

## An Open Letter to my colleagues in the Scottish Film Industry: The Emperor of Pentland Studios Wears No Clothes

I began researching Pentland Studios in May 2017 after reading various articles [declaring the project 'green-lit'](#), and in which a representative from PSL Land Ltd was quoted stating their hope that the studio would be operational by the end of 2018. My intention was not to write an article, rather simply to better understand the situation. However after fact checking these claims I believe it's pertinent to share what I've discovered.

The conclusion of my research so far outlines what I consider to be a more accurate timeline before physical and legal boundaries pertaining to the development of Pentland Studios are lifted, if they can be at all. Subsequently, I find it improbable that the company behind Pentland Studios, PSL Land Ltd, will be authorised to break ground within the next four to five years - a timescale which the Scottish Government acknowledges within the documents I will go on to reference.

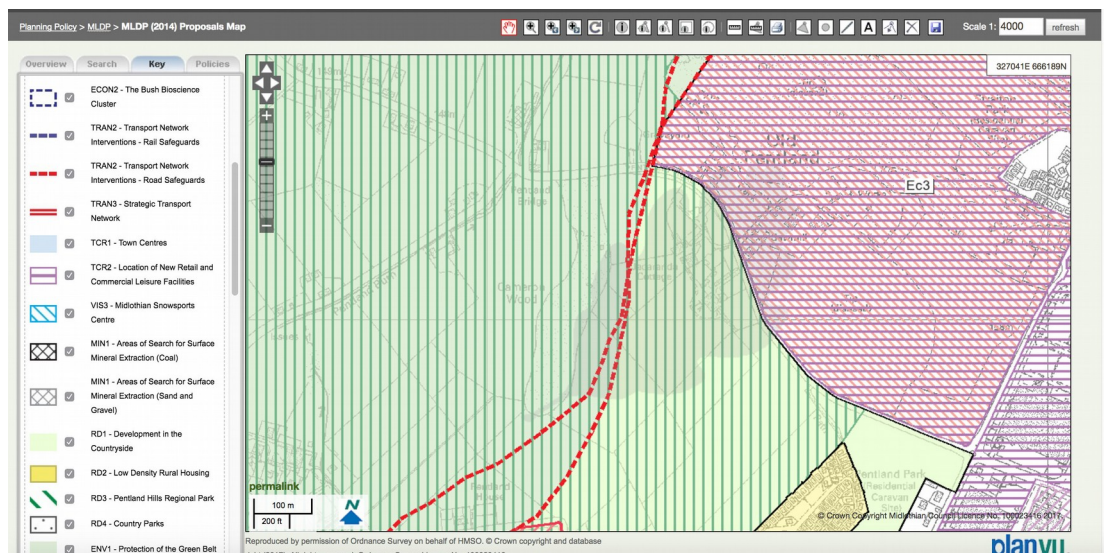
The following three reasons support the veracity of this proposed timescale and I will go on to discuss each point in more detail. In order to purchase the land, and to secure and enact planning permission in principle and go on to break ground on the development, PSL Land Ltd must navigate:

1. The funding of, and negotiated safeguarding of, an area on which to build a road that is only in a very early design phase, subject to a suspensive Grampian condition.
2. A potentially lengthy court battle with a tenant farmer with a rare tenancy of neglected legal status, and supported by strong opposition from the Damhead community and their lawyers.
3. The funding of and application for full planning consent along with the public scrutiny this entails.

