

Notice of Meeting and Agenda



Planning Committee

Venue: Council Chambers,
Midlothian House, Dalkeith, EH22 1DN

Date: Tuesday, 28 February 2023

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Democratic Services
Clerk Telephone:
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Further Information:

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1 Welcome, Introductions and Apologies

2 Order of Business

Including notice of new business submitted as urgent for consideration at the end of the meeting.

3 Declaration of Interest

Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

4 Minute of Previous Meeting

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| 4.1 | Minute Planning 10 January 2023 for Approval | 3 - 8 |
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5 Public Reports

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| 5.1 | NPF4 Update, MLDP2 Launch and DPS15 Report and Appendices | 9 - 42 |
| 5.2 | PPF 2021-22 - Feedback Report and RAG Assessment | 43 - 48 |
| 5.3 | Land North of 6 Ashbank, Gorebridge - Enforcement Notice Prosecution Report and Appendices | 49 - 72 |
| 5.4 | 2 Conifer Road, Mayfield - Enforcement Notice Appeal Decision Report and Appendices | 73 - 84 |
| 5.5 | 22.00027.PPP - Land South of Mayfield and East of Newtongrange Report and Plans | 85 - 146 |
| 5.6 | 22.00345.DPP - Hamilton Waste, Eldin Industrial Estate, Loanhead Report and Plans | 147 - 178 |
| 5.7 | 20.00899.DPP - Land at Robertson Bank, Gorebridge Report and Plans | 179 - 208 |
| 5.8 | 22.00721.DPP - Easthouses Primary School Report and Plans | 209 - 230 |

6 Private Reports

No items for discussion

7 Date of Next Meeting

The next meeting will be held on 28 March 2023

Minute of Meeting

Planning Committee
Tuesday
Item No: 4.1



Planning Committee

Date	Time	Venue
Tuesday 10 January 2023	1.00 pm	Council Chambers, Midlothian House

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Bowen	Councillor Cassidy
Councillor Drummond	Councillor McCall
Councillor McEwan	Councillor McKenzie
Councillor McManus	Councillor Parry
Councillor Pottinger	Councillor Scott
Councillor Smail	Councillor Virgo
Councillor Winchester	

In Attendance:

Matthew Atkins	Lead Officer, Planning Obligations and Enforcement
Derek Oliver	Chief Officer, Place
William Venters	Principal Solicitor
Janet Ritchie	Democratic Services Officer
Ross Neill	Democratic Services Officer

1. Apologies

Apologies for absence were received from Councillor Russell, Councillor Milligan and Councillor Curran.

2. Order of Business

The order of business was as set out in the Agenda.

3. Declarations of interest

Councillor Scott declared an interest with regards to item 5.1 and 5.2 therefore would take no part in this discussion and would leave the meeting for both these items.

Councillor Smaill advised that with regards to 5.1 his wife had joined Moorfoot Community Council but this was subsequent to the comments submitted regarding this item therefore he would still participate in this item. Having consulted with the Monitoring Officer he further advised that if his wife in her role within the Community Council commented on any future planning applications he would abstain from the discussion, however, if no comments were made he would fulfil his duties as a Councillor in the planning discussions.

4. Minutes of Previous Meetings

The minute of the meeting of 22 November 2022 was submitted and approved as a correct record.

5. Reports

Councillor Scott left the meeting at 1.02 pm

Agenda No	Report Title	Submitted by:
5.1	Pre Application Report – Middleton Lower Quarry, Gorebridge (22.00856.PAC)	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for the proposed change of use of land to a recycling facility and the continuation of landfill operations at Middleton Lower Quarry (Middleton Limeworks), Gorebridge.</p> <p>The Planning Officer presented the report outlining the main sections contained within the report.</p>		
Decision		
<p>The Planning Committee noted:</p> <p>a) the provisional planning position set out in this report;</p>		

<p>b) that any comments made by Members will form part of the minute of the Committee meeting; and</p> <p>c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.</p>
Action
The Lead Officer, Planning Obligations and Enforcement

Agenda No	Report Title	Submitted by:
5.2	Section 42 Application – Middleton Limeworks, Gorebridge (22.00546.S42)	Chief Officer Place
Outline of report and summary of discussion		
<p>At the Planning Committee meeting on 17 November 2015 the Committee granted planning permission for the infilling and restoration of the former Middleton Limeworks Quarry. This section 42 application seeks to amend the wording of conditions 1 and 3 attached to the grant of planning permission (15/00503/DPP) to confirm the duration of the temporary planning permission and to allow the acceptance of non-hazardous waste as an infill material.</p> <p>The Planning Officer in presenting the report highlighted the main sections contained within the report and advised that today the Committee is considering the variations to the conditions as detailed in the report.</p> <p>The Planning Officer in response to a question with regards to how long it takes for the land to be filled in before it can be used for another purpose confirmed that with regards to this application it will be completed by March 2024.</p>		
Decision		
<p>The Planning Committee granted Planning permission for the following reason:</p> <p><i>The proposed amendments to conditions does not fundamentally change the development which is being implemented under a previous grant of planning permission. The proposed development does not have adverse environmental impacts subject to detailed/technical matters being agreed/secured by condition. This presumption in favour of development is not outweighed by any other material considerations. The proposed development accords with the Midlothian Local Development Plan (2017).</i></p> <p>Subject to the conditions as set out in the report.</p>		
Action		
The Lead Officer, Planning Obligations and Enforcement		

Councillor Scott rejoined the meeting at 1.07 pm following discussion of the above two items.

Agenda No	Report Title	Submitted by:
5.3	Section 42 Application – Land South West of Newtonloan Toll, Gorebridge (22.00588.S42)	Chief Officer Place
Outline of report and summary of discussion		
<p>In November 2012 planning permission in principle (07/00556/OUT) was granted for Class 4 (business) and Class 5 (general industrial) uses on land to the south west of Newtonloan Toll, Gorebridge. In December 2019 a new planning permission in principle (17/00559/S42) was granted for the development without compliance with condition 8 (provision of zero and/or low carbon equipment) of the original grant of planning permission. The current planning application seeks to amended conditions; 4.viii (pedestrian/cycling links), 5.i (vehicular and pedestrian access), 5.iii (proposed signalised junction access layout), 5.iv (existing traffic lights at Newtonloan Toll), 7 (high speed fibre broadband) and 9 (electric vehicle charging stations).</p> <p>The Planning Officer outlined the main sections contained within the report and responded to a question with regards to Retail use advising that Retail use was not one of the uses proposed within this Application.</p>		
Decision		
<p>The Planning Committee granted planning permission in principle for the following reason:</p> <p><i>The proposed development site is identified as being part of the Council's safeguarded/committed economic land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations or the proposed amendment of conditions.</i></p> <p>Subject to:</p> <ul style="list-style-type: none"> i. the prior signing of a legal agreement to secure contributions towards public transport. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused; and ii. the conditions as set out in the report. 		
Action		
The Lead Officer, Planning Obligations and Enforcement		

Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the meeting during discussion of the undernoted item, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraph 13 of Part I of Schedule 7A to the Local Government (Scotland) Act 1973:-

Agenda No	Report Title	Submitted by:
6.1	Tree Preservation Order (TPO) - Cousland	Chief Officer Place
Decision		
The Committee agreed the recommendations as detailed in the Report.		
Action		
The Lead Officer, Planning Obligations and Enforcement		

6. Date of Next Meeting

The next meeting will be held on Tuesday 28 February 2023 at 1.00pm

The meeting terminated at 1.11 pm



NATIONAL PLANNING FRAMEWORK NO.4 UPDATE, COMMENCEMENT OF MIDLOTHIAN LOCAL DEVELOPMENT PLAN NO.2, INVITATION TO PREPARE LOCAL PLACE PLANS AND APPROVAL OF DEVELOPMENT PLAN SCHEME FOR MIDLOTHIAN NO.15

Report by Chief Officer Place

1 PURPOSE OF REPORT

1.1 The purpose of this report is to update the Committee on the adoption of the National Planning Framework No. 4 (NPF4) and to advise of the implications for Midlothian of NPF4 adoption, including the formal commencement of the preparation of Midlothian's next local development plan and engagement with communities with regard the preparation of local place plans. The report requests the Committee instruct the Planning, Sustainable Growth and Investment Manager to:

1. Commence preparation of the second Midlothian Local Development Plan (MLDP2);
2. Issue invitations to local community groups to prepare Local Place Plans (LPPs) which will help inform production of MLDP2 (Appendix A);
3. Establish a MLDP2 Officer Project Board, comprising senior managers from across the Council services, to ensure the spatial dimensions of other Council strategies are reflected in MLDP2;
4. Arrange a series of workshops between elected members and officers on NPF4 and MLDP2;
5. Publish the Development Plan Scheme for Midlothian no.15 (DPS15) (Appendix B); and
6. Make any non-material changes necessary to the DPS15 and the Local Place Plan invitations prior to publication.

And the report invites the Committee to note the update on NPF4.

2 BACKGROUND

Adoption of National Planning Framework No.4 (NPF4)

2.1 The Planning (Scotland) Act 2019 (PSA19) introduced a number of changes to the development plan process, most significantly, the change in status of the National Planning Framework (NPF). On adoption and publication by Scottish Ministers NPF4 becomes part of the statutory development plan. The removal of the need for strategic

development plans (SESplan in Edinburgh and the South East of Scotland) under the same legislation means that the spatial strategy, national developments and the national planning policies set out in NPF4 have primacy in the determination of planning applications unless outweighed by material considerations (and subsequent appeals and notices of review). It will also influence the form and content of the next Midlothian Local Development Plan (MLDP2).

- 2.2 On 11 January 2023 the Scottish Parliament approved NPF4, which was then adopted and published by Scottish Ministers on Monday 13 February 2023. NPF4 along with the current Midlothian Local Development Plan (MLDP), which was adopted on 7 November 2017, forms the statutory development plan for Midlothian.
- 2.3 NPF4 sets out the Scottish Government's vision, ambition and policy for land use and development until 2045. It includes an updated collection of national planning policies, superseding the previous Scottish Planning Policy (SPP, 2014), and sets out a comprehensive land use plan for the future. NPF4 is ambitious in that it combines land use strategy and policy framework in their traditional forms, with the inclusion of wider environmental, economic, social, health and wellbeing and human rights and equality priorities.
- 2.4 Progress reports on the PSA19/NPF4 were reported to the Committee at its meetings of August 2019, November 2019, May 2021, January 2022 and 15 March 2022. In addition a NPF4 elected member seminar was held on 1 March 2022. It is recognised that since these reports and seminar local elections have taken place and as such additional workshops with elected members are essential to progress MLDP2.

Determination of Planning Applications

- 2.5 Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (by the 2006 Planning etc. Act and the PSA19) states: "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise". NPF4 is part of the development plan, along with the MLDP and as such both documents provide the policy position against which planning applications and other applications made under the planning Acts are assessed.
- 2.6 As NPF4 is a more recent document than MLDP, and as such is seen as being more up to date, where there is an incompatibility in policies between NPF4 and MLDP, NPF4 will carry more weight in the decision making process in policy terms – however, the local planning authority can determine that material considerations are such that the policy position set out in MLDP is the position the Council wants to adopt in the assessment of an application especially until MLDP2 is adopted. If there are policy and development strategy matters in the MLDP that are not addressed in NPF4, then the MLDP will be the primary planning policy document.

- 2.7 The development land allocations made and confirmed in the MLDP remain and are not amended as a result of the adoption of NPF4.

3 NPF4 POLICY DIRECTION AND HOUSING TARGETS

- 3.1 NPF4 is the Scottish Government's national spatial strategy for Scotland. It sets out the Scottish Government's spatial principles, regional priorities, national developments and national planning policy.
- 3.2 It represents a radical shift in national policy requirements for the country's planning system, with a real focus and drive on the climate crisis, sustainability and biodiversity. While it contains policy on the wide range of matters that form part of the planning system, it places great emphasis and significance on:
- The climate and nature crisis;
 - Biodiversity – its safeguarding and enhancement;
 - Sustainability and quality environments;
 - Location and quality of different types of development;
 - Living locally and the 20 minute neighbourhoods concept;
 - Community wealth building and a wellbeing economy;
 - Infrastructure and services; and
 - Renewable energy.
- 3.3 NPF4 sets out that local development plans should allocate sufficient land for business and industry to ensure a range of sites are available to meet market demand. It will be for MLDP2, using business and industry land audits, to ensure sufficient land is available. Unlike with housing, no specific quantity of economic land to be allocated is identified in NPF4. NPF4 identifies a housing land requirement for Midlothian.

Midlothian Housing Requirement from NPF4

- 3.4 NPF4 contains a Minimum All Tenure Housing Land Requirement (MATHLR) for each planning authority (the Council's housing target). For Midlothian the MATHLR requirement is 8,850 homes. NPF4 sets out in Annex E (page 143) that the 8,850 Midlothian MATHLR figure is the *minimum* number of new homes that should be provided in Midlothian for a 10 year period (the lifespan of MLDP2). NPF4 sets out the MATHLR is expected to be exceeded in each planning authority's local development plan. This means that MLDP2 is expected to provide land for a figure in excess of 8,850 new homes. A very significant amount of housing land is already allocated through MLDP that can help meet this requirement.
- 3.5 Existing housing land allocations will not be removed by NPF4. The Council will need to ensure MLDP2 identifies land allocations for the 8,850 requirement and for any additional units. In identifying any new development land requirements, it will be for the Council to select the land it considers most appropriate for a place making approach that is in line with the policy direction of NPF4. The NPF4 housing requirement figures are based on demand from 2022 to 2036, but have been

annualised and converted into a ten year requirement forming a development plan target. MLDP2 when adopted, as required by the PSA19, needs to cover a 10 year period and will need to identify land for in excess of 8,850 homes as informed by the MLDP2 Evidence Report and the subsequent Proposed Plan.

