



Agenda Item 9

APPLICATION UNDER SECTION 42 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED, FOR VARIATION OF DEEMED PLANNING PERMISSION (SCOTTISH GOVERNMENT ENERGY CONSENTS UNIT REF EC00005229) TO THE EXTENT THAT CONDITION 18 THEREOF IS MODIFIED AS FOLLOWS: PRIOR TO THE COMMENCEMENT OF THE DEVELOPMENT, EXCEPT FOR SITE PREPARATION, GROUND AND ENABLING WORKS, THE REMEDIATION WORKS IDENTIFIED IN THE APPROVED REMEDIATION STRATEGY SHALL BE CARRIED OUT IN ACCORDANCE WITH THE TERMS OF THAT STRATEGY. NO PART OF THE DEVELOPMENT SHALL BE OCCUPIED UNTIL A REMEDIATION COMPLETION REPORT OR VALIDATION CERTIFICATE HAS BEEN SUBMITTED TO THE PLANNING AUTHORITY AND APPROVED AT SITE TO THE WEST OF FORTH PORTS PLC, CENTRAL DOCK ROAD, GRANGEMOUTH, FOR FORTH PORTS LIMITED - P/18/0324/VRC

FALKIRK COUNCIL

Subject: APPLICATION UNDER SECTION 42 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED, FOR VARIATION OF DEEMED PLANNING PERMISSION (SCOTTISH GOVERNMENT ENERGY CONSENTS UNIT REF EC00005229) TO THE EXTENT THAT CONDITION 18 THEREOF IS MODIFIED AS FOLLOWS: PRIOR TO THE COMMENCEMENT OF THE DEVELOPMENT, EXCEPT FOR SITE PREPARATION, GROUND AND ENABLING WORKS, THE REMEDIATION WORKS IDENTIFIED IN THE APPROVED REMEDIATION STRATEGY SHALL BE CARRIED OUT IN ACCORDANCE WITH THE TERMS OF THAT STRATEGY. NO PART OF THE DEVELOPMENT SHALL BE OCCUPIED UNTIL A REMEDIATION COMPLETION REPORT OR VALIDATION CERTIFICATE HAS BEEN SUBMITTED TO THE PLANNING AUTHORITY AND APPROVED AT SITE TO THE WEST OF FORTH PORTS PLC, CENTRAL DOCK ROAD, GRANGEMOUTH, FOR FORTH PORTS LIMITED - P/18/0324/VRC

Meeting: PLANNING COMMITTEE
Date: 19 March 2019
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Grangemouth

Councillor David Balfour
Councillor Allyson Black
Councillor Robert Spears

Community Council: Grangemouth Community Council

Case Officer: Kevin Brown (Planning Officer), Ext. 4701

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 Under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, this application proposes the variation of condition 18 attached to Scottish Government Energy Consents Unit Ref EC00005229 which refers to the construction of a biomass electricity generating station at the Port of Grangemouth. Condition 18 relates to contaminated land requirements. The current proposal seeks a rewording of this condition to allow basic site investigation and preparation works to be carried out prior to full remediation of the site being completed. The proposed rewording retains a restriction that prevents occupation of the facility prior to the completion of remediation works.

1.2 Condition 18 currently states:

“Prior to the Commencement of the Development the remediation works identified in the approved remediation strategy shall be carried out in accordance with the terms of that strategy. No part of the development shall be occupied until a remediation completion report or validation certificate has been submitted to the Planning Authority and approved.”

1.3 The proposed revised wording of condition 18 is as follows:

“Prior to the Commencement of the Development, except for site preparation, ground and enabling works, the remediation works identified in the approved remediation strategy shall be carried out in accordance with the terms of that strategy. No part of the development shall be occupied until a remediation completion report or validation certificate has been submitted to the Planning Authority and approved.”

1.4 A consequence of granting an amendment of condition 18 through this section 42 application would be that a further planning permission for the development as a whole would be granted. The period for implementation of the development would then be 3 years from the date of this permission unless otherwise directed.

1.5 The application has been considered against the hierarchy of developments as set out within Scottish Planning Circular 5/2009: Hierarchy of Developments, as well as threshold criteria within the National Planning Framework. The application is considered to represent a Major Development for the purposes of this planning assessment.

1.6 The application has also been screened against the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. An Environmental Impact Assessment (EIA) was undertaken as part of the section 36 consenting process for the project as a whole. A copy of this environmental statement has been included within the submissions made for this section 42 application. The variation to the condition sought through this application does not give rise to any significant additional environmental effects beyond those previously considered. A further EIA is not therefore required to support this application.