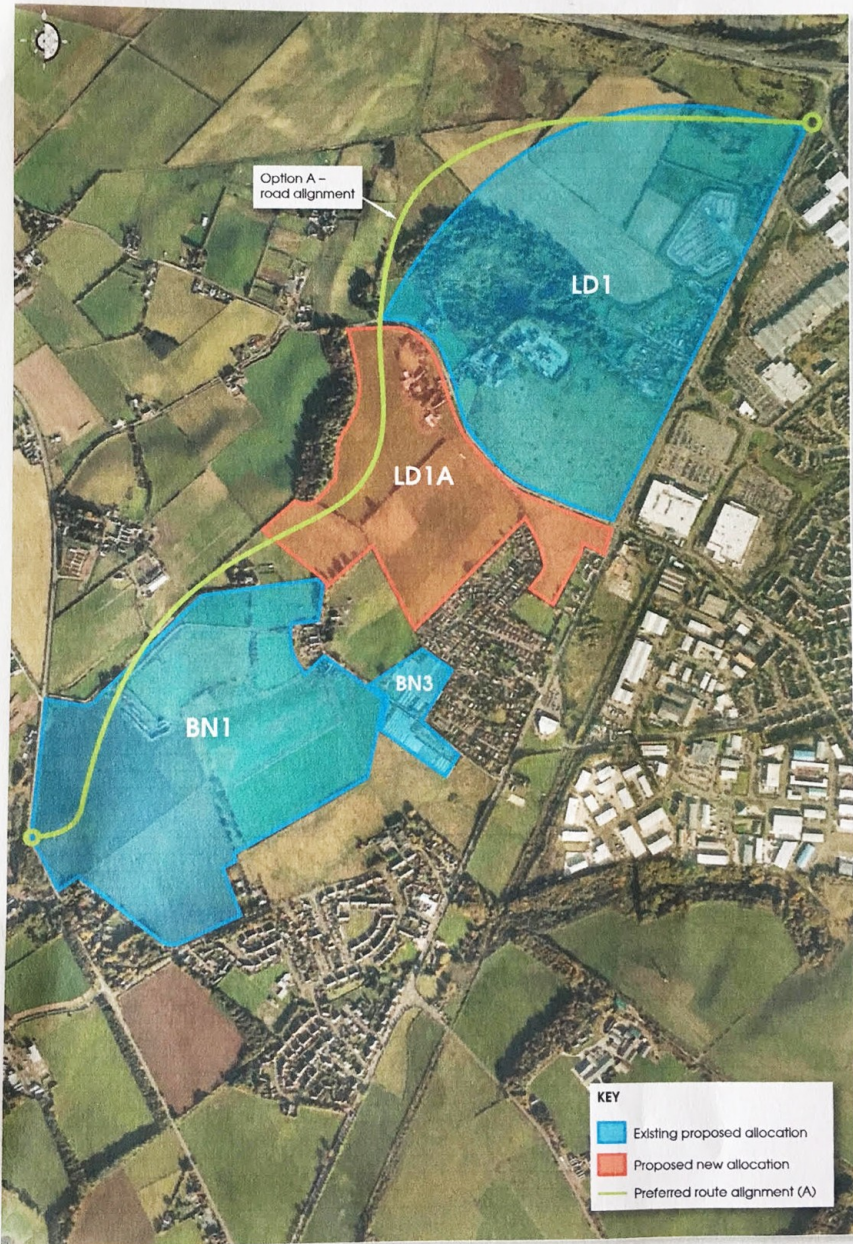
Please note that every fact stated or quote referenced in this article is publicly available in [596 documents on the DEPA website](#), the Scottish Land Court website and the website of the Midlothian Local Plan. With this volume of information, it's taken a lot of time to digest and evaluate, and so it's now my hope that this article will be of interest to any number of 'grown ups' in the film and TV industry whose experience places them in a better position to assess its relevance to the wider studio conversation. I'm not writing this to throw a spanner in the works, more to draw attention to the existing spanner that has so far been fairly lacking in public scrutiny.

### 1. The Grampian Condition

Contrary to news headlines stating that Pentland Studios has been 'given the green light' by the Scottish Government, this phrase is misleading. In 2016 The Scottish Government sent the land and planning official David Bullya to create an [independent report](#) on the Pentland Studios development. His report concluded that planning permission in principle should be rejected. The Scottish Government chose to consider his concerns, but rather than reject the application it issued a [Notice Of Intention](#) to grant planning permission in principle, subject to several caveats and with a six-month deferral of their decision. To this end, planning permission in principle has not yet been granted fully and one of the reasons is Midlothian Council's proposed Local Development Plan (LDP), and in particular its proposal to [build the A701 relief road](#) through an area of land owned by The Gibsons Trust, leased to Mr Jim Telfer, and earmarked by PSL Land limited for the development of Pentland Studios.



(Zoomed in screenshot from [MLDP maps website](#) demarcating the two proposed routes of the A701 relief road.)