- 3.6 As set out in the 2022 Housing Land Audit (2022 HLA), presented to Committee at its meeting in November 2022, the established housing supply in Midlothian is 11,966 units as of 31 March 2022. This is the sum of the remaining capacity of all sites known to Midlothian Council, whether allocated through development plans or granted planning permission. Of these, 11,276 units are effective and 690 are constrained. Existing housing allocations will be able to meet much of the MATHLR requirement. On the basis of programming in the 2022 HLA, by April 2026 there will be a remaining effective supply of 7,663 houses. Safeguarded Sites identified in the development plan would provide further supply of 1,250 units (bringing the total up to 8,913 units) – there is active developer interest in most of these sites, the Safeguarded Sites table in the Audit provides further information about likely phasing. A future stream of windfall sites (sites not currently known about and not identified in the plan) could provide a further 680 units over 10 years if the windfall build rates in the last decade are maintained – this would bring the total of potential units to 9,593, exceeding the MATHLR figure of 8,850 units, although this is dependent on Safeguarded Sites being delivered during the life of MLDP2 and windfall sites coming forward as anticipated. Windfall sites are often considered as ‘additional’ units rather being set against housing targets and for certainty it would be prudent not to be dependant on windfall sites to meet the MATHLR target.
- 3.7 The identified sources of supply listed above would potentially meet the majority of the MATHLR for MLDP2 (excluding windfall sites). Set against this, other factors such as de-allocation of sites or demolitions may diminish the housing land supply. Determining the degree of additional housing allocation to meet the MATHLR will be a key requirement of MLDP2’s Evidence Report and the “Gate Check” process to be overseen by the Scottish Government’s Directorate of Planning and Environmental Assessment. Furthermore, the Council may wish to consider new housing allocations to support its own ambitions which may be to deliver additional affordable housing and/or ‘starter’ homes, housing to support the rural economy of Midlothian or for place-making or economic reasons.
- 3.8 It should be emphasised that the MATHLR is an All-Tenure requirement. MLDP2 will have to address demands for affordable, specialist and wheelchair accessible housing through site allocations and policy. This will also be a key requirement of MLDP2’s Evidence Report and the “Gate Check” process.
- 3.9 NPF4’s Quality Homes section states that areas that may be suitable for new homes beyond the 10 year local plan period are also to be identified. The 10 year lifespan of MLDP2 is expected to be 2026-2036.

Therefore MLDP2 should be considering its position on housing and possible locations for it beyond 2036 into MLDP3. No housing targets for the post 2036 period are given in NPF4.

4 MIDLOTHIAN LOCAL DEVELOPMENT PLAN NO.2 (MLDP2)

Authority to Commence Preparation of MLDP2

- 4.1 This report requests the authority of the Committee to formally launch the MLDP2 process, which will trigger a period of widespread engagement and the drafting of a new local plan. An indicative timescale for the production of MLDP2 is set out in the below table. MLDP2 will be prepared in accordance with the Scottish Governments Local Development Planning regulations and guidance (currently in draft, but expected to be adopted in March 2023) and when adopted will supersede the current adopted MLDP.

Indicative Timescale for Production of MLDP2

	Key Stage	Approval Body	Timescale
1	Formal commencement of MLDP2	Planning Committee	February 2023
2	Invitations to community groups to prepare Local Place Plans (LPPs)	Planning Committee	March 2023
3	Widespread engagement to inform production of the MLDP2 Evidence Report*	Planning Committee	2023
4	Approval of MLDP2 Evidence Report for submission to Scottish Ministers "Gate Check"	Full Council	January 2024
5	Reporting the results of/feedback from Scottish Ministers "Gate Check" of the MLDP2 Evidence Report	Planning Committee	From March 2024
6	Approval of MLDP2 Proposed Plan for publication for representations (a 12 week formal consultation period)	Full Council	March/April 2025
7	Approval of the MLDP2 Draft Delivery Programme for publication	Full Council	March/April 2025
8	Approval of MLDP2 Proposed Plan for submission to Scottish Ministers – this may include a Modification Report making changes to the Proposed Plan following representations received	Full Council	December 2025
9	Examination into unresolved issues from representations received on MLDP2 Proposed Plan	N/A	From March 2026
10	Report of Examination Received from the Reporter from the Directorate for Planning and Environmental Appeals (DPEA) appointed by Scottish Ministers	N/A	September 2026
11	Adoption of MLDP2	Full Council	December 2026
12	Adoption of MLDP2 Delivery Programme	Planning Committee	March 2027

Note: the dates set out in the table maybe subject to change.

* Widespread engagement to inform production of the MLDP2 Evidence Report will take place with elected members, local communities, groups identified in planning legislation, key agencies, third sector organisations, private sector organisations, landowners and the construction and development industry.

New Style Local Development Plans (LDPs)

- 4.2 Every planning authority shall prepare a local plan for their district which sets out proposals and policies for the development and use of land and for the protection and conservation of natural assets and amenity. The local plan shall also include a map showing the said proposals.
- 4.3 Changes introduced by the PSA19 have amended the process which the Council followed when it prepared the current MLDP. The previous requirement to produce a Main Issues Report and then prepare a Proposed Plan to take to Examination and for ultimate adoption has been replaced by a requirement to produce an Evidence Report, followed by the production of a Proposed Plan, which will be published to invite representations and then go forward for Examination, and ultimate adoption by the planning authority. Further detail of this new process is provided later in this report and in the Development Plan Scheme for Midlothian no.15 (DPS15) which is appended to this report as Appendix B. In summary the production process of the MLDP2 will be (for which an indicative timetable is provided in the above table):
1. Preparation of the Evidence Report by Midlothian Council and the Preparation of Local Place Plans by community groups;
 2. Scottish Ministers “Gate Check” of the Evidence Report;
 3. Preparation of MLDP2 Proposed Plan;
 4. Examination of unresolved representations to the MLDP2 Proposed Plan;
 5. Adoption of final MLDP2 by Midlothian Council followed by monitoring and delivery of MLDP2.
- 4.4 As a result of PSA19 new LDPs must be reviewed at intervals of no more than 10 years. Previously the review period was every five years. It is important to note that Midlothian currently has an up to date LDP. The LDP establishes where development should occur and where it should not. Without an up to date LDP planning applications would have to be assessed on a case by case basis without an up to date locally informed policy framework. The LDP process allows Midlothian Council to consider the future of the district in conjunction with the climate emergency and the requirements for growth as set out in NPF4.
- 4.5 The purpose of planning is to manage the development and use of land in the long term public interest. MLDP2 will define how Midlothian will develop over the 10 year period 2026-2036. It will include policies and allocations for the uses of the land. PSA19 changes the construct of the development plan - as NPF4 will form part of the development plan,

many of the policies used to determine planning applications will instead be provided by this national document. MLDP2 should not duplicate and include policies that are in NPF4, although MLDP2 can seek to clarify interpretation of NPF4 in a local context. MLDP2 should provide policy and detail on matters unique to Midlothian, that are not in NPF4 and that can also help deliver the aspirations of NPF4. This approach for the LDP process is intended to help produce a strategy and policy framework more directly suited to the local area.

- 4.6 The expectation from the planning system is that the LDP focusses on delivery. There is a statutory requirement for the MLDP2, under section 16(2)(a)(i) of the Town and Country (Planning) Scotland Act 1997, to take NPF4 and its content into account when MLDP2 is being prepared. The production of MLDP2 is also required by section 4ZB of the Town and Country (Planning) Scotland Act 1997 to have regard to any relevant Regional Spatial Strategy. The Interim Regional Spatial Strategy covering Midlothian was approved by SESplan in June 2021.
- 4.7 New style LDPs are expected to be place-based, with an increased emphasis on maps and site briefs rather than policy wording. The LDP should be used to co-ordinate development and service provision.

Key Issues for MLDP2

- 4.8 Key issues for the MLDP2 will include:
- Mitigation and adaptation to the climate emergency and nature/biodiversity crisis;
 - The protection and enhancement of natural, historical and cultural assets;
 - Housing land supply to meet the NPF4 housing targets;
 - Continuing support for the provision of affordable and specialist housing;
 - Support for economic development, businesses and job creation with an emphasis on community wealth building and a well-being economy;
 - The provision of infrastructure and services;
 - Support for the rural economy;
 - Support for public transport and active travel; and
 - Community building and place-making to create great places to live, work, play and invest.

Evidence Report

- 4.9 The first stage in preparing MLDP2 is to prepare the Evidence Report. This will be the main focus of MLDP2 plan preparation and work in 2023. The Evidence Report is required to provide the evidence base for what to plan for in MLDP2 and be informed by those who are anticipated to be affected by MLDP2. The Evidence Report will be subject to an examination process known as “the Gate Check” to be overseen by the Scottish Government Directorate for Planning and Environmental Appeals (DPEA). This is to ensure that it provides sufficient information

and evidence to go to the next stage in the MLDP2 production, namely the preparation of a Proposed Plan for MLDP2. The Evidence Report is not required to provide all the information collected, but should provide a summary and analysis of what the evidence means for MLDP2 and its preparation. PSA19 places requirements on the planning authority to engage with a wide range of groups when preparing the Evidence Report, including but not limited to elected members, local communities, groups identified in planning legislation, key agencies, third sector organisations, private sector organisations, landowners and the construction and development industry. The Evidence Report must include a statement of how it has sought to include the views of these identified groups in the plan preparation process.

- 4.10 The Evidence Report will not contain details of possible future development sites. Detailed site and location considerations occur at the Proposed Plan preparation stage. The Evidence Report is only intended to contain information to inform preparation of the strategy and the policy framework of the Proposed Plan.

Local Place Plans (LPPs)

- 4.11 The PSA19 introduces a system of Local Place Plans (LPPs). Planning authorities are required to formally invite community groups to prepare LPPs. A schedule of known community groups has been compiled by the Planning, Sustainable Growth and Investment Service in anticipation of issuing an invitation to these groups to prepare an LPP. A copy of the draft invitation is attached to this report as Appendix A.
- 4.12 LPPs are documents to be produced by a community body setting out their ambitions for the development and use of land in their communities. LPPs need to meet identified legislative requirements and be verified by the planning authority, in part to demonstrate the community group has engaged and consulted with the wider local community covered by the local place plan. Where they are verified by the planning authority they must be taken into account in preparing the LDP. The LPPs must take account of NPF4 and MLDP (as the existing local plan) during preparation, but they are also an opportunity for community groups to formally express their aspirations for their local areas in a document that must be demonstrably considered and taken into account in the preparation of a LDP.
- 4.13 This means the LPP can include aspirations on land, buildings, the environment (built and physical), facilities, footpath, cycle and road connections and public transport. It can also include information on what is valued in a community. The key point is that they are prepared by local communities. They can be short and “low tech” documents. Their appearance is not important, it is the content that is important as that is what will be used to help inform preparation of MLDP2. Importantly, community groups should seek to work together, in instances where more than one local community group wishes to prepare a local place plan for the same location or area – the local

planning authority cannot verify multiple LPPs for an area. A community can also choose not to submit a LPP.

- 4.14 The invitation to community groups to prepare a LPP (attached as Appendix A) and the Proposed Development Plan Scheme for Midlothian No.15 (DPS15) (attached as Appendix B) provide more background on LPPs. Before preparing the LDP, planning authorities must publish an invitation to community bodies to prepare LPPs. The planning authority must also provide information on the date and manner by which LPPs are to be prepared in order that they can be taken into account in preparing the LDP. The planning authority must also identify the support it can offer to community bodies for the preparation of LPPs. The invitation provides this information and sets a date of submitting LPPs as prior to November 2023.
- 4.15 Initial discussions on LPPs have been had with the Federation of Midlothian Community Councils and an information event for Midlothian Community Councils on LPPs has been arranged for the end of March 2023. An information pack and website information will be made available to communities. The invite and the information pack will be sent to all organisations in the district which appear to the Council to meet the definition of a community body set out in the Scottish Government Planning Circular 1/2022: Local Place Plans.

Infrastructure and Services

- 4.16 Midlothian is, and has been for some time, the fastest growing district in Scotland (in percentage growth of population terms). This brings particular challenges to infrastructure (including health, education, transport and water/sewage). NPF4 sets out an infrastructure first approach to land use planning that puts infrastructure at the heart of place making. MLDP2 will need to set out the infrastructure requirements to deliver its spatial strategy. This needs to be informed by evidence on infrastructure capacity, condition, need and deliverability (including the cost and by whom, when and where it will be delivered). The MLDP2 will need to align with relevant Council, local, regional and national infrastructure plans. It will also need to take account of the Scottish Government infrastructure investment hierarchy (available on its website) and sustainable travel and investment hierarchies in developing the spatial strategy.
- 4.17 The NHS, Scottish Water, and Transport Scotland are treated as 'Key Agencies' within the meaning of the Planning Acts. This means that these bodies have a duty to co-operate with planning authorities as they prepare their development plans. Regular meetings will occur with Key Agencies to provide the information needed for the Evidence Report and MLDP2.
- 4.18 Through the proposed internal officer project board referred to in this report, the input of Council services, such as Education, Transport, Housing, Property/Estates, Finance, Land and Countryside, Waste and Environmental Health and the Midlothian Community Planning

Partnership will be sought for inclusion in the Evidence Report and consideration for the preparation of MLDP2.
Member Workshops on NPF4 and MLDP2

- 4.19 This report raises a wide range of matters in terms of new policy (NPF4), the need to understand and document current land use and service pressures (the preparation of the Evidence Report) and the ambition of setting a new land use strategy for Midlothian (the Proposed Plan). Subject to Committee's approval, this report requests that the Planning, Sustainable Growth and Investment Manager arranges a series of workshops with elected members to further inform them of the implications of NPF4 and to capture their ambitions for MLDP2.
- 4.20 Workshops and/or engagement will also be undertaken with local communities, groups identified in planning legislation, key agencies, third sector organisations, private sector organisations, landowners and the construction, the development industry and other Council Services.

5 DEVELOPMENT PLAN SCHEME FOR MIDLOTHIAN NO.15

- 5.1 Preparation of the Development Plan Scheme (DPS) is a statutory requirement. Each year local planning authorities are required to prepare, publish and submit a DPS to Scottish Ministers setting out their intentions with respect to preparing, reviewing and consulting on the development plan for their area over the coming 12 months.
- 5.2 A DPS is required to contain:
- the proposed development plan programme (including the proposed timetable and details of what is likely to be involved at each stage of preparation or review); and
 - the participation statement (including an account of when and with whom consultation is likely to take place, its format and the steps to be taken to involve the public at each stage).
- 5.3 Consultation on the DPS is not required at present, however the PSA19 will require formal consultation on participation statements in future. As in previous years, DPS15 includes a question seeking views on the Council's proposed engagement activities and welcomes comments from interested parties. After approving the DPS, the local planning authority is required to publish it (including electronically), place it on deposit in public libraries and send it to Scottish Ministers (for information only, not for approval).
- 5.4 Midlothian's current local development plan was adopted on 7 November 2017. Under the PSA19 local development plans must be prepared at intervals of no more than 10 years. The timetable in DPS15 reflects the approval of NPF4 by the Scottish Parliament in January 2023. Although NPF4 took six months longer than anticipated to be approved, the MLDP2 production timetable set out in DPS15 has an adoption date of 2026 for the plan to help ensure MLDP is not more than 10 years old at the time of its replacement.