2. REASON FOR COMMITTEE CONSIDERATION

2.1 The application was called in by Councillor Allyson Black to allow further scrutiny of local environmental and visual impacts given the passage of time since the original deemed planning permission was issued.

3. SITE HISTORY

3.1 The Port of Grangemouth Biomass Electricity Generating Station was granted an electricity consent and a deemed planning permission under Section 36 of the Electricity Act 1989 by Scottish Ministers in June 2013. On 8 March 2018 Forth Energy secured from the Scottish Government a time extension to the electricity consent, extending the implementation period of that consent to 3 June 2020.

3.2 P/09/0074/FUL Detail – Granted 26.03.2009 Installation of 70 Metre High Meteorology Mast.

4. CONSULTATIONS

- 4.1 The Health and Safety Executive (HSE) procedures for an application seeking variation of condition on a consent issued under the Electricity Act is that a PADHI response is not required.
- 4.2 The Council's Environmental Protection Unit has no objection to this proposal.
- 4.3 The Scottish Government Energy Consents Unit has offered no comments on this proposal.

5. COMMUNITY COUNCIL

- 5.1 Grangemouth Community Council has expressed concerns over what has changed since the original permission was issued by the energy consents unit. Specifically the need for the development, in terms of the supply of steam and power to neighbouring sites, is now questioned.

6. PUBLIC REPRESENTATION

- 6.1 During consideration of this application, no letters of representation were received from individual members of the public.

7. DETAILED APPRAISAL

- 7.1 Under section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, the determination of planning applications for local and major developments shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

7a The Development Plan

- 7a.1 The Falkirk Local Development Plan was adopted on 16 July 2015. It includes a number of supplementary guidance documents which also have statutory status as part of the Development Plan. The proposed development was assessed against the following policy or policies:
- 7a.2 Policy RW10 - Vacant, Derelict Unstable and Contaminated Land states:-

Proposals that reduce the incidence of vacant, derelict, unstable and contaminated land will be supported, subject to compliance with other LDP policies, particularly those relating to development in the countryside. Where proposals involve the development of unstable or contaminated land, they will only be permitted where appropriate remediation or mitigation measures have been undertaken.

- 7a.3 The proposed amendment of condition 18 retains a commitment to carry out any necessary remediation work and implement any necessary mitigation measures. The proposed amendment to the wording of condition 18 is limited to a change in what level of work can be carried out in advance of the remediation work being carried out. The current condition wording prevents any works being carried out until the site is remediated in full. It is considered reasonable to allow site investigation and preparation works to be undertaken provided, as is proposed, the necessary remediation works are completed prior to any occupation of the facility. The proposed variation would not result in an increase in contaminated land and, as a result, the proposal accords with the terms of policy RW10.
- 7a.4 The proposal to amend condition 18 accords with the terms of the Falkirk Local Development Plan.

7b Material Considerations

- 7b.1 The material consideration to be assessed are consideration of supplementary guidance not forming part of the Development Plan, responses to consultations, the Falkirk Local Development Plan (Proposed Plan) and National Policy.

Supplementary Guidance not forming part of Local Development Plan

- 7b.2 Supplementary Planning Guidance Note - Development of Land Affected by Contamination: Guidance for Applicants and Developers is relevant.
- 7b.3 This document builds upon the Scottish Government guidance contained within PAN 33, 'Development of Contaminated Land' and sets out the Council's approach to dealing with contaminated land. The supplementary guidance sets out general advice on what is required of developers and sets out standard conditions which will be applied to permissions where contaminated land risks are identified. The condition which is the subject of this application was derived from the wording set out within this guidance document. In relation to remediation works, the guidance sets out what a remediation strategy should include and makes it clear that remediation proposals and timescales of work would need to be agreed with the Planning Authority prior to work proceeding on site. The main emphasis of this guidance is to ensure that land is made suitable for any new use. The proposed changes to condition 18 retain a restriction that the facility cannot be occupied until such time that agreed remediation measures are completed in full. The proposal accords with the terms of this guidance.

Responses to Consultation

- 7b.4 The Council's Environmental Protection Unit has advised that they are satisfied with the proposed amendment to condition 18.