(Image from MLDP indicating Option A road alignment)

The proposal for this road build, however, is not yet confirmed because the LDP has yet to be evaluated and so, to quote directly from sections 18 and 19 of the [letter containing the Scottish ministers' decision](#) on the planning application, dated 3 April 2017:

18. ... "Given the uncertainty around the precise location and land uptake required for the proposed A701 relief road, and to address

*the reporter's concern regarding the impacts of this proposal upon its delivery, Ministers determine that a Grampian (suspensive) condition be attached to the grant of consent. This condition would prevent the proposed development from commencing until an appropriate location for the A701 relief road has been approved in writing by the planning authority and safeguarded. This would ensure that the mixed use film studio proposal would not prejudice the aspirations for a relief road in the local development plan."*

*19. ... "Ministers recognize that the location of the route of the A701 relief road has potential to impact on the proposed development but consider that as the route is yet to be established, this is not sufficient grounds to refuse to grant planning permission in principle."*

So the government acknowledges that the desired location for the A701 relief road would prevent the studio build, but since the route is still in negotiation, that isn't a good enough reason to refuse PPP. Which brings us to why planning permission in principle has not yet been fully granted:

*34. ... "Scottish ministers propose to defer their decision on the planning application, in the first instance for a period of six months to enable the relevant planning obligation to be completed and registered or recorded, as the case may be."...*

The relevant planning obligation refers to the Grampian (suspensive) condition attached to the grant of consent that insists:

*13. (1) (Appendix) "No development shall be commenced unless and until a reserved area map has been submitted to and approved by the planning authority."*

The 'reserved area map' refers to:

*13. (Appendix) ... "A map showing the reserved A701 relief road area; the area of land which is to be reserved for the construction of the proposed A701 relief road and associated works and upon which there is to be no development in accordance with this planning permission."...*

So what's the area? And what's the significance of the Grampian condition? As of May 2017, Midlothian Council had written a brief to be issued to a designer to design the road. Before Midlothian Council approves a design an area cannot be safeguarded, and PSL Land Ltd cannot adhere to the Grampian condition.

According to a spokesperson from Midlothian Council on 12 July 2017:

*“The Council is currently commissioning preparatory work which will need to be completed so that it can inform the preparation of detailed design proposals. At present it is difficult to be precise about the timing of the design stage - the aim is to see this project implemented without delay. We will have clearer knowledge on timescales later this year.”*

If this cannot be achieved within the six month deadline:

*34. “If, by the end of that period, a copy of the relevant planning obligation with evidence of registration or recording has not been submitted to ministers, they will consider whether planning permission should be refused or granted without such a planning obligation.”*

PSL Land Ltd are also required to contribute financially to the cost of the road:

*23. “The report recommends a planning obligation to commit the developer to make a financial contribution to the A701 relief road and to fund improvement of the A701/B702/A720 westbound off-slip/A720 eastbound on-slip junction. Ministers agree this appears to be an appropriate means of mitigating the impact of this proposal on these roads and the proposed A701 relief road.”*

So it's likely that come October ministers will have to re-consider whether planning permission in principle will be refused or granted without the reserved area map. According to Midlothian Council, the land reservation does not need to be identified before the Ministers' decision is made; it is a condition that can be discharged at a later date. It is the case that the applicants will need the Council to assist in identifying this area and, to that end, the Council is due to commission transport consultants to undertake that work.

It seems likely to me that planning permission in principle will be granted in October, but will be followed by a lengthy consultation relating to the reservation of land.

To give a flavor of the complexity of the conversation surrounding the A701 relief road, available in the [David Bullya report](#), alternative alignments for the section of relief road suggested by PSL Land Ltd.'s developer, Keppie, both involve an alt-grade crossing of the Pentland / Damhead Road via a signal-controlled junction box, a design unfavourable to Midlothian Council because it would cause an increase in waiting traffic and could nullify the purpose of the relief road. According to the Bullya report, the optimum solution for crossing the Pentland / Damhead Road without affecting the proposed studio site would be by [a road bridge over the existing road](#). This bridge would require sections of earth embankments on both sides to bring the new road alignment up to the level of the

bridge. The two options submitted by Keppie do not safeguard an adequate area of land to accommodate this design requirement, and if a safeguarded area were agreed upon, the site would require detailed ground investigation.