6 RECOMMENDATIONS

- 6.1 It is recommended that the Committee note the update on NPF4 and agree to instruct the Planning, Sustainable Growth and Investment Manager to:
1. Commence preparation of the second Midlothian Local Development Plan (MLDP2);
 2. Issue invitations to local community groups to prepare Local Place Plans (LPPs) which will help inform production of MLDP2 (Appendix A);
 3. Establish a MLDP2 Officer Project Board, comprising senior managers from across the Council services, to ensure the spatial dimensions of other Council strategies are reflected in MLDP2;
 4. Arrange a series of workshops between elected members and officers on NPF4 and MLDP2;
 5. Publish the Development Plan Scheme for Midlothian no.15 (DPS15) (Appendix B); and
 6. Make any non-material changes necessary to the DPS15 and the Local Place Plan invitations prior to publication.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2023
Contact Person: Grant Ballantine, Lead Officer Conservation and Environment
grant.ballantine@midlothian.gov.uk

Background Papers: 2022 HLA Report to 22 November 2022 Committee

Appendices:

Appendix A: Invitation to Midlothian Community Groups to Prepare a Local Place Plan

Appendix B: Proposed Development Plan Scheme for Midlothian No.15

INVITATION TO PREPARE LOCAL PLACE PLANS

**Town and Country Planning (Scotland) Act 1997- Section 15A + Schedule 19: LPPs
The Town and Country Planning (Local Place Plans) (Scotland) Regulations 2021**

Local Place Plans are a way for communities to achieve change in their local area. They are a tool to help communities think about how they can make their 'place' better - agreeing priorities and working with others to make change happen.

Midlothian Council invite community groups

to prepare Local Place Plans, setting out proposals for the development or use of land in their area. These plans may also identify land and buildings that community groups consider to be of particular significance. More information is on our website at: www.midlothian.gov.uk/LPP



Process and Timescale

In preparing a Local Place Plan, a community group must fully comply with the legislation noted above, which includes:

- having regard to the Midlothian Local Development Plan (LDP), the National Planning Framework (NPF) and any locality plan for the area
- setting out reasons for considering that the adopted LDP should be amended
- complying with requirements as to the form and content of the Local Place Plan and steps to be taken before preparing the plan

Local Place Plans will be taken into account by the Council during the preparation of their new LDP and should therefore be submitted to the Council before November 2023.

Assistance

Community groups will take the lead in preparing Local Place Plans. Midlothian Council can provide assistance and support to communities, including an initial meeting and advice relating to:

- preparing plans
- relevant resources, guidance, precedents and templates
- events, training and knowledge sharing
- funding opportunities
- existing data for the local area
- relevant local and national planning policies
- best practice for community engagement (including Place Standard)
- draft plan (meeting subject to officer availability)
- compliance with legislative and validation requirements
- online district register and map of all valid Local Place Plans

Contacts

To find out more you can contact Midlothian Council:

Address:

Local Place Plans, Planning Service,
Place Directorate, Midlothian Council
Fairfield House, 8 Lothian Road,
Dalkeith, EH22 3ZN



Email:

LPP@midlothian.gov.uk



Twitter:

@MidGov



Website:

www.midlothian.gov.uk/LPP



Development Plan Scheme for Midlothian Number 15

March 2023

1. Introduction

1.1 This is the 15th **Development Plan Scheme** (DPS) for Midlothian. On 11 January 2023 the Scottish Parliament approved National Planning Framework 4 (NPF4). NPF4 will come into force on 13 February 2023. This signals the start of the process to replace the adopted Midlothian Local Development Plan.

1.2 In the last year the Scottish Government has made regulations on the preparation of Local Place Plans. The Scottish Government has still to make some further regulations on development planning, to complete implementation of the Planning Scotland Act 2019. The draft regulations and guidance on local development plans have been taken into account in this DPS. More information is available in the Scottish Government's Transforming Planning website [Transforming Planning Link](#)

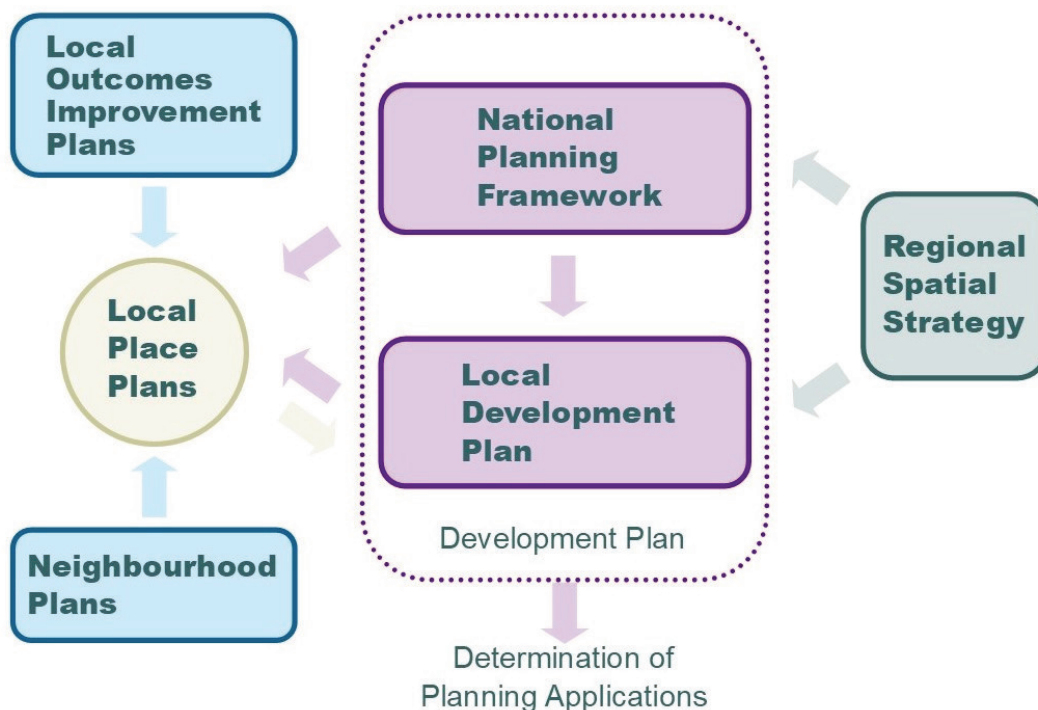
1.3 The DPS sets out the **timetable for preparing the Local Development Plan (LDP)**, and other related planning guidance. It also includes a **Participation Statement** which describes how and when you can get involved in the preparation of the plan. We will prepare a new Development Plan Scheme every year.

1.4 Changing Context for Development Planning

1.5 The Planning (Scotland) Act 2019 received Royal Assent in July 2019. The Act changes many features of the current system of development plans, including:

- removing the requirement to prepare Strategic Development plans
- removing provisions which allowed Supplementary Guidance to form part of the development plan
- making the Scottish Government's National Planning Framework part of the Development Plan
- introducing Regional Spatial Strategies to provide long term spatial development frameworks at regional level
- replacing Main Issues Reports with a new requirement to prepare an Evidence Report
- Changing the regulations to allow the Proposed Plan to be more of a consultative document
- Introducing a longer 10 year timescale for development plans, rather than 5 years at present
- Introducing potential for local communities to prepare new Local Place Plans

1.6 The relationship between the parts of the new development plan system is shown in the diagram below.



Relationship between new plans and strategies

1.7 More information on the main changes introduced by the Planning (Scotland) Act 2019 may be found in the report to Midlothian Council on 27 August 2019 (available through this link [2019 Act Committee Report](#)). More information about the programme to implement the Act can be found on the Scottish Government website (available through this link [Scottish Government planning reform](#))

1.8 The Scottish Government has adopted regulations for **local place plans** which came into force on 22 January 2022. These LPPs will be prepared by local communities. The accompanying Circular sets out the duties of the planning authority and how those plans are handled through the planning system [Local Place Plan Circular](#)

1.9 Recognising that all planning authorities are at different stages of their plan preparation, transitional arrangements have been published, see [Transitional arrangements document](#). As Midlothian will base its replacement LDP on NPF4 and the new regulations, the 'stop' provisions in the transition arrangements for old style plans 'started but not finished' will not apply.

1.10 The Planning (Scotland) Act 2019 introduces new requirements to seek and have regard to any views expressed by the public as to the content of the participation statement in the Development Plan Scheme: the regulations that give effect to this change are expected to come into force later in 2023. In advance of this becoming a formal requirement, Midlothian Council would like to know what you think of its proposed consultation arrangements, see the question 'HAVE YOUR SAY' at the end of section 6.

1.11 Fourth National Planning Framework for Scotland (NPF4). NPF4 was approved by Parliament in January 2023, and took effect from 13 February. From this date the Strategic Development Plan for Edinburgh and South East Scotland and the old Scottish Planning Policy (4) ceased to be operative. The approved NPF4 may be viewed on the Scottish Government website [Approved NPF4](#). NPF4 forms part of the development plan for Midlothian. Amongst other things, it sets a minimum all tenure housing requirement to be met by the LDP. NPF4 replaces the Edinburgh and South East Scotland Strategic Development Plan and Scottish Planning Policy. This is a major change because not only will it have a direct influence on the form and content of the next Midlothian Local Development Plan (MLDP), but will be a primary consideration in the determination of planning applications and any subsequent appeals.

1.12 To inform the preparation of development plans, the planning authorities in the South East Scotland area have prepared an **interim Regional Spatial Strategy**. This is not a document of equivalent weight to the Strategic Development Plan but sets a framework for the future development of the region - [Regional Strategy link](#)

2. The Development Plan for Midlothian

2.1 Current Development Plan

WHAT DEVELOPMENT PLANS EXIST AT PRESENT IN MIDLOTHIAN?

The adopted development plan for Midlothian is provided by the National Planning Framework for Scotland 4 (NPF4) and the Midlothian Local Development Plan (MLDP) 2017. The National Planning Framework may be viewed through this link [Approved NPF4](#) The MLDP may be viewed online by clicking on this link [Development Plans and Policies](#) The MLDP may also be viewed in paper copy at any Midlothian library.

WHAT DOES A DEVELOPMENT PLAN DO?

Development Plans allocate land for development and contain policies which will be used to assess applications for planning permission.

2.2 There are a number of ongoing tasks associated with the adopted MLDP. A revision of the current Action Programme (AP) was adopted by the Council in June 2021. The AP is a requirement of the 2006 Planning Scotland Act, and identifies the actions which will help implement the policies and proposals of the plan. The next Action Programme is due in June 2023.

2.3 Midlothian Council also carries out post adoption monitoring, looking at the performance of the plan, progress on implementing proposals, how policies are being interpreted and applied in determining planning applications, and the impact of the policies and proposals on a number of environmental factors. This links to ongoing responsibilities under the Environmental Assessment legislation.

2.4 Supplementary Guidance

2.5 The Midlothian Local Development Plan requires Supplementary Guidance (SG) and planning guidance (pg) to be prepared. The Supplementary Guidance, once adopted has the same status as a policy in the plan (the Planning (Scotland) Act 2019 will change the status of SG, see below). Planning guidance has a lesser status but is an aid to applicants and to decision making on development proposals. The table below shows the planned SG and pg, and progress at the start of 2023. Approved guidance and emerging guidance subject to consultation may be viewed online through the [Midlothian planning portal](#)

Supplementary Guidance	Status
Midlothian Green Network (SG)	Adopted
Special Landscape Areas (SG)	Adopted
Resource Extraction (SG)	Adopted
Development in the Countryside and the Green Belt (SG)	Adopted
Food and Drink and Other non Retail Uses in Town Centres (SG)	Adopted
Community Heating (SG)	Under review
Low Density Rural Housing (SG)	Adopted
Nature Conservation (PG)	Adopted
Dalkeith Shop Front Design Guide (PG)	Adopted
Dalkeith Townscape Heritage Initiative (THI) Homeowners Guide: 'Repair and Maintenance of Historic Buildings in Dalkeith, Home Owners Guide' (PG)	Adopted
Masterplans (for Ec3 and sites allocated in 2017 MLDP where not already commenced)	Likely to be issued for consultation 2023
Wind Energy Development in Midlothian	Under review

2.6 Adopted and forthcoming Supplementary (SG) and planning guidance (pg)

2.7 The Planning (Scotland) Act 2019 repeals those provisions of the 1997 Town and Country (Planning) Scotland Act which allowed SG to form part of the development plan, although there are transitional arrangements relating to this change, and the status of the approved SG is unchanged.

2.8 The Transitional Arrangements for the new planning Act envisage that a period of 24 months after the coming into force of the development plan regulations, will be allowed for the adoption of supplementary guidance associated with local development plans adopted under the 2006 Act. After this point, no further supplementary guidance will be allowed to come forward for adoption. The outstanding Supplementary Guidance is comprised:

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Advertisements, Flooding and Water Environment, Planning Obligations and Affordable Housing, and Quality of Place; as well as planning guidance for Open Space Standards, Shop Front Design Guide, Hillend Country Park and site masterplans.

2.9 The Council will reflect on how the outstanding guidance is to be provided, in recognition of the fact that supplementary guidance will not be part of the new development plan system. Now that the NPF4 will form part of the development plan, it is appropriate for the Council to consider the new national policies and decide if it is best to continue bringing forward supplementary guidance in all cases.