- 7b.5 The Grangemouth Community Council has objected to the proposal on the grounds that, in their view, the circumstances surrounding this development have substantially changed since this application was granted and that the proposal is now unlikely to be brought forward as originally envisaged. In particular, concern has been raised that the original justification for the development, i.e. the provision of steam and power to adjacent industrial sites, have been overtaken by time and that new planning permissions and other proposals that are at a more advanced stage will negate the need for this development to meet those requirements. Questions have also been raised in respect of the viability of future district heating proposals associated with this and other developments. Concerns are also raised that this proposal may be the first of many such requests to vary conditions associated with this proposal.
- 7b.6 This application relates solely to the proposed amendment of the wording of a contaminated land condition on the deemed planning permission, condition 18. No other changes to the approved development are proposed by the applicants. In determining the application the matters raised by the Community Council in relation to the principle of the development, supply of the heat and power and question of whether there is need for the development are not material considerations. This planning application to amend the contaminated land condition does not give the Council opportunity to reopen consideration of the principle of the development.
- 7b.7 If an proposal comes forward in the future to amend the development Scottish Ministers would have opportunity at that time to consider whether the amendment is a material variation with regard to the electricity consent. Likewise the Council would have opportunity to consider whether the amendment is material in relation to the deemed planning permission. Whether an amendment is material and the procedures for determination will depend on the nature of change proposed.

Falkirk Local Development Plan 2 (Proposed Plan)

- 7b.8 The current Falkirk Local Development Plan is in the process of being replaced by a new plan, LDP2. The Proposed Falkirk Local Development Plan 2 (LDP2) has been approved by the Council for consultation. The consultation period ran from 27 September 2018 to 23 November 2018. Following consideration by Scottish Ministers of representations received it is expected that LDP2 will be adopted in 2020, at which point it will replace the current Falkirk Local Development Plan. LDP2 provides the most up to date indication of Falkirk Council's views in relation to Development Plan policy and constitutes a material consideration in the determination of planning applications. In the case of this particular application, the proposed plan in its current form does not introduce any new policy considerations or land use allocations which justify a refusal of planning permission in this instance.

National Planning Policies and Guidance

- 7b.9 The following documents are considered relevant in the assessment of this application:
- Circular 4/1998 'The Use of Conditions in Planning Permissions'
 - Planning Advice Note 33 'Development of Contaminated Land' (PAN 33)

Circular 4/1998, 'The Use of Conditions in Planning Permissions' seeks to ensure that the use of planning conditions on applications is fair, reasonable and practical. In order to achieve this, the document sets out six tests for conditions stating that they must be:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

7b.10 The proposed revised wording of condition 18 is considered to meet these six tests. The proposal also affords the developers an additional degree of flexibility which would aid with the viability of the project whilst not adversely impacting on the overall intent of the planning condition which is to achieve suitable remediation of any contamination found at the site. The proposal accords with the guidance set out in Circular 4/1998. PAN 33, 'Development of Contaminated Land' places its policy emphasis on remediating a contaminated site to a level appropriate for its intended use. As stated above, the changes to the condition sought would retain a requirement for the developer to remediate the site prior to occupation. This timeframe for remediation is considered appropriate for the intended use and proposal therefore complies with PAN 33.

7c Conclusion

7c.1 The proposed amendments to condition 18 pose no significant impacts and do not represent a material change to the development previously granted. There remains general policy support for biomass heat and energy generation plants at a national and local level. The proposal accords with the terms of the Falkirk Local Development Plan. There are no material planning considerations that warrant a refusal of planning permission in this instance.

7c.2 As a consequence of a grant of planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as Amended, a further planning permission for the development as a whole will be granted. It is therefore necessary to repeat the planning conditions from the original deemed planning permission issued by the Energy Consents Unit within this decision. For ease of reference, it is considered appropriate that the condition numbering contained within this decision reflects the numbering used in deemed planning permission EC00005229 which was issued by the Scottish Government Energy Consents Unit on 03 June 2013. Timescales for implementation of this permission have also been aligned with extant electricity consent as recently issued by the Scottish Government. The implementation period for this planning permission has therefore been limited to 3 June 2020.

8. RECOMMENDATION

8.1 It is recommended to grant planning permission subject to the following conditions and reason(s):-

9. Unless otherwise agreed in writing with the Planning Authority, within 12 months of the site permanently ceasing to be used for the purpose of electricity and heat generation, a scheme for demolition and removal of the development from the site shall be submitted to the Planning Authority for approval in writing. The scheme shall include:

- (a) details of all structures and buildings which are to be demolished**
- (b) details of the proposed reuse of any building to be retained;**
- (c) details of the means of removal and materials resulting from the demolition and methods for the control of dust and noise;**
- (d) the phasing of demolition and removal; and**
- (e) details of the restoration works and the phasing of the restoration works.**

Thereafter the approved scheme shall be implemented in full.