In either instance, whether the A701 relief road runs through The Gibsone Trust land or through an alternative route to accommodate the studio, road planning is a laborious process and to add to that, Midlothian Council would also be looking at compulsory purchase orders for the Gibsone Trust land and / or potentially other land and property owned by Damhead residents depending on the agreed design.

Evidently, there are many decisions to be made. I recommend a thorough read of the David Bullya report in order to fully understand the issues thrown up by the Grampian condition. The report does, however, prompt a key question: considering the condition that PSL Land Ltd must contribute to the cost of the road, but that land reservation does not need to be identified before the Ministers' decision is made, will the Scottish Government grant planning permission in principle without an evaluation of what this cost might be? Not to mention the costs of any potential Compulsory Purchase Orders?

Private investment in infrastructure is certainly an attractive offer to the Scottish Government; however, it seems likely that by the end of the six month period (October 2017) in which PSL Land is expected to conclude the necessary planning obligation, failure to do so will either result in planning permission in principle being rejected, or if accepted, it would be pending adherence to the Grampian condition.

Considering these conditions, and the legalities surrounding Jim Telfer's tenancy dispute which I discuss below, I find it safe to estimate the timeline for the settling of this dispute could be as long as four to five years. In fact, the Scottish Government acknowledges the likelihood of this timescale in the Notice of Intention (see below):

*33. Section 59 of the Act provides for a 3-year time limit for the submission of applications for approval of certain matters where approval of the planning authority is required by a condition before the development in question may be begun. Ministers consider that in this case this period be extended to 5 years to allow the necessary requirements of the permission to be agreed and met.*

To surmise, even if Planning Permission in Principle were to be granted, the Scottish Government is allowing five years rather than three years for all issues to be settled before PSL Land Ltd would lose the right to enact their planning permission. Evidently they have just as much confidence in the 2018 delivery as I do.

This brings us neatly to:

## 2. The Tenant Farmer's land dispute

Jim Telfer, 84 years old, husband of Mary, 82 years old, leases a 59-acre plot of land in Old Pentland that's owned by The Gibsone Trust, and has been farmed by his family since November of 1915 when his grandfather signed a lease. This lease is a [statutory smallholding](#) and is very unlike most farming leases. It's governed by the Crofters' Holdings Act 1886 and the Small Landholders Scotland Act 1911. There are [only 74 of these particular types of tenancy left in Scotland](#) and their legal status has been neglected. This neglect is relevant to Pentland Studios' future and will be discussed further into this article.

The only way to break these tenancies is by non-compliance of tenancy i.e. not paying rent, wilfully giving up your landhold or the [decision by a land court](#) to remove the tenant, if served a notice to quit by the landlord. Unlike modern agricultural tenancies like an SLTD (Short Limited Duration Tenancy, no more than five years) or an MLTD (Modern Limited Duration Tenancy, a minimum of ten years) which are governed by the Agricultural Holdings (Scotland) Act 2003, and of which the 'right to buy' is triggered when the owner of the farms decides to sell the farms, statutory smallholdings like Mr Telfer's are not currently allowed the right to buy, [but they are heritable](#). Mr Telfer's landhold will legally be passed down through his family, although Mr Telfer can still, at any time, be served a Notice to Quit by the landowner. However, the Crofters' Holdings (Scotland) Act 1886 sets out the requirements for resumption, namely for a reasonable purpose to the benefit of the estate, and only [the Scottish Land Court](#) has permission to grant the resumption order.

Mr Telfer has been offered several different packages by the Gibsone Trust to willfully give up his landhold, none of which he has accepted.

Mr Telfer has no intention of leaving his home, land and business, or to disinherit his family of the land, and so he will contest any effort towards resumption of the landhold or farmhouse. The Gibsone Trust must apply to the Scottish Land Court for resumption of the landhold and if it does so, the case is likely to appear before the court approximately six months after Mr Telfer lodges a motion to contest. If the decision of the Scottish Land Court is unfavourable to the tenant he may have the right to appeal the decision at the Outer House, which can potentially take another year, and then another year to the Inner House and up to another year and a half if the tenant chooses to continue his appeal before the Supreme Court.

