawings, documents, and plans have been submitted to support the Notice of Review:

- Notice of Review Form;
- CD1 Appeal Statement;
- CD2 Supporting Planning Statement;
- CD3 L(-1)101 Location Plan;
- CD4 L(-1)102 Existing Site Block Plan;
- CD5 L(-1)151 Proposed Site Block Plan;
- CD6 L(-3)351 Proposed Site Section;
- CD7 Irvine Plant Correspondence;
- CD8 Report of Handling 23/01003/FUL;
- CD9 Decision Notice 23/01003/FUL;
- CD10 Application Form 23/01003/FUL;
- CD11 Flood Officer's email relating to 21/00987/FUL; and
- CD12 Current and Historic Images.

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