10. Prior to Commencement of the Development, the detailed design of the development shall be submitted to the Planning Authority for written approval. The detailed design shall include:

- (a) Details of the siting, design and external appearance of all buildings and structures to be erected and retained following the Commissioning of the Development;**
- (b) Details of the colour, material and surface finish in respect of those buildings and structures referred to in (a) above;**
- (c) Details of the existing and proposed ground levels and buildings and structure levels, including cross sections through the site;**
- (d) Details of all proposed roads, parking, hard standings, loading and unloading areas and turning facilities;**
- (e) Details of permanent artificial lighting;**
- (f) Details of permanent fencing or other means of enclosure;**
- (g) Details of all hard and soft landscaping; and**
- (h) Phasing and length of time of all proposed works.**

Development shall not commence on site until written approval is given by the Planning Authority. Thereafter, the development shall proceed in accordance with the approved details.

11. All forest derived fuels to be used in operating the development shall be certified by accepted sustainability certification systems.

12. Throughout the lifetime of the development, written records shall be held and be available for inspection by the Scottish Ministers and SEPA, recording the quantities, nature and sources of fuel combusted at the development, including details of certification and method of transportation to the site.

- 13. The 110m main stack shall be fitted with aviation lighting. The stack shall be fitted with 25 candela omni directional red lighting at the highest practicable point and the Company shall provide details of the development to the Defence Geographic centre.**
- 14. Prior to commencement of any works, a scheme to connect the Development to the public waste water network shall be submitted for the written approval of the Planning Authority following consultation with Scottish Water, and shall be carried out in accordance with the approved scheme, unless it is ascertained from condition 21 (drainage impact assessment) that other mitigation measures are appropriate.**
- 15. Prior to Commencement of the Development a construction traffic management plan and freight management plan shall be submitted for the written approval of the Planning Authority following consultation with community statutory consultees. This shall include procedures for the movement of traffic including sized loads and escorting requirements. Thereafter traffic management and freight management shall be carried out in accordance with the approved plans.**
- 16. Unless otherwise agreed in writing with the Planning Authority, prior to Commencement of the Development a contaminated land assessment prepared in accordance with current guidance shall be submitted for the written approval of the Planning Authority. The assessment shall determine the nature and extent of any contamination on the site, including contamination that may have originated from elsewhere, and also identify and potential risks to human, property, the water environment or designated ecological sites.**
- 17. Where contaminated land (as defined by Part IIA of the Environmental Protection Act 1990) is encountered, a detailed remediation strategy shall be submitted to the Planning Authority for written approval. The strategy shall demonstrate how the site shall be made suitable for its intended use by the removal of any unacceptable risks caused by the contamination.**
- 18. Prior to the Commencement of the Development, except for site preparation, ground and enabling works, the remediation works identified in the approved remediation strategy shall be carried out in accordance with the terms of that strategy. No part of the development shall be occupied until a remediation completion report or validation certificate has been submitted to the Planning Authority and approved.**
- 19. In the event that unexpected contamination is encountered following the Commencement of the Development, all work on the affected part of the site shall cease immediately and shall be reported in writing to the Planning Authority. A desk study, site investigation, risk assessment and, where necessary, a remediation strategy shall be submitted to the Planning Authority for approval in writing, and that approved strategy shall be implemented prior to the resumption of works on the affected part of the site.**