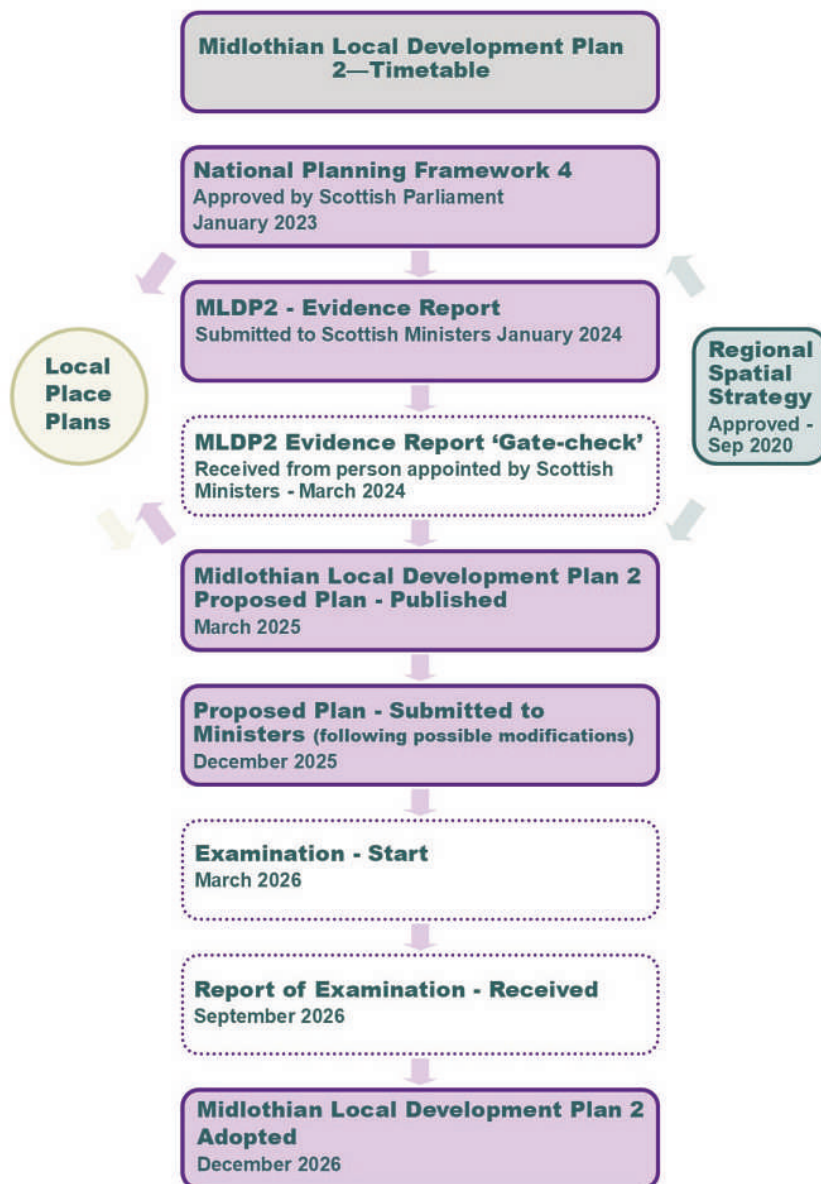
3. Production of the Second MLDP

3.1 Under the new system LDPs will be replaced every 10 years and replacement LDPs should be prepared within 5 years of National Planning Framework approval.

3.2 Midlothian Council decided to wait until NPF4 was adopted rather than prepare a further LDP based on the 2013 SDP. Midlothian Council will use the Action Programme process to review implementation of the adopted plan and in particular to assess the adequacy of the housing land supply (as described in paragraph 2.3.9 of the MLDP).

3.3 The timetable in Section 4 below is Midlothian Council's best estimate of how long the new processes will take, starting with approval of NPF4 in 2023. We expect to adopt MLDP2 in 2026, so within 5 years of NPF4 being approved.

4. Timetable for LDP2



5. Local Place Plans

5.1 Local Place Plans have been introduced by the Planning (Scotland) Act 2019. Regulations on Local Place Plans (including the roles of local communities and the planning authority) came into force on 22 January 2022. LPPs are plans relating to the development and change of use of land in a community. A Local Place Plan is not produced in isolation - it must have regard to the Local Development Plan for the area and the National Planning Framework.

5.2 Key duties on planning authorities in relation to Local Place Plans are:

- Publish an invitation to local communities to prepare Local Place Plans.
- Publish information on the manner and date by which such Local Place Plans are to be prepared in order to be taken into account in the preparation of the Local Development Plan.
- Provide information on the assistance that the authority may offer to communities wishing to produce a Local Place Plan.
- Maintain a register of Local Place Plans
- Maintain a map, which shows the land where LPPs are registered.

5.3 The Council will work with its Community Planning Team and the Federation of Community Councils to raise awareness of LPPs and engage in a discussion about how LPPs may be progressed. It must be stressed that these will be the communities' plans, and the Council will not be leading this process. It is likely that in most cases it will be the Community Council that will lead preparation of the LPP, as these are established bodies with an existing interest in land use planning bodies. However, other community based bodies that meet the definition in the Community Empowerment (Scotland) Act 2015 may come forward (for example a group concerned with the regeneration of a particular locality), or perhaps a group constituted solely for the purpose of preparing an LPP.

5.4 The Council will place information on its website to act as an information hub for parties interested in LPPs. Midlothian Council has set up a local place plan email address where any queries about LPPs may be sent. LPP@midlothian.gov.uk

5.5 Midlothian Council will shortly issue invitations to community bodies to prepare LPPs. This will set out the assistance that the Council can give, and provide guidance to ensure that LPPs are prepared that meet the requirements of the legislation. Midlothian Council expects to issue its invitation to prepare LPPs in early 2023, at the same time as MLDP2 is commenced.

5.6 For an LPP to be taken into account in the preparation of the MLDP2, it is important that the Scottish Government regulations are taken into account. Reference should be made to the [Circular](#) and [Regulations](#) but the main requirements are:

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- LPP must be prepared by a community body as defined under the Community Empowerment (Scotland) Act 2015
- The LPP must be focused on proposals for the development and change of use of land within a defined community boundary
- In preparing the Local Place Plan, the Community Body must have regard to other plans including the NPF, the LDP and any locality plan published for the area
- When submitting the LPP to the planning authority, a statement indicating the degree of community support for the proposals contained in the LPP together with the extent and outcome of engagement undertaken must be included

5.7 Midlothian Council will maintain a register of valid LPPs and will also list these in future editions of the DPS.

5.8 WHEN SHOULD LPPs BE PREPARED? To have the greatest influence on the MLDP, it would be advisable to submit LPPs in order to be taken into account in the preparation of the Evidence Report. As Midlothian Council propose to submit the Evidence Report in January 2024, LPPs would need to be submitted to us by 31st October 2023, to be taken into account at this stage of the LDP process. LPPs submitted after that date could still be taken into account in the preparation of the plan. It is likely that the planning authority would need to receive and validate any further LPPs around 6 months before the Proposed Plan is published. This points to final submission of LPPs being required by 1 September 2024 so that they may be taken into account in the preparation of the LDP. We will work closely with Community Bodies preparing LPPs, and endeavour to be as accommodating as possible, while recognising our own very challenging timetable.

6. Participation Statement

6.1 A Participation Statement sets out how, when and with whom the Council will consult and engage on its Development Plan. Independent planning Reporters from the Directorate for Planning and Environmental Appeals (DPEA) appointed by Scottish Ministers, will review the Council's engagement activities to see that they match what the Council said it would do in the Participation Statement. The timescale for activities may change depending on progress on secondary legislation associated with the Planning (Scotland) Act.

6.2 Engagement is at its most effective at the early stages of plan preparation. Within the framework of the new planning system, the Council will seek to maintain open channels of communication so that a wide range of ideas on policy can be exchanged in advance of publication of the Proposed Plan.

6.3 The new LDP should align with the work of the Community Planning Partnerships (CPPs) who have drawn together public, voluntary and private sector bodies, and local communities to develop a shared 'plan' to improve the lives of local people: the [Single Midlothian Plan](#)

6.4 The Climate Emergency Community Planning Group has identified as one of its priorities '*Place the Climate Emergency as the Central theme of the Midlothian Local Development Plan. 2*'. More generally the Council recognises that there is widespread interest and knowledge in the community on a variety of topic areas which can be used to improve the next LDP.

Aims

- To raise awareness of Local Development Planning in Midlothian
- To design an approach to engagement that is as open and inclusive as possible
- To provide meaningful opportunities to shape the next LDP, allowing input to the plan before it is written

Our Approach

- To seek to use best practice, looking at the approach of other organisations including Planning Aid for Scotland
- Produce information across a variety of formats, including our website, consultation portal and social media, alongside traditional written material

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- To work closely with neighbourhood planning and community planning partnerships
- To advise and assist communities in preparing Local Place Plans
- Collaborate with Key Agencies and other interested parties - we will explore the potential for co-production of parts of the second LDP
- Seek to continuously improve by carrying out annual review of our engagement activities
- Make information available as early as possible
- Use clear, plain language in all our material
- To ensure that events and materials are accessible as far as is practicable
- To consider all engagement activity in the context of the Councils public sector equality duty
- Use graphics and maps where appropriate
- Provide events in communities throughout Midlothian
- Where special arrangements for the Covid-19 pandemic are in place, to seek meaningful engagement opportunities which preserve public health.

6.5 A revised DPS may be brought out the next planned update in April 2024 if a changing situation justifies it. Online engagement will remain a key tool for communicating with stakeholders but parallel in person events and activities will be undertaken, in part so that those who do not have internet access or whose preference is not to use online engagement are not excluded from participating in the LDP process, and to get the benefits of face to face engagement.

Overview of proposed engagement activities for the second Midlothian Local Development Plan in period covered by DPS15 (April 2023-April 2024).

Activity	Description	What we plan to do	Timescale
Development Plan Scheme 15	Sets out Midlothian Council's programme for reviewing its development plans.	Publish online and distribute to Community Councils. Seek views on participation statement. Place in libraries	April 2023
Report and members briefing to initiate MLDP2 project	To formally launch the MLDP2 replacement plan project. This will be an opportunity to inform members of new style of development planning and seek views on the issues for Midlothian	Report to Planning Committee, followed by Members' Seminar. Further seminars could be held on geographic, or topic basis, depending on members wishes.	February 2023, with seminar shortly thereafter.
Prepare Community Council briefing	Inform Community Councils of forthcoming LDP, and discuss issues. Also discuss support for Local Place Plan process.	Seminar	Spring 2023
Evidence Report	The Evidence Report is a new requirement of the Planning (Scotland) Act 2019. The planning authority are to set out its view on the principal characteristics of the area.	Report Evidence Report to committee. Engage with public at large as well as groups defined in legislation. This will involve: (i) awareness raising through email 'mailshot' to consultee database inviting comments/feedback; (ii) local media releases; (iii) awareness raising among Council staff;	Through 2023 to Committee Report in January 2024

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Overview of proposed engagement activities for the second Midlothian Local Development Plan in period covered by DPS15 (April 2023-April 2024).

Activity	Description	What we plan to do	Timescale
		(iv) publishing information online and using all Council channels to raise awareness; (v) meeting and discussing issues with stakeholder groups expressing Interest on request. (vi) Virtual and face to face engagement to collect information	
Report on 'Gatecheck'	Report on Scottish Government Gatecheck on Evidence Report	Committee Report	March 2024
Seek contacts for future engagement	Promote online engagement and promote and encourage registration on consultation database	Use all channels including the 'Register an Interest' page in this DPS to facilitate this process	Throughout 2023-2024
Awareness raising with Community Planning Partnership (particularly through Climate Emergency Group of the Partnership)	Develop understanding of new plan and seek ideas/input.	Attend events with Community Planning partners regarding the new LDP, and raise awareness of Local Place Plans.	2023-24

Overview of proposed engagement activities for the second Midlothian Local Development Plan in period covered by DPS15 (April 2023-April 2024).

Activity	Description	What we plan to do	Timescale
Links with Key Agencies	Key Agencies are organisations defined in planning legislation; Planning authority is required to engage with them and they in turn to engage with development plan preparation.	Regular discussions with Key Agencies, Community Planning Partnership and other Council services.	Throughout 2023-24
Understanding needs of Children and Young People people with disabilities, and gypsies and travellers in respect of LDP2	Planning (Scotland) Act 2019 requires planning authorities to seek to engage with these groups in preparation of the Evidence Report.	An engagement package focussed on these groups is being developed, in conjunction with other Council services.	Carry out engagement in 2023-24 (subject to school access and conformity with curriculum) and use to inform preparation of Evidence Report

LOOKING AHEAD TO THE EVIDENCE REPORT

The programme diagram above envisages publication of the Evidence Report at the start of 2024 and the Proposed Plan in March 2025.

The Evidence Report will set out the Council's view on the characteristics of the area including the capacity of infrastructure and the need for additional development land. This is a key engagement stage under the Planning (Scotland) Act 2019 .

It is a requirement of the Planning Act that the views of the key agencies, children and young people (in particular school pupils, youth councillors and youth parliament representatives), and the public at large are taken into account in its preparation.

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After preparing the Evidence Report, the Council will submit it to Scottish Ministers, who will appoint a person to determine whether it contains sufficient information to enable the authority to prepare the plan. This is known as the Gatecheck process.

There will be a statement in the Evidence Report setting out how the Council sought views in preparing it, and how they were taken into account.

As well as the specific actions listed above, Midlothian Council expect to carry out the following actions in support of engagement for the Evidence Report.

- Publish material online for consultation and place paper copies of material at libraries.
- Encourage engagement on Evidence Report through scheduled drop in events, discussions with stakeholders and social media activity.
- Meet and discuss issues with stakeholder groups expressing interest or concern on request.
- Hold structured workshop events to look at places and topics in greater detail. These may use the 'Place Standard' tool or another technique to understand the needs of a community.
- Raise awareness through email 'mailshot' to customer database inviting comments, (including use of online surveys), local media releases, awareness raising among Council staff: publishing articles in e-staff newsletter.

6.6 Following the Evidence Report and 'Gatecheck', the draft Development Plan Regulations envisage a 'Call for Ideas' stage to inform the preparation of the Proposed Plan. This should be open to everyone to propose ideas for any aspect of the plan. The Council will consider this further as the Regulations are finalised.

THE PROPOSED PLAN

Under the new planning system introduced by the Planning (Scotland) Act 2019 it remains the case that the Proposed Plan represents the plan that the Council proposes to adopt. However, there is provision under the Planning (Scotland) Act 2019 to make modifications after the representation period, before submitting to Scottish Ministers. Any unresolved representations will be considered by a Reporter from the Directorate for Planning and Environmental Appeals (DPEA) appointed by Scottish Ministers, as part of an examination of the plan at a later date.

MAKING SURE EVERYONE IS INVOLVED

The 2019 Planning (Scotland) Act introduces a particular requirement when preparing the Evidence Report to consult with

- disabled persons
- gypsies and travellers
- children & young people on the Evidence Report.

A planning authority must also make arrangements that they consider appropriate to promote and facilitate participation by children and young people in the preparation of the LDP more generally.

FAIRER SCOTLAND DUTY

The Fairer Scotland Duty places a legal responsibility on public bodies to pay due regard to how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

Midlothian Council is a public body and the MLDP2 is a strategic decision making document, so it is covered by the duty.