You may have an opinion regarding whether or not Mr Telfer *should* be evicted to make way for the studio; some of you may have strong opinions for or against more radical land reform and security of tenure for farmers. You might feel strongly about whether his use of the land is more or less important than building a film studio. Regardless of these views, the fact remains that Mr Telfer has a legal right to contest his eviction, and along with the backing of the Damhead community, he intends to appeal at every stage. How we feel about this is academic, frustration cannot change agricultural law.

And so, back to the relevance of the neglected legal status of the particular type of tenancy that Jim Telfer holds; because of the age of the legislation protecting this tenancy, never before has the current legislation governed by the Land Reform Act of 2016 been tried at a land court against the Crofters' Holdings Act 1886 and the Small Landholders Scotland Act 1911. That's what makes this case so fascinating, and likely very time consuming. SLTDS and MLDS, and any tenancy governed by the Agricultural Holdings (Scotland) Act 2003 are not contestable, and in such instance as a notice to quit is served, it could be actioned immediately. However, rare statutory smallholdings such as the type for which Mr Telfer holds a lease *are* contestable - thus the case could be tried at an Inner House, Outer House and Supreme Court. This action is impossible for anyone to predict at this time; however Mr Telfer and the Damhead community have spent the past two years preparing for court and they intend to fight at every stage. They believe they have sufficient evidence to take their case all the way to the Supreme Court, and considering the uncertainty surrounding the legal status of Mr Telfer's tenancy, one should not assume that they wouldn't be granted the appeals they lodge.

Planning permission aside, as referenced in the [Delloite Report](#), purchase missives although concluded, are conditional upon securing planning permission in principle and the current owner providing vacant possession. In short, a purchase cannot take place until the tenancy dispute has been settled. If you're still with me, you'll see by now that this situation puts Mr Telfer, the Gibsone Trust and PSL Land Ltd in a type of stalemate where nobody can make a move, be it to build, buy or vacate, until a judge decides whose case is the strongest.

The last hurdle to discuss on this occasion is:

### 3. The nature of the planning permission

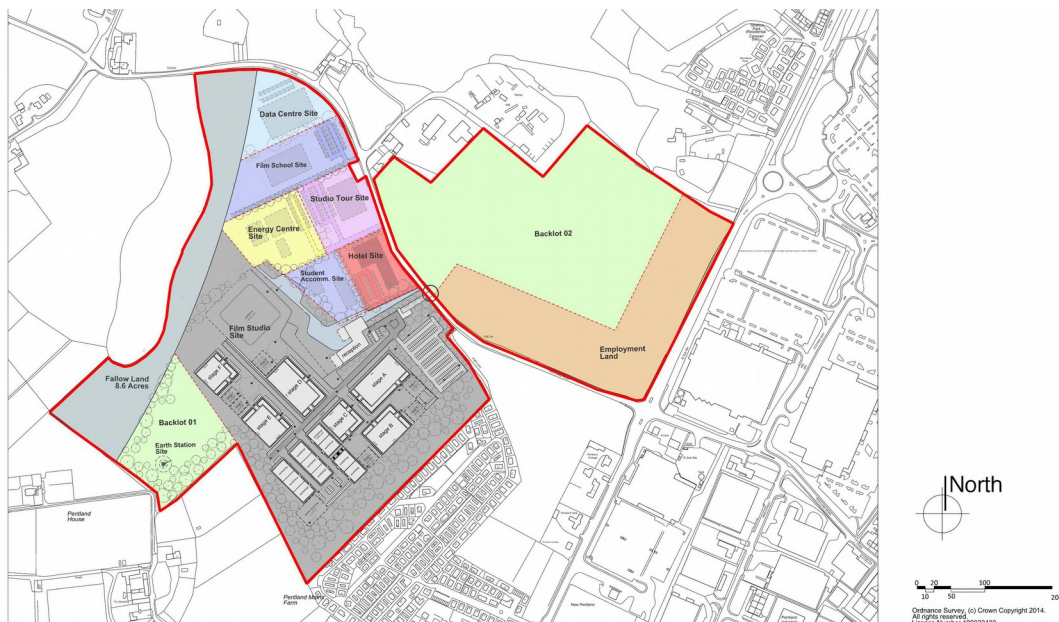
The planning permission in question is planning permission in principle, not planning permission in detail. By granting planning permission in principle the government would essentially be saying 'Yes we agree that you could, in theory, build a studio on this bit of



land.’ The purpose of planning permission in principle is often to help developers and landowners negotiate sales before further details of the build are worked out. PSL Land Ltd will still have to apply for planning permission in detail, at which point the actual design and build of the studio will be subject to scrutiny.