- 20. Prior to the Commencement of the Development a detailed scheme of flood mitigation measures shall be submitted to the Planning Authority from written approval. The scheme shall include an assessment of the safety of personnel and suitable mitigation measures, including consideration of methods of safe access and egress to and from the Development. Thereafter the approved flood mitigation measures shall be implemented and maintained for the duration of operation development.**
- 21. Prior to the Commencement of the Development on site a drainage impact assessment shall be submitted to the Planning Authority. Should the assessment identify the mitigation measures and required at the development then prior to commencement of the development a scheme of proposed mitigation measures shall be submitted to the planning authority for approval in writing. The approved scheme of mitigation measures shall be fully implemented.**
- 22. Prior to Commencement of the Development a risk assessment shall be submitted for the written approval of the Planning Authority identifying potential major accident or emergency situations involving the development from within the plant or an external source, for both construction and operational phases of the proposal. The Company will seek an invitation to participate in the already established major incident group.**
- 23. Unless agreed in writing by the Planning Authority, or unless in an emergency, the movement of biomass fuel feedstock by conveyor and the storage of any recovered biomass fuel feedstock (such as recovered wood, paper and cardboard) and all post-combustion residues shall be under cover at all times during the operation of the development.**
- 24. The final Commissioning of the Development shall not commence until a scheme for monitoring air quality, within an area to be prescribed by the Planning Authority by the Planning Authority and SEPA, is submitted to and approved in writing by the Planning Authority in consultation with community statutory consultees. The scheme shall include measured location(s) within the prescribed areas from which air quality will be monitored, the equipment and methods to be used and frequency of measurements to be undertaken continuously thereafter. Monitoring air quality shall be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the Planning Authority.**
- 25. Prior to the Final Commissioning of the Development, plant and pipework (a) to generate process heat to be used by neighbouring properties, and (b) to recover heat for a district heat network shall be installed within and to the boundary of the development site to allow the future supply of both forms of heat from the development.**
- 26. Commencement of the Development shall not take place until a scheme for informing the local community about the progress of the development has been submitted to and approved in writing by the Planning Authority. The scheme shall be implemented in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority.**

27. Prior to Commencement of Operation of the development a vehicle management plan shall be submitted for the approval of the Planning Authority in conjunction with Transport Scotland. The plan shall include procedures for recording the number of biomass fuel feedstock deliveries to the plant by road each day and for making such records available to the Planning Authority for inspection on request. No more than 50 fuel delivery vehicles shall enter the site in any 24 hour period without prior written approval of the planning authority. No more than 900 fuel delivery vehicles shall enter the site in any calendar month unless a transport assessment to cover this eventuality has been submitted to and approved in writing by the Planning Authority, following consultation with Transport Scotland. In the event that any mitigation measures are identified as being necessary they shall be implemented in accordance with the approved transport assessment. Thereafter the vehicle management plan shall be implemented.
28. Any percussive piling proposed must be demonstrated (prior to the start of cooling water outfall construction operations) to produce no more than 95dBht at the mouth of the River Carron. This must also be monitored during piling operations, to ensure that the mitigation is operation correctly.
- Piling operation for the cooling water outfall construction must;
- soft start methods must be employed
 - avoid night time piling (piling limited to no more than 12 hours a day)
 - limit percussive piling to 6 hours a day
 - last no more than 6 months in total.
29. Construction works in the River Carron shall only take place between the months of April to September (inclusive).

Reason(s):-

9. To ensure that the buildings are removed and the site is properly restored in the interests of visual amenity.
10. To enable the Planning Authority to fully consider these details and to exercise reasonable and proper control over the design and appearance of the development.
11. To ensure that only certified biomass fuel feedstocks are used and to ensure that the plant operates according to sound sustainable principles and policies.
12. To ensure that only certified biomass fuel feedstocks are used and to ensure that the plant operates according to sound sustainable principles and policies.
13. In the interest of air safety
14. To protect people and the environment from the impact of waste water and to ensure the development of the public sewer network.

15. To ensure the development does not cause unreasonable congestion within the surrounding urban road network and in particular at the M9 junction 6 off the slip during construction and operation.
- 16-20. To ensure the ground is suitable for the proposed development, and to protect the health of people working on the site.
21. To ensure the site is adequately mitigated against the risk of flooding.
22. To ensure that the development is adequately risk assessed.
23. To protect visual amenity.
24. To protect air quality.
25. To ensure that appropriate grade heat is available for use to benefit of the local domestic, commercial and industrial users when the demand arises.
26. To ensure that the local community is informed about the progress of the development.
27. To ensure that the operation of the plant does not cause unreasonable congestion within the surrounding road network.
28. To avoid impacts on the River Teith SAC from percussive piling.
29. To avoid impacts on the Firth of Forth SPA from construction works

Informative(s):-

1. For the avoidance of doubt, the plans to which this decision refers includes all plans approved as part of deemed planning permission EC00005229 which was issued by the Scottish Government Energy Consents Unit on 03 June 2013 as well as plans associated with this application bearing our online reference numbers 01, 02, 03 and 04.
2. For the avoidance of doubt, the condition numbering reflects the numbering used in deemed planning permission EC00005229 which was issued by the Scottish Government Energy Consents Unit on 03 June 2013.
3. Falkirk Council directs that unless the development hereby permitted has already begun, this permission will lapse on 3 June 2020. This direction replaces section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended) for this permission.