Involving communities and facilitating participation are central to good policy making

The Council will measure progress on meeting the requirements of the duty at key stages, through its Integrated Assessment process

PUBLIC SECTOR EQUALITY DUTY

The Public Sector Equality Duty was established in the Equality Act 2010.

There is a requirement for public authorities in the exercise of their functions to advance equality of opportunity between people who share a relevant protected characteristic and those who do not.

Protected characteristics includes age, disability and race - including gypsies and travellers.

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In preparing the first MLDP the Council prepared an Equality Impact Assessment (EqIA), which assessed the impact of the plan on the identified protected characteristics groups (which include age, disability, and race).

The EqIA approach was useful as it involved systematic assessment of the plan in respect of the protected groups to ensure there was no disadvantage and that opportunities were not missed. The EqIA also considered the approach to consultation and engagement. Midlothian Council will use the successor tool to EqIA, known as Integrated Assessment, to provide a similar assessment process for MLDP2. The participation statement requires tailored consultation for targeted groups: as we prepare the Evidence Report in 2023 we will provide further detail on how this will be carried out

6.7 HAVE YOUR SAY

Question 1

What is your view of our participation statement and our planned consultation activities? Please let us know if you have any suggestions to improve engagement

If you are viewing the DPS as a paper copy and you wish to respond to the question above, you can use the contact details below.

CONTACT US

If you have any questions about the Local Development Plan or this Development Plan Scheme, please get in touch.

by email: ldplan@midlothian.gov.uk

by writing: Midlothian Council Planning, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3AA

7. Register an interest

Are you interested in being involved in the second Midlothian Local Development Plan?

Follow this link to register as an interested party in the Second Midlothian Local Development Plan.

[Link to register as a consultee or agent with Midlothian Council](#)

Once we have your contact details we can send you information about events, documents for comment and keep you informed about progress with the MLDP.

COMMUNICATING CLEARLY

We are happy to translate on request and provide information and publications in other formats, including Braille, tape or large print.

如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyarız.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (بڑا اکراد کے لیے) انگریزی کے ہونے حروف کی کھائی) میں، ٹیپ پر یا بڑے حروف کی کھائی میں فراہم کر سکتے ہیں۔



PLANNING PERFORMANCE FRAMEWORK ANNUAL REPORT 2021/22

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report provides an update on the progress of work undertaken on the Planning Performance Framework (PPF) for Midlothian. Specifically, it provides feedback from Scottish Government on the Council's submitted PPF for 2021/22.

2 BACKGROUND

- 2.1 An initial report to Committee in November 2012 explained that from October 2012 the Scottish Government's Minister for Local Government and Planning (now Public Finance, Planning and Community Wealth) had instigated a new Planning Performance Framework system under which each local planning authority in Scotland would be required to submit annually a report to Scottish Government on its performance across a range of quantitative and qualitative measures, including the long-standing indicators of age of local plan(s) and speed of handling planning applications. Accordingly, this Council has prepared and submitted an annual PPF report every year since 2011/12. The feedback from Scottish Government has been reported to the Committee (except for the 2019/20 submission).
- 2.2 As reported to Committee in November 2012 it remains the case that Scottish Government officials have made clear that the primary purpose of the PPF is to provide Ministers, Councils and the public with a much better understanding of how a particular planning authority is performing. Whilst it is inevitable that comparisons across planning authorities will be made, Scottish Government is advising that it is not a 'name and shame' exercise: where particular authorities may be underperforming the Scottish Government officials through normal liaison with officers in the relevant authorities will seek to assist and support improvement.
- 2.3 The Council's PPF for 2021/22 was submitted to Scottish Government in July 2022. A copy of the document has been placed in the Members' Library and on the Council's website. It provides a comprehensive review of progress during the year and highlights steady improvement in a number of areas and examples of good quality development taking place on the ground. It also highlights the

position that Midlothian's Planning Service has continued to provide a full frontline service during the pandemic and as we transition out of the pandemic.

3 FEEDBACK ON THE 2021/22 SUBMISSION

- 3.1 Formal written feedback was received 22 December 2022 by way of a letter from the Minister for Public Finance, Planning and Community Wealth, and enclosing a specific report on a total of fifteen 'performance markers'. A copy of the feedback is attached to this report as Appendix A.
- 3.2 In the feedback report on the fifteen performance markers, for the first time all 15 were rated as 'green' giving no cause for concern. None were rated as 'amber' which are areas of identified improvement or 'red', this being used to indicate where some specific attention is required. The feedback on ratings will help to inform the content of the 2022/23 return, which will be due in July 2023.
- 3.3 The ratings demonstrate an exceptionally high level of performance and reflects the team's commitment to delivering a good service.
- 3.4 The PPF feedback also sets out the timescales for the determination of planning applications. The average time to determine local (non-householder) developments for 2021/22 was 10.5 weeks, quicker than the Scottish average of 13.5 weeks. The average time to determine householder developments for 2021/22 was 8.2 weeks, better than the Scottish average of 8.7 weeks. The average time to determine major developments for 2021/22 is 44.6 weeks and matches the Scottish average of 44.6 weeks.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the feedback from Scottish Government on the Council's submitted Planning Performance Framework (PPF) for 2021/22.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	20 February 2023
Contact Person:	Peter Arnsdorf
Email:	peter.arnsdorf@midlothian.gov.uk
Background Paper:	1) Midlothian's PPF (2021/22) submission available in the Members library and on the Council's website; and 2) Ministers feedback on Midlothian's PPF (2021/22) submission attached as Appendix A.

PERFORMANCE MARKERS REPORT 2021-22

Name of planning authority: **Midlothian**

The High Level Group on Performance agreed a set of performance markers. We have assessed your report against those markers to give an indication of priority areas for improvement action. The high level group will monitor and evaluate how the key markers have been reported and the value which they have added.

The Red, Amber, Green ratings are based on the evidence provided within the PPF reports. Where no information or insufficient evidence has been provided, a 'red' marking has been allocated.

No.	Performance Marker	RAG rating	Comments
1	Decision-making: continuous reduction of average timescales for all development categories [Q1 - Q4]	Green	<p>Major Applications Your average timescale of 44.6 weeks is faster than the previous year but is the same than the Scottish average of 44.6 weeks. RAG = Green</p> <p>Local (Non-Householder) Applications Your average timescale of 10.5 weeks is marginally faster than last year and is faster than the Scottish average of 13.5 weeks. RAG = Green</p> <p>Householder Applications Your average timescale of 8.2 slower than last year but is faster than the Scottish average of 8.7 weeks. RAG = Amber</p> <p>Overall RAG = Green</p>
2	Processing agreements: <ul style="list-style-type: none"> offer to all prospective applicants for major development planning applications; and availability publicised on website 	Green	<p>You encourage processing agreements for all major applications as one way in which identify as a way to achieve the best planning outcomes.</p> <p>RAG = Green</p> <p>Processing agreement information is available through your website including a template and expectations with regards to conditions and developer contributions. RAG = Green Overall RAG = Green</p>
3	Early collaboration with applicants and consultees <ul style="list-style-type: none"> availability and promotion of pre-application discussions for all prospective applications; and clear and proportionate requests for supporting information 	Green	<p>You provide a free pre-application advice service which is promoted through the website and by case officers engaging with prospective applications. You also have a pre-app guide available on your website. RAG = Green</p> <p>You have proportionate and clear processes for requesting supporting information including checklists for 21 development types outlining the likely information required to be submitted to support an application. RAG = Green Overall RAG = Green</p>

4	Legal agreements: conclude (or reconsider) applications after resolving to grant permission reducing number of live applications more than 6 months after resolution to grant (from last reporting period)	Green	Your average timescale for determining major applications with legal agreements was 29.4 weeks which is faster than last year and faster than the Scottish average of 33.2 weeks..
5	Enforcement charter updated / re-published within last 2 years	Green	Your enforcement charter was 15 months old at the end of the reporting year.
6	Continuous improvement: <ul style="list-style-type: none"> progress ambitious and relevant service improvement commitments identified through PPF report 	Green	You have completed 8 out of 12 of your improvement commitments with the remaining partially complete and ongoing. You have identified 11 improvement commitments for the coming year. RAG = Green
7	Local development plan less than 5 years since adoption	Green	Your LDP was 4 years and 4 months old at the time of reporting.
8	Development plan scheme – next LDP: <ul style="list-style-type: none"> project planned and expected to be delivered to planned timescale 	Green	Your project plan for the delivery of the development plan is set out in a new Development Plan Scheme approved in March 2022.
9 & 10	LDP Engagement: stakeholders including Elected Members, industry, agencies, the public and Scottish Government are engaged appropriately through all key stages of development plan preparation.	Green	You have highlighted various strands of engagement which has taken place with various stakeholders including discussions with key agencies and elected members on the implications of the next LDP based on the emerging NPF4 policy.
11	Policy Advice: Production of relevant and up to date policy advice	Green	You have produced a number of guidance documents during the reporting year including Housing in the Countryside, and Green Belt. You have also produced guidance on Nature conservation which will be published in the 2020-21 reporting period. Conservation Area and Management Plans have also been prepared which are a material consideration in the determination of planning applications.
12	Corporate working across services to improve outputs and services for customer benefit (for example: protocols; joined-up services; single contact arrangements; joint pre-application advice)	Green	You have provided examples of how you work with other council services including adding a representative from the Council's Communities and Lifelong Learning Team onto the project board for progressing the new LDP. Your pre-app and duty planner service is another example of providing a single point of contact to coordinate responses to enquiries and provide advice to applicants. You have also set up a Development Management Officers Working Group to ensure consistent approach to planning applications by case officers.
13	Sharing good practice, skills and knowledge between authorities	Green	You have provided good examples of the learning you have undertaken with other councils such as working with City of Edinburgh and East Lothian Councils on cross-boundary energy projects as well as taking part in the Housing Needs and Demand Assessment project team with neighbouring authorities. You also take part in various workshops run by other councils

14	Stalled sites / legacy cases: conclusion or withdrawal of old planning applications and reducing number of live applications more than one year old	Green	You have cleared 3 cases during the reporting year, with 13 cases still awaiting conclusion. This is a slight improvement from last year.
15	Developer contributions: clear and proportionate expectations <ul style="list-style-type: none"> • set out in development plan (and/or emerging plan); and • in pre-application discussions 	Green	<p>Your LDP, supported by supplementary guidance, sets out expectations for developer contributions. RAG = Green</p> <p>Your pre-application discussions involve setting out the expectations for developer contributions. RAG = Green Overall RAG = Green</p>

MIDLOTHIAN COUNCIL
Performance against Key Markers

Marker		13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22
1	Decision making timescales									
2	Processing agreements									
3	Early collaboration									
4	Legal agreements									
5	Enforcement charter									
6	Continuous improvement									
7	Local development plan									
8	Development plan scheme									
9 & 10	LDP Early Engagement		N/A	N/A	N/A					
11	Regular and proportionate advice to support applications									
12	Corporate working across services									
13	Sharing good practice, skills and knowledge									
14	Stalled sites/legacy cases									
15	Developer contributions									

Overall Markings (total numbers for red, amber and green)

2012-13	3	8	4
2013-14	2	8	5
2014-15	3	5	5
2015-16	5	4	4
2016-17	2	4	7
2017-18	0	3	12
2018-19	1	2	12
2019-20	1	3	11
2020-21	0	4	11
2021-22	0	0	14

Decision Making Timescales (weeks)

	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	2021-22 Scottish Average
Major Development	60.5	77.4	47.8	84.7	91.5	45.8	65.6	76.2	44.6	44.6
Local (Non-Householder) Development	19.7	11.0	10.7	11	12.1	11.1	15.0	13.3	10.5	13.5
Householder Development	6.9	6.7	6.9	6.8	6.9	6.4	6.6	6.9	8.2	8.7



NON COMPLIANCE WITH THE REQUIREMENTS OF AN ENFORCEMENT NOTICE REGARDING THE CHANGE OF USE OF VACANT LAND TO A BUILDERS' YARD (SUI GENERIS); SITING OF SHIPPING CONTAINERS AND ASSOCIATED ENGINEERING OPERATIONS TO FORM HARDSTANDING AT LAND NORTH OF 6 ASHBANK, GOREBRIDGE.

Report by Chief Officer Place

1 REPORT SUMMARY AND RECOMMENDATION

- 1.1 This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, with regard the change of use of vacant land to a builders' yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding at land north of 6 Ashbank, Gorebridge.
- 1.2 The enforcement notice required the unauthorised use of the land as a builder's yard to permanently cease and for the shipping containers brought onto the site in associated with that use to be removed from the land. Furthermore, the areas of hardstanding formed on the land to facilitate the unauthorised use shall be removed and the land returned to grass. None of these steps have been taken, either by the enforcement notice compliance date of 6 January 2023 or to date (at the time of drafting this report). Non-compliance with an enforcement notice constitutes an offence.
- 1.3 This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.

2 BACKGROUND

- 2.1 A retrospective planning application (21/00499/DPP) for the change of use of vacant land to a builders' yard (sui generis); siting of shipping

containers and associated engineering operations to form earth bund and hardstanding at land north of 6 Ashbank, Gorebridge was refused 19 October 2021 and a subsequent notice of review was dismissed by the Local Review Body (LRB) at its meeting of 21 March 2022. The planning application was refused and subsequent review dismissed for the following reason:

“The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal is therefore contrary to policy RD1 of the Midlothian Local Development Plan 2017. Any economic benefits generated by the proposal are not a significant enough material consideration to outweigh the provisions of the development plan.”

- 2.2 Despite the refusal of planning permission and the LRB decision to dismiss the review the site operator (and owner) continued to operate the authorised use on the land, the unauthorised hardstanding also remained in situ and as such an enforcement notice was issued 30 June 2022, with a take effect date of 31 July 2022 and a three month compliance period. A copy of the enforcement notice is attached to this report as Appendix A. The enforcement notice required the site operator to:
 1. “Permanently remove all shipping containers from the land. For the avoidance of any doubt this requirement also includes removal of the timber clad container located closest to the site entrance.
 2. Remove the unauthorised hardstanding areas from the land and return the site to a grass field using topsoil and grass seed, as appropriate.
 3. Permanently cease the unauthorised use of the land as a builders’ yard.”
- 2.3 The site operator appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice. A copy of the appeal decision was reported to the Committee at its meeting in November 2022. As a consequence of the appeal the compliance period is extended to 6 January 2023 (three months after the appeal decision).
- 2.4 In reaching the decision the Reporter confirmed that the breach of planning control was taking place onsite as alleged, that the alleged use of land and works constitute a breach of planning control and that the unauthorised use of land and works were not exempt from enforcement action (the operator alleged the onsite activities were exempt from enforcement action because of historical uses of the site).
- 2.5 During a site inspection by a Council officer in early January 2023 it was established that none of the enforcement notice requirements had been complied with by the required date (see photographs attached as Appendix B). The land owners were subsequently formally informed

(by recorded delivery) that the enforcement notice had not been complied with, that being an offence and that the matter would be referred to the Committee for consideration of prosecutorial action.

3 THE LEGISLATIVE POSITION

- 3.1 It is not a criminal offence for development to take place without the requisite planning permission, but it is an offence to fail to comply with an enforcement notice. There is a 6 month period from the date of the offence occurring (that is the date by which the notice should have been complied with, not the date from which the breach of planning control occurred) in which a prosecution could be potentially brought.
- 3.2 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the majority of instances, criminal offences are referred to COPFS by Police Scotland. However, other bodies who are the responsible regulatory organisation for particular legislative areas will also refer cases. This includes the Health and Safety Executive, the Scottish Environmental Protection Agency and local authorities in relation to planning and other matters.
- 3.3 In this particular case, given the scale, nature and extent of the unauthorised development that has occurred, it is considered that the breach of planning control is at the serious end of the spectrum in terms of both the unauthorised developments involved and the failure to comply with any of the requirements of the enforcement notice. Officers have considered the issuing of Fixed Penalty Notice (FPN) as an alternative to prosecution. However, a FPN is limited in scope in that it would result in a maximum fine of £2,000, and that is not appropriate or sufficient in this instance. The issuing of a FPN precludes other prosecutorial action if it is paid within 30 days.
- 3.4 It should be noted that failure to comply with an enforcement notice is not only an offence, it is also a continuing offence should a prosecution be successfully brought, a conviction secured and the enforcement notice requirements remain outstanding. For example, if non-compliance with the enforcement notice requirements continued for a further month after conviction that would be a further 31 offences occurring which would bring further potential implications for a defendant in terms of further potential convictions, criminal records and levels of fines.
- 3.5 The Town and Country Planning (Scotland) 1997 Act provides that *“In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence”*

- 3.6 The failure to comply with an enforcement notice is clearly regarded as a serious matter and understandably so by the Scottish Ministers because of its implications for the integrity of the planning system and indeed in relation to the upholding of the rule of law. The Planning (Scotland) Act 2019 which has now been enacted specifically provided for the increasing of fines for a number of enforcement related matters. In relation to enforcement notices the level of fine on successful prosecution has increased from a maximum of £20,000 to £50,000.

4 OTHER CONSIDERATIONS

- 4.1 The Scottish Government Policy on planning enforcement is contained in Circular 10/2009: Planning Enforcement. It includes the following guidance that is particularly relevant to the consideration of this case :

“Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.”

“The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.”

- 4.2 The Proceeds of Crime Act (POCA) is operative across the United Kingdom and provides for the appropriate authorities in some circumstances to adjudicate final assessment from those benefitting financially from criminal activity. In England there have been a number of instances of Confiscation Orders being authorised by the Courts in instances where enforcement notices have been breached, criminal convictions secured in relation to such offences and where those responsible have continued to benefit financially (the leading judicial case in relation to such matters is R v Del Basso - Court of Appeal, 2010). It should be noted that it is not for the Council to determine whether or not there should be a Confiscation Order, but to note prosecuting authorities (COPFS) have scope to consider such matters.

5. CONCLUSION

- 5.1 The responsibility of the outstanding breach of planning control lies with the landowner who decided to relocate their business to the site, a field in the countryside, undertake engineering works and changing the

use of the land without the benefit of planning permission. All of the unauthorised development which is the subject of the enforcement notice remains on site and the unauthorised use of the land as a builder's yard has continued in breach of the enforcement notice requirements. The unauthorised development has been the subject of public complaint.

- 5.2 It is for COPFS to make the final decision with regard prosecutorial action against the non-compliance with an enforcement notice. In this case, unauthorised development has been carried out which does not have the benefit of planning permission. A planning application for the change of use of vacant land to a builders' yard (*sui generis*); siting of shipping containers and associated engineering operations to form earth bund and hardstanding at land north of 6 Ashbank, Gorebridge was refused and a subsequent notice of review was dismissed by the Council's LRB. The Council has lawfully served an enforcement notice in relation to unauthorised developments and that notice has been upheld on appeal by the Scottish Ministers. The notice has not been complied with within the period specified by the notice. It is an offence for an enforcement notice not to be complied with. Therefore having regard to the guidance provided by Scottish Ministers in Circular 10/2009, the serious nature of the breach of planning control and the Council's responsibility to uphold confidence and integrity in the planning system and the rule of law, it is considered to be in the public interest for the Council to refer this case to COPFS.

6 RECOMMENDATION

- 6.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997 as amended.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2023
Contact Person: Matthew Atkins, Lead Officer Planning Obligations
matthew.atkins@midlothian.gov.uk

**IMPORTANT
THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**Town and Country Planning (Scotland) Act 1997, as amended
by the Planning (Scotland) Act 2019 (“the Act”)**

ENFORCEMENT NOTICE

Issued by Midlothian Council

30 June 2022

**Peter Joyce and Son Ltd.
16 South Quarry View
Gorebridge
EH23 4GT**

1. THIS IS A FORMAL NOTICE issued by Midlothian Council (“the Council”) because it appears that there have been breaches of planning control under the terms of section 123(1)(a) of the Act at the land described below. The Council considers it expedient to issue this Enforcement Notice (“EN”) having regard to the provisions of the development plan and to other material planning considerations. Note that Schedule 1 of this EN contains important information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land North of 6 Ashbank, Gorebridge, as shown edged in red on the location plan attached to this EN.

3. THE MATTERS WHICH APPEAR TO CONSTITUTE BREACHES OF PLANNING CONTROL

Without planning permission : the change of use of vacant land to a builder's yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding.

4. REASONS FOR ISSUING THIS NOTICE

(a) Retrospective planning permission (reference 21/00499/DPP) for the developments referred to in Part 3 of this Notice (above) was refused by Midlothian Council on 19 October 2021.

(IMPORTANT – CONTINUES ON NEXT PAGE)

- (b) A Notice of Review for the refused planning permission- referred to in part 4 (a) of this EN - was submitted to Midlothian Council on 18 January 2022. The Council's Local Review Body (LRB) dismissed the review at its meeting of 21 March 2022.
- (c) The Determination Report presented at the LRB meeting advised that if the Review was dismissed : the use of the land as a builder's yard will need to cease; the storage containers and any other structures placed on the land will need to be removed from the land; the hard surface removed; the applicant will be asked to comply with that requirement within two months of the LRB Decision Notice and the failure to carry out the required works will result in the Council having to consider issuing an EN.
- (d) Planning Officers met with Mr. Rory Joyce (of Peter Joyce and Son Ltd.) at the land subject of this EN on 31 March 2022. During the meeting the need to voluntarily comply with the requirements referred to in Part 4(c) above within the same two months period was further outlined and fully discussed. Advice was also offered on finding an alternative site for the business operations based at the land.
- (e) Notwithstanding the decision of the LRB - referred to in part 4(b) above - and despite the two month time period referred to in Parts 4 (c) and 4(d) having expired on 21 May 2022, all unauthorised developments subject of this EN remain in place on the land and its unauthorised use as a builder's yard continues.
- (f) The continuing unauthorised use of the land - and the unauthorised developments associated with that use - are in conflict with the democratic, planning decision-making process (referred to in parts 4(a) and 4(b) of this EN) and would thereby undermine the credibility of the planning system and public trust in its outcomes.

5. WHAT YOU ARE REQUIRED TO DO

- (1) Permanently remove all shipping containers from the land. For the avoidance of any doubt this requirement also includes removal of the timber clad container located closest to the site entrance.
- (2) Remove the unauthorised hardstanding areas from the land and return the site to a grass field using topsoil and grass seed, as appropriate.
- (3) Permanently cease the unauthorised use of the land as a builders' yard.

(IMPORTANT – CONTINUES ON NEXT PAGE)

6. TIME PERIOD FOR COMPLIANCE

All steps referred to in Part 5(1) to 5(3) of this EN to be taken within three calendar months from when this EN takes effect, namely by 31 October 2022.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 31 July 2022 unless an appeal is made against it beforehand.

Signed



Matthew Atkins

Lead Officer Planning Obligations
Midlothian Council.

On behalf of:

Derek Oliver

Chief Officer - Place,
Midlothian Council.

Date: 30 June 2022

(IMPORTANT – CONTINUES ON NEXT PAGE)

8. **YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 31 July 2022. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

Schedule 1 of this notice gives information on your Right of Appeal.

9. **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this EN, it will take effect on 31 July 2022 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements in terms of s145A(1) of the Act. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

(IMPORTANT – CONTINUES ON NEXT PAGE)

SCHEDULE 1**EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE****RELEVANT LEGISLATION**

A copy of Sections 123, 124, 127-139 of the Act is attached. You may wish to note the points referred to below.

RIGHT OF APPEAL

If you wish to appeal against this EN, you should write to Planning and Environmental Appeals Division, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in section 130 of the Act. If you decide to appeal you should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

If you lodge an appeal, the EN is suspended and will not take effect unless the appeal is withdrawn or dismissed.

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitation, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out these operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to an unlimited fine. If the use or operations are continued after conviction, the person may be convicted of a second or subsequent offence. In determining the amount of any fine for any convicted person, in either circumstance, the court shall in particular have regard to any financial benefit that has accrued - or appears likely to accrue - to any person who has committed the offence. That consideration will similarly apply to the level of fine imposed by the court on any convicted person who complies with an enforcement notice requiring the removal or alteration of a building(s) or works, in cases where the building(s) or works are subsequently re-instated or restored at any time after the compliance date.

(IMPORTANT – CONTINUES ON NEXT PAGE)

As an alternative to prosecution the Council may serve a Fixed Penalty Notice. This requires payment of a fine to be made within 30 days of its service, which will be retained by them. The level of fine is £2,000 for non-compliance with an enforcement notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid to the Council is reduced to £1,500.

DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may also enter on the land, take those steps and recover the costs involved, from the owner or lessee of the land.

FURTHER OFFENCES

Compliance with the terms of an enforcement notice does not discharge that notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.

	PART VI ENFORCEMENT		
	<i>Application</i>		
Expressions used in connection with enforcement	123	(1)	For the purposes of this Act -
		(a)	carrying out development without the required planning permission, or
		(b)	failing to comply with any condition or limitation subject to which planning permission has been granted, or
		(c)	initiating development without giving notice in accordance with section 27A (1) of this Act, or
		(d)	carrying out development without displaying a notice in accordance with section 27C (1) of this Act
			constitutes a breach of planning control.
		(2)	For the purposes of this Act -
		(a)	the issue of an enforcement notice, or
		(b)	the service of a breach of condition notice,
			under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A
		(3)	In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.
Time Limits	124	(1)	Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
		(2)	Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
		(3)	In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
		(4)	Subsections (1) to (3) do not prevent -
		(a)	the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
		(b)	taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.
Enforcement Notices			
Issue of enforcement notice	127	(1)	The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them –
		(a)	that there has been a breach of planning control, and
		(b)	that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
		(2)	A copy of an enforcement notice shall be served -
		(a)	that there has been a breach of planning control, and
		(b)	on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
		(3)	The service of the notice shall take place -

		(a)	not more than 28 days after its date of issue, and
		(b)	not less than 28 days before the date specified in it as the date on which it is to take effect.
Contents and effect of notice	128	(1)	An enforcement notice shall state -
		(a)	the matters which appear to the planning authority to constitute the breach of planning control, and
		(b)	the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
		(2)	A notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
		(3)	An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
		(4)	Those purposes are –
		(a)	remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
		(b)	remedying any injury to amenity which has been caused by the breach.
		(5)	An enforcement notice may, for example, require -
		(a)	the alteration or removal of any buildings or works,
		(b)	the alteration or removal of any buildings or works,
		(c)	any activity on the land not to be carried on except to the extent specified in the notice, or
		(d)	the contour of a deposit of refuse of waste materials on land to be modified by altering the gradient or gradients of its sides.
		(6)	An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7) is as similar as possible to the demolished building.
		(7)	A replacement building -
		(a)	must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
		(b)	may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and
		(c)	must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
		(8)	An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.
		(9)	An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.
		(10)	Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
		(11)	An enforcement notice shall specify such additional matters as may be prescribed.
		(12)	Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.

		(13)	Where
		(a)	an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
		(b)	all the requirements of the notice have been complied with,
			then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
		(14)	Where -
		(a)	an enforcement notice requires the construction of a replacement building, and
		(b)	all the requirements of the notice with respect to that construction have been complied with,
			planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.
Variation and withdrawal of enforcement notice	129	(1)	The planning authority may -
		(a)	withdraw an enforcement notice issued by them, or
		(b)	waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
		(2)	The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
		(3)	The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
		(4)	The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.
Appeal against enforcement notice	130	(1)	A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds -
		(a)	Repealed by 2006 Act.
		(b)	that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;
		(c)	That the matters (if they occurred) do not constitute a breach of planning control;
		(d)	that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
		(e)	that copies of the enforcement notice were not served as required by section 127;
		(f)	that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
		(g)	that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
		(2)	An appeal under this section shall be made -
		(a)	by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or

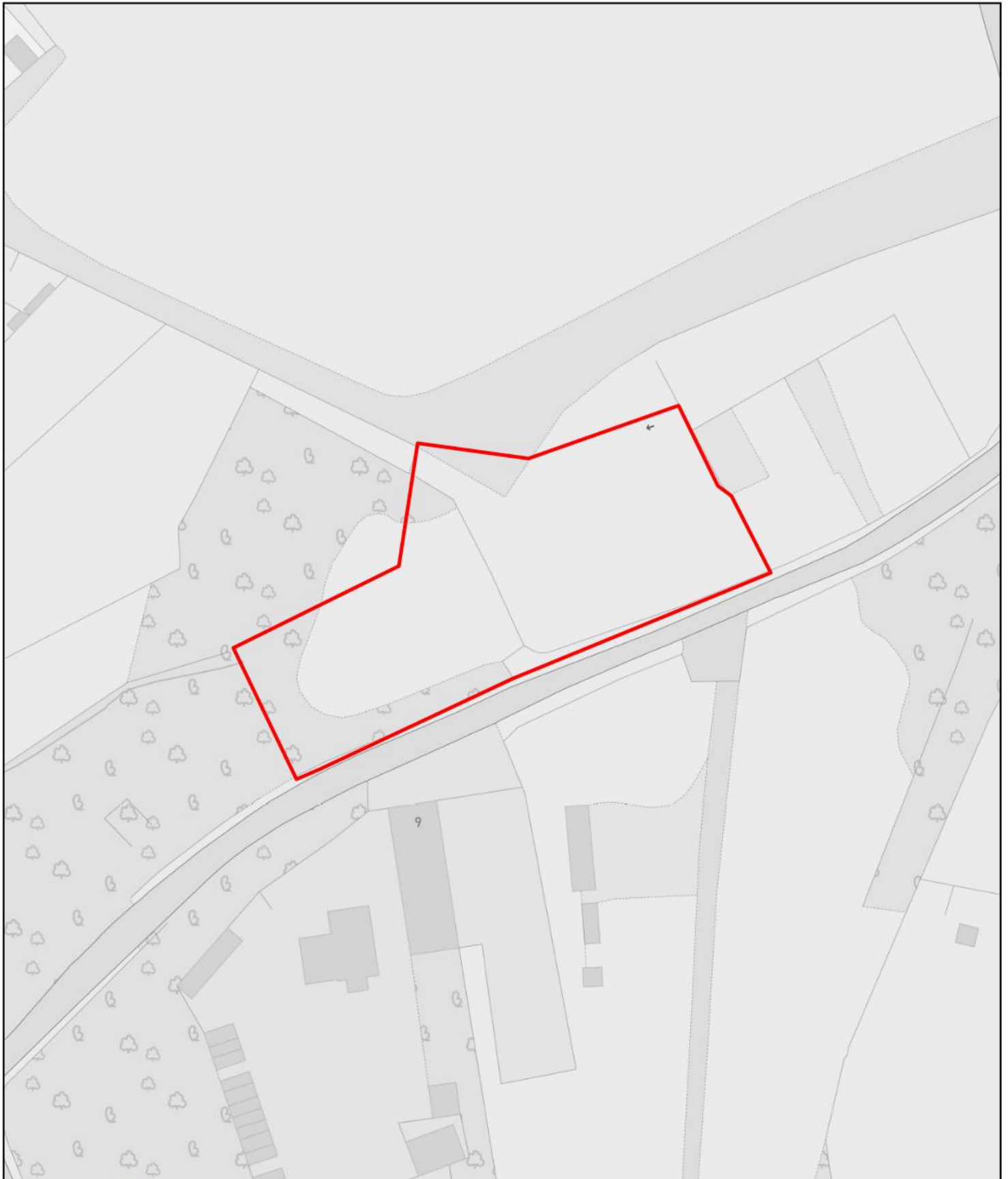
			(b)	by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or
			(c)	by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date
		(3)		A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -
			(a)	specifying the grounds on which he is appealing against the enforcement notice, and
			(b)	giving such further information as may be prescribed.
Appeals: supplementary provisions	131	(1)		The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may -
			(a)	specify the matters on which information is to be given in a statement under section 130(3);
			(b)	require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
			(c)	specify the matters to be included in such a statement;
			(d)	require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;
			(e)	require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.
		(2)		Repealed by 2006 Act
		(3)		Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
		(4)		Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.
General provisions relating to determination of appeals	132	(1)		On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.
		(2)		On such an appeal the Secretary of State may -
			(a)	correct any defect, error or misdescription in the enforcement notice, or
			(b)	vary the terms of the enforcement notice,
				if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
		(3)		The Secretary of State may -
			(a)	dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
			(b)	allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).
		(4)		Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

Grant or modification of planning permission on appeal against enforcement notice.	133	(1)	On the determination of an appeal under section 130, the Secretary of State may	
			(a)	Repealed by 2006 Act
			(b)	Repealed by 2006 Act
			(c)	Repealed by 2006 Act
			(d)	determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.
		(2)	The provision of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if -	
			(a)	any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and
			(b)	references to the planning authority were references to the Secretary of State.
		(3)	Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.	
		(4)	Repealed by 2006 Act.	
		(5)	Repealed by 2006 Act.	
		(6)	Repealed by 2006 Act.	
		(7)	Repealed by 2006 Act.	
		(8)	Repealed by 2006 Act.	
		(9)	Repealed by 2006 Act.	
		(10)	Repealed by 2006 Act.	
		(11)	Repealed by 2006 Act.	
Validity of enforcement notices	134	The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1) (b) to (e) except by appeal under that section.		
Execution and cost of works required by enforcement notice	135	(1)	If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may -	
			(a)	enter the land take those steps, and
			(b)	recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
		(2)	If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.	
		(3)	In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.	
		(4)	Where a copy of an enforcement notice has been served in respect of any breach of planning control -	
			(a)	any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
			(b)	any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,
			shall be recoverable from the person by whom the breach of planning control was committed.	

		(5)	If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
		(6)	A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within three days of their removal.
		(7)	After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
		(8)	Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that -
		(a)	he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
		(b)	he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
			his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
		(9)	A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
		(10)	Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
		(11)	In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance. .
Offence where enforcement notice not complied with	136	(1)	Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
		(2)	Where the owner of the land is in breach of the notice he shall be guilty of an offence.
		(3)	In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
		(4)	A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
		(5)	A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
		(6)	An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
		(7)	Where -
		(a)	a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
		(b)	the notice is not contained in the appropriate register kept under section 147,

			it shall be a defence for him to show that he was not aware of the existence of the notice.
		(8)	A person guilty of an offence under this section shall be liable -
		(a)	on summary conviction, to a fine not exceeding £50,000, and
		(b)	on conviction on indictment, to a fine.
		(9)	In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
	136a	Fixed penalty notice where enforcement notice not complied with	
		(1)	Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
		(2)	The fixed penalty notice is to specify—
		(a)	the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
		(b)	the activity so specified which has not ceased.
		(3)	It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
		(4)	For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
		(5)	But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
		(6)	The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
		(7)	The conditions are that the fixed penalty notice—
		(a)	is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
		(b)	is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice
		(8)	During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
		(9)	If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
		(10)	A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
		(11)	In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.
Effect of planning permission etc on enforcement or breach of condition notice	137	(1)	Where, after the service of –
		(a)	a copy of an enforcement notice, or
		(b)	a breach of condition notice,

			planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
		(2)	Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
		(3)	The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.
Enforcement notice to have effect against subsequent development	138	(1)	Compliance with an enforcement notice, whether in respect of –
		(a)	the removal or alteration of any building or works,
		(b)	the discontinuance of any use of land, or
		(c)	any other requirements contained in the notice,
			shall not discharge the notice.
		(2)	Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
		(3)	Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
		(4)	A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding the statutory maximum.
		(5)	In determining the amount of the fine to be imposed under subsection (4), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.
Power of Secretary of State to serve enforcement notice	139	(1)	If it appears to the Secretary of State that it is expedient that an enforcement notice should be served in respect of any land, he may himself serve such a notice under section 127.
		(2)	An enforcement notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
		(3)	The Secretary of State shall not serve such a notice without consulting the planning authority.
		(4)	The provisions of this Act relating to enforcement notices apply, so far as relevant, to an enforcement notice served by the Secretary of State as they apply to an enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Enforcement Notice Land North of 6 Ashbank, Gorebridge

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Scale: 1:1,000
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ENFORCEMENT NOTICE APPEAL DECISION WITH REGARD THE ERECTION OF AN OUTBUILDING AT 2 CONIFER ROAD, MAYFIELD.

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of an enforcement notice appeal decision with regard the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield.

2 BACKGROUND

- 2.1 A retrospective planning application for the erection of an outbuilding at 2 Conifer Road, Mayfield was refused 29 September 2020. The outbuilding comprises a timber clad structure, with timber framed windows and a felt flat roof. It measures 5m wide, 3.6m deep and 3m high. It is set back 2.6m from the pavement at the side of the property and 1.1m, at its closest point, from the boundary with the neighbour to the rear. The building includes accommodation at ground floor and what appears as a raised platform bed area with a window at the higher level – it is used for domestic purposes.
- 2.2 Despite the refusal of planning permission and a letter to the occupant dated 26 August 2021 requesting the removal of the outbuilding by 11 October 2021, the outbuilding remained in place. An enforcement notice was issued on the occupier and the owner (Melville Housing Association) on 13 September 2022, with a take effect date of 13 October 2022 and a five month compliance period. A copy of the enforcement notice is attached to this report as Appendix B. The enforcement notice required the owner and occupier of the property to:
- (1) Remove the outbuilding which was the subject of planning application reference 20/00429/DPP
 - (2) Remove all dismantled materials permanently from the land subject of this Notice.
- 2.3 The occupier appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice. A copy of the appeal decision is attached to this report as Appendix A. As a consequence of the appeal

the compliance period is extended to 12 June 2023 (five months after the appeal decision).

3 THE DECISION

- 3.1 In reaching the decision the Reporter confirmed that the enforcement notice meets all the statutory requirements set out in section 128 (1) to (11) of the Town and Country Planning (Scotland) Act 1997 as amended and is therefore sound.
- 3.2 The cover letter which accompanied the enforcement notice contained a typographical error in one of the two mentions of the compliance date (stated once correctly as 13 March 2023 and once incorrectly as 13 March 2022). The Reporter confirmed that the cover letter forms part of the explanatory notice required by section 128 (12) of the 1997 Act, and that the typographical error does not, in this instance, make the enforcement notice invalid.
- 3.3 The Reporter was satisfied that the steps required by the notice could be undertaken within the five months stipulated in the notice, and therefore dismissed the appeal which was made on the grounds that the compliance period was unreasonable.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the enforcement notice appeal decision with regard to the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2023
Contact Person: Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager
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Planning and Environmental Appeals Division

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Scottish Government
Riaghaltas na h-Alba
gov.scot

Appeal Decision Notice

Decision by Fortune Gumbo, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-290-2011
- Site address: 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE
- Appeal by Peter Adams against the enforcement notice dated 13 September 2022 served by Midlothian Council
- The alleged breach of planning control: the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE
- Date of site visit by Reporter: 9 December 2022

Date of appeal decision: 12 January 2023

Decision

I dismiss the appeal and direct that the enforcement notice dated 13 September 2022 be upheld subject to the variation of the terms of the notice by deleting the words "..., namely by 13 March 2023" in paragraph 6 of the enforcement notice.

Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

1. The appeal against the enforcement notice was made only on ground (g) as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997. Ground (g) provides that any period specified in the notice falls short of what should reasonably be allowed.

2. To succeed on this ground the appellant has to demonstrate that any period specified in the notice falls short of what should reasonably be allowed. The enforcement notice requires compliance within five months of the effective date of the notice. The appellant has not suggested an alternative compliance period which they consider should reasonably be allowed.

3. The only basis of the appeal draws from the cover letter (reference 19/00099/UNDEV of 13 September 2022 from the council) accompanying the enforcement notice. On this letter there are two compliance dates. The first is in the penultimate paragraph of the letter and it reads, "The attached Enforcement Notice requires that the outbuilding, which was subject to planning application reference 20/00429/DPP, to be removed by 13 March 2023...". The second date is in the final paragraph of the letter, and it reads, "The Enforcement Notice will take effect on 13 October 2022 and must be complied with by 13 March 2022 unless an appeal to Scottish Ministers...". As the notice was issued on 13

September 2022, this date predates the issue of the enforcement notice. It is this second date which is being challenged.

4. There is no suggestion from the appellant that the enforcement notice is a nullity, and having reviewed it, it meets all the statutory requirements set out in sections 128 (1) to (11) of the 1997 Act and is therefore sound.

5. The cover letter is required by section 128 (12) of the 1997 Act which states that regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the rights of appeal under section 130. I consider the cover letter to be or form part of an explanatory note. There is no right of appeal against the contents of the explanatory note.

6. The March 2022 date on the cover letter contains a typographical error (2022 instead of 2023). I do not consider that the typographical error in this sentence makes the enforcement notice overall ambiguous. The reason for this assertion is that when the sentence is read in conjunction with the first compliance date on the letter and paragraph 6 of the notice both state that compliance must be achieved within five calendar months from when the notice takes effect, namely by 13 March 2023.

7. I have no power to correct the typographical error in the cover letter. However, I find that the typographical error does not, in this instance, make the enforcement notice invalid.

8. There is nothing before me from either party that suggests that the compliance period set out in the enforcement notice is unreasonably short. My site inspection did not reveal any obvious impediments to compliance. I am satisfied that the steps required by the notice could be undertaken within the five months stipulated in the notice. The appeal on ground (g) fails.

Other matter

9. I have varied the terms of the notice by deleting the words “namely by 13 March 2023” in paragraph 6. The reason for this deletion is that the compliance period of the notice runs from the final determination of the appeal which includes any legal challenges. Consequently, the words that I have deleted are now unnecessary as a consequence of the determination of the appeal.

Conclusion

10. I have considered all of the other matters raised, but there are none which would lead me to alter my conclusion that the enforcement notice should be upheld.

Fortune Gumbo

Reporter

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

*Town & Country Planning (Scotland) Act 1997, as amended by the
Planning (Scotland) Act 2019 (“the Act”)*

ENFORCEMENT NOTICE

Issued by Midlothian Council

13 September 2022

**Mr Peter Adams
2 Conifer Road
Mayfield
Dalkeith
EH22 5DE**

**ISSUED BY: Midlothian Council (“the Council”) as planning
authority for the purposes of Section 127 of the Act**

1. THIS IS A FORMAL NOTICE which is issued by Midlothian Council (“the Council”) because it appears that there has been a breach of planning control, under the terms of section 123(1) (a) of the above Act, (as amended), at the land described below. The Council considers it expedient to issue this Enforcement Notice (“EN”), having regard to the provisions of the development plan and to other material planning considerations. Note that Schedule 1 of this EN contains important information.

2. THE LAND TO WHICH THE NOTICE RELATES

2 Conifer Road, Mayfield, Dalkeith, EH22 5DE, shown edged in red on the location plan attached to this EN.

**3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF
PLANNING CONTROL**

Without planning permission the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield, Dalkeith, EH22 5DE.

4. REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the last four years.

- (a) Under Class 3A of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, an outbuilding is not permitted where any part of the development is forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road.
- (b) The constructed building has been erected in the side garden of the north side of the house and is forward of the side elevation that fronts a road. The building was erected without planning permission. The occupier was informed of the need to submit an application in November 2019. A valid application was registered on 12 August 2020. On 29 September 2020, planning permission for the outbuilding was refused.
- (c) The surrounding area is predominantly characterised by houses set behind front gardens/driveways (some including retaining walls at the front) enclosed by low fences and walls. The front and side garden of 2 Conifer Road is very open to public view. The outbuilding is positioned forward of the side elevation of the house and approximately 1.5 metres forward of the front elevation of the property to the rear and is only 2.6 metres from the pavement. The building is partly screened as a result of the higher ground level of the property to the rear but is still very prominent in the street scene as viewed from both Conifer Road and the corner with Andrew Dodd's Avenue. As a result of a combination of its position set forward of the adjacent buildings, its proximity to the pavement, its somewhat unconventional design and its size the outbuilding appears as an incongruous feature in the street scene detrimental to the character of the area.
- (d) The proposal is contrary to Policy DEV 2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built up area.
- (e) The unauthorised development and its environmental effects have been the subject of public complaint.

5. WHAT YOU ARE REQUIRED TO DO

- (1) Remove the outbuilding which was the subject of planning application reference 20/00429/DPP.
- (2) Remove all dismantled materials permanently from the land subject of this Notice.

(IMPORTANT – CONTINUES ON NEXT PAGE)

6. TIME PERIOD FOR COMPLIANCE

Within 5 calendar months from when this Notice takes effect, namely by 13 March 2023.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 13 October 2022 unless an appeal is made against it beforehand.

Signed



Matthew Atkins
Lead Officer – Planning Obligations
Planning, Sustainable Growth and Investment Service
Place Directorate
Midlothian Council

Date: 13 September 2022

(IMPORTANT – CONTINUES ON NEXT PAGE)

7 YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 13 October 2022. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

Schedule 1 of this notice gives information on your Right of Appeal.

8 WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on 13 October 2022 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

(IMPORTANT – CONTINUES ON NEXT PAGE)

SCHEDULE 1

EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

RELEVANT LEGISLATION

A copy of Sections 123, 124, 127-139 of the Town & Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019 is attached. You may wish to note in particular the points referred to below.

RIGHT OF APPEAL

If you wish to appeal against this notice, you should write to The Directorate for Planning and Environmental Appeals, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR or contact the DPEA via their website <https://www.dpea.scotland.gov.uk/>. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in section 130 of the Town & Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019. If you decide to appeal you should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

If you lodge an appeal, the enforcement notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitation, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out these operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to an unlimited fine. If the use or operations are continued after conviction, the person may be convicted of a second or subsequent offence. In determining the amount of any fine for any convicted person, in either circumstance, the court shall in particular have regard to any financial benefit that has accrued - or appears likely to accrue – to any person who has committed the offence. That consideration will similarly apply to the level of fine imposed by the court on any convicted person who complies with an enforcement notice requiring the removal or alteration of a building(s) or works, in cases where the building(s) or works are subsequently re-instated or restored at any time after the compliance date.

(IMPORTANT – CONTINUES ON NEXT PAGE)

As an alternative to prosecution the Council may serve a Fixed Penalty Notice. This requires payment of a fine to be made within 30 days of its service, which will be retained by them. The level of fine is £2,000 for non-compliance with an enforcement notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid to the Council is reduced to £1,500.

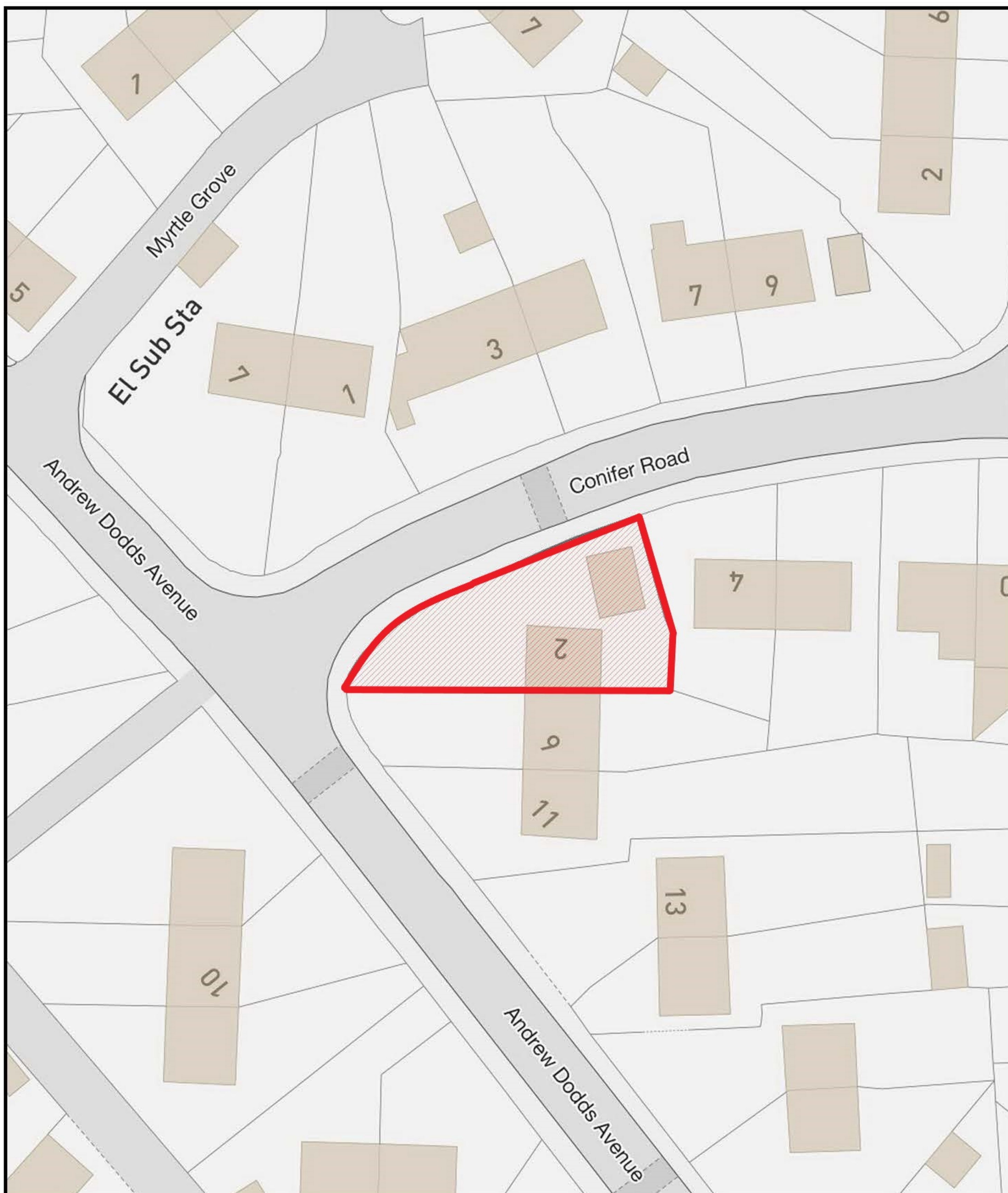
DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may also enter on the land, take those steps and recover the costs involved, from the owner or lessee of the land.

FURTHER OFFENCES

Compliance with the terms of an enforcement notice does not discharge that notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.

(IMPORTANT – CONTINUES ON NEXT PAGE)



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Enforcement Notice

2 Conifer Road, Mayfield, Dalkeith, EH22 5DE

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File No.E/22/31

Scale: 1:500

f1



**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE
22/00027/PPP FOR RESIDENTIAL DEVELOPMENT WITH ASSOCIATED
NEIGHBOURHOOD RETAIL, COMMERCIAL AND LEISURE
DEVELOPMENT AND/OR COMMUNITY FACILITIES; AND ASSOCIATED
INFRASTRUCTURE WORKS (EIA DEVELOPMENT) ON LAND SOUTH OF
MAYFIELD AND EAST OF NEWTONGRANGE, CRAWLEES ROAD,
GOWKSHILL, GOREBRIDGE**

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission in principle for residential development with associated neighbourhood retail, commercial and leisure development and/or community facilities on land to the south of Mayfield and east of Newtongrange, Crawlees Road, Gowkshill, Gorebridge (alternately referred to as the South Mayfield or Lingerwood site).
- 1.2 There have been 83 representations and consultation responses from the Coal Authority, Scottish Water, NatureScot, the Scottish Environment Protection Agency (SEPA), Historic Environment Scotland, Newtongrange Community Council (NGCC), Mayfield and Easthouses Community Council (M&ECC), the Council's Archaeological Advisor, the Council's Ecological Advisor (TWIC), the Council's Senior Manager Neighbourhood Services (Roads), the Council's Senior Manager Protective Services, the Council's Land Resources Manager and the Council's Education Executive Business Manager.
- 1.3 The relevant development plan policies are policies 1, 2, 3, 4, 6, 7, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 24, 25, 28 and 31 of the National Planning Framework 4 (NPF4) and policies STRAT1, DEV1, DEV2, DEV3, DEV5, DEV6, DEV7, DEV 8, DEV9, DEV10, TRAN1, TRAN5, IT1, TCR2, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV16, ENV 17, ENV18, ENV19 ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).
- 1.4 The recommendation is to grant planning permission subject to conditions and the applicant entering into a planning obligation to

secure contributions towards necessary infrastructure and the provision of affordable housing.

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is extensive in size, being 74.5 hectares, and comprises agricultural land that is located to the south of Mayfield, to the north of Gowkshill and to the east of Newtongrange. The application site wraps around the existing Mayfield Industrial Estate to the east and south. The site does have a history of mine works and a number (14 have been identified) of disused mineshafts are present on the site.
- 2.2 The site is characterised by an ascending gradient from west to east, which is steep in parts. From the lowest point of the site at the west boundary to the highest point of the site at the east/south east boundary there is an increase in levels of circa 70m.
- 2.3 The settlement of Mayfield is to the north, Newtongrange to the east and Gorebridge is to the south. The site is bound by Blackcott Drive to the south and by Westhouses Road to the north east. On the site's eastern boundary, at its northern limits, the site is bound by Cushat Gardens. Moving south along the site's east and south east boundary, the site is predominantly bound by agricultural land. Right of way ref: MID/6-50/5, generally follows the site's south east boundary, set within the site.
- 2.4 At the south the main definition of the site's limit is the settlement of Gowkshill. Between Gowkshill and the site runs a right of way (ref: MID/5-29/1), this progresses to the east uphill towards Masterton Wood, parallel with the site boundary. To the west of Gowkshill the site is bound on its southern limited by Stobhill Road.
- 2.5 The site's western boundary starts at the south running north with existing development at Monkwood Road to the west, but separated from the site by existing tree belt and landscaping. This is the scenario up to Lingerwood Road, which enters the site almost perpendicular to the site boundary, penetrating into the southern centre of the site.
- 2.6 To the north of Lingerwood Road, the site's western boundary is defined by Newtongrange and principally existing development at Lothian Terrace which runs parallel to the site's boundary. To the north of Lothian Terrace the site abuts the ends of First – Sixth Streets within the Newtongrange Conservation Area. The western boundary is further characterised by the presence of right of way ref: MID/5-34/3 that runs north from Lingerwood Road to the north west corner of the site.
- 2.7 Development at Wester Suttleslea Terrace is located at the north west corner of the site, with the Mayfield Industrial Estate forming the north

boundary of the site until the site wraps around the east of the industrial estate and progresses back up to Blackcott Drive.

- 2.8 The site's interior is characterised primarily by functional agricultural fields defined in the most part by established hedgerows. This land is identified within the MLDP as the following sites:
- h34 – East Newtongrange (Committed Development – 109 houses)
 - h35 – Lingerwood (Committed Development – 137)
 - h38 – South Mayfield (indicative capacity 439)
 - h49 – Dykeneuk, Mayfield (indicative capacity 50)

A total of 735 units.

- 2.9 The site wraps around some existing residential dwellings including:
- Smithy Cottages at the junction of Lingerwood Road and Crawlees Road;
 - Lingerwood Farm to the north of Lingerwood Road; and,
 - Lingerwood Farm Cottages to the north of Lingerwood Road.
- 2.10 A "Safeguarded Route" through the industrial estate, into the north of the site is identified in the MLDP and would deliver a direct route from Suttieslea Road south to Crawlees Road. The MLDP further safeguards a future connection from the southern end of Bogwood Road to the north, through to Crawlees Road which runs north to south through the heart of the development and connects Mayfield and Gowkshill.
- 2.11 With respect to statutory and non-statutory environmental designations, the Gowkshill enclosure (SM6336) is located approximately 200m to the south of the site. The Newtongrange Conservation Area lies adjacent to the site's north-western boundary. There are no statutory national nature/conservation designations within close proximity to the site; the closest being the Crichton Glen SSSI over 5km away. A regionally and locally important nature conservation site, Camp Hill/Camp Wood, is located approximately 500m from the site to the south east.

3 PROPOSAL

- 3.1 Planning permission in principle is sought for residential development, neighbourhood retail, commercial and leisure development and/or community facilities; and associated infrastructure.
- 3.2 A design and access statement and masterplan (reference: MI02(SW)MP01) have been prepared by the applicant to outline the following indicative development components:
- A residential led development proposal in excess of 900 dwellings within 9 character areas;

- Three new or upgraded vehicular access points - from Bogwood Road, Sutteislea Road and Stobhill Road;
- A primary spine road and bus route running from Bogwood Road to the north east of the site, through to the centre of the site to connect with Crawlees Road and progress south to Stobhill Road;
- Three indicative locations for neighbourhood retail, commercial, leisure and/or community facilities, including the potential at Lingerwood Steadings for artisan workshops;
- Two development plots to accommodate community growing areas and the provision of allotments;
- Enhanced pedestrian and cycling accessibility/connectivity and extended public transport routes into the site;
- A network of open space provision including land for orchards, play space, sports pitches and viewing points;
- The provision of structure landscaping and trees at the sites boundaries and within proposed areas of open space;
- The provision for sustainable urban drainage systems (SUDS) comprising SUDS basins, porous paving, filter drains and swales to suit future site layout arrangement;
- The retention and enhancement of existing trees and woodland;
- The provision of a 6m high landscaped noise bund (and fencing) around the north, east and southern boundaries of the Mayfield Industrial Estate; and
- Footpath links from the existing network into the site.

3.3 An indicative housing capacity in excess of 900 dwellings is identified within the masterplan and accompanying submission.

3.4 As this application is for planning permission in principle, an exact number of residential units is not known, however an associated environmental impact assessment (EIA) screening and subsequent assessment limits numbers to not more than 1,000 dwellings.

3.5 The application is accompanied by the following documentation:

- Pre-Application Consultation Report (PAC);
- Design and Access Statement (DAS);