If planning permission in principle is granted in October then the sale of the land to PSL Land Ltd can go through (but only if and when Jim Telfer’s tenancy dispute is resolved because the sale of the land is subject to vacant possession, and remember how long that is likely to take, and thus this whole story line is turning into a Catch 22 scenario). Planning permission increases the value of land from around £5,000 per acre to £500,000 an acre, so I imagine the Gibsons Trust is keen for this to happen, and if PPP is granted, PSL Land Ltd can progress with a PPD application, but for a development of this scale, it’s a huge cost, and PSL Land Ltd will have to decide how much money it wants to spend on a PPD application before the tenancy dispute is resolved. As discussed in the last section of this article, this could be years. Depending on the extent of local opposition, a PPD application could potentially be as long and drawn out as the PPP application.

There are already several questions regarding current plans for the build. Current plans for Pentland Studios include a studio tour building directly on top of Mr Telfer’s property, so plans for the design of the studio complex would require a significant reworking if he were to be allowed to remain in his home.



*(Most recently published design from Keppie Design Ltd with fallow land intended to allow space for the A701 relief road, but subject to restrictions including all-grade crossing. This map shows a studio tour building on top of Mr Telfer’s farmhouse)*

## In Summary

You may be now forgiven for raising an eyebrow about the possibility of a new build studio by the end of 2018. Are you starting to wonder if perhaps this particular patch of land isn't the *best* place to build a film studio?

I would suggest that as Film and TV Practitioners we would be wise to consider, at this stage, whether we should continue to support Pentland Studios in perpetuity (i.e. support at any cost, and for however long it takes), and perhaps we should think critically and pragmatically about the extent to which we lobby for the advancement of Pentland Studios.

Perhaps we should be campaigning for more realistic developments? Perhaps we should continue to pressure the Film Studio Delivery Group and the Scottish Government to back a studio plan that has potential to be delivered more expeditiously, as should be the case considering the delivery of a Scottish film studio is recognised by the Scottish Government as an 'Issue of National Importance'.

With or without Pentland Studios, perhaps the Scottish Film Industry still needs incremental development of several smaller two-to-four sound stage studio builds, delivered quickly, designed to sufficiently accommodate current demands and with the potential to grow incrementally as the industry grows?

There are many economic and political barriers that Creative Scotland, Scottish Enterprise and the Cultural Enterprise Office must navigate in order to attract mixed public and private sector developments in accordance with state aid rules, and I can understand why an entirely privately funded development is attractive enough to overlook, for a certain period of time at least, the issues that make this development so precarious. In order to fully understand the Film Studio Delivery Group's predicament I recommend reading these parliamentary reports from [9 March 2016](#) and [10 February 2016](#).

All this in consideration, I propose that as film and TV practitioners we:

- a) Consider carefully whether or not to support Pentland Studios in perpetuity.
- b) Put strong pressure on The Film Studio Delivery Group to investigate, in the meantime, other sites for several smaller studio constructions.
- c) Pay close attention to Guardhouse Studios at Heriot Watt University when its application for Planning Permission in Detail is submitted later this year.

As a lobby group, we have a lot of power as film and TV practitioners. The letters submitted to Liz Kerr by members of the AFTPS delivered considerable weight behind the Pentland Studios planning permission application and these representations were considered by the Scottish Government when it decided to reject the advice of the reporter, David Bullya and push through the PPP, albeit with caveats, as an 'Issue of National Importance'.

It's clear to me from reading the [representations from the industry](#) on the DEPA website that most authors were not campaigning for Pentland Studios specifically, but for the 'desperate need for any Scottish Studio.' It occurs to me that after twenty years of failure to deliver a film studio, our government might be so embarrassed to see the Emperor of Pentland Studios slowly and painfully undressing that it might pretend to us for a while that he is clothed. Our voice is strong and carries weight, and for this reason we must not take our eye off the ball.