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pp Director of Development Services

Date: 8 March 2019

LIST OF BACKGROUND PAPERS

1. Falkirk Local Development Plan.
2. Falkirk Local Development Plan 2 (Proposed Plan).
3. Scottish Planning Circular 4/1998 'The Use of Conditions in Planning Permissions'.
4. Planning Advice Note 33 'Development of Contaminated Land' (PAN 33).
5. Scottish Government Energy Consents Unit decision letter Ref EC00005229 - dated 3 June 2013.
6. Scottish Planning Circular 5/2009: Hierarchy of Developments.
7. National Planning Framework.

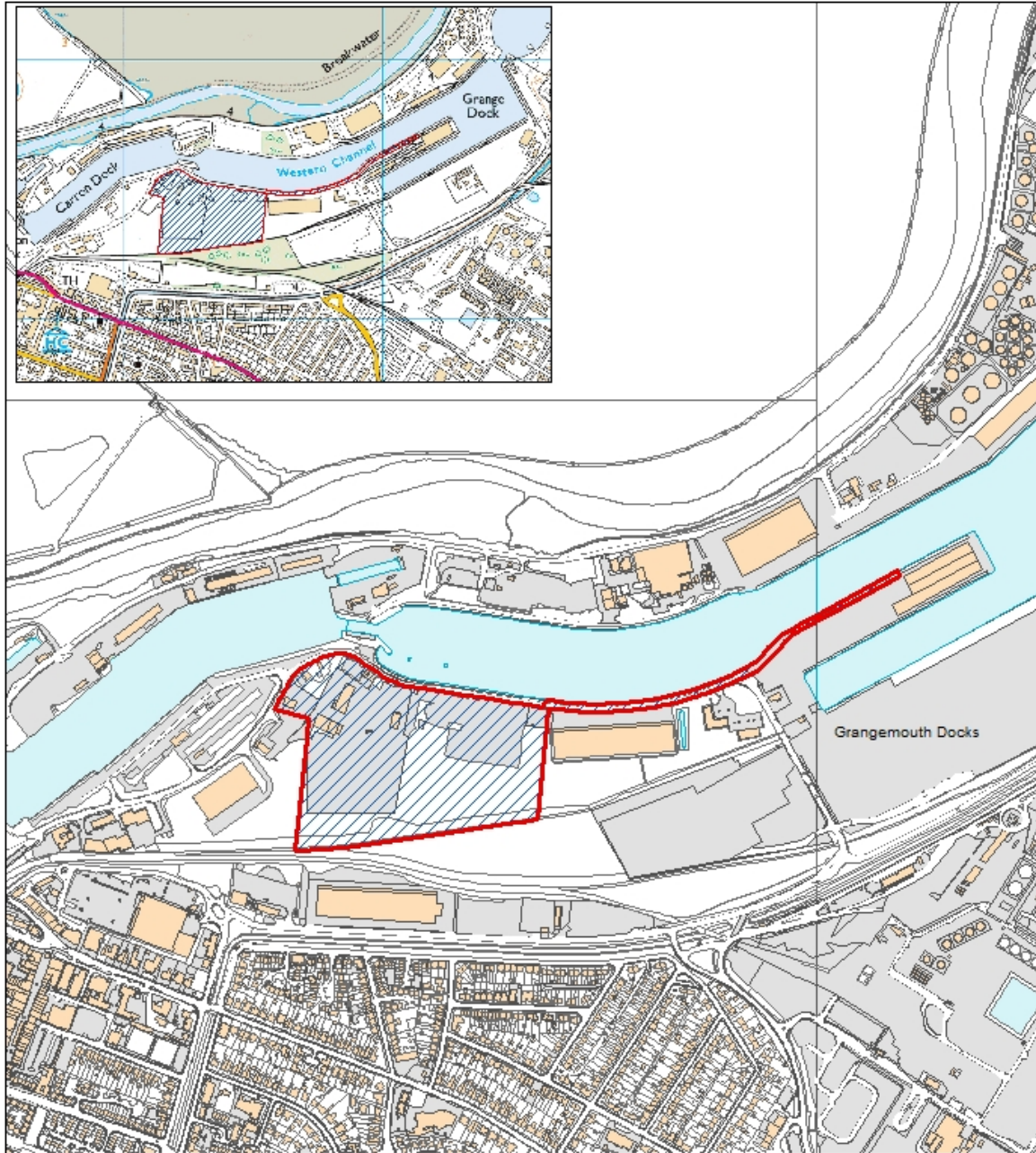
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504701 and ask for Kevin Brown, Planning Officer.

Planning Committee

Planning Application Location Plan

P/18/0324/VRC

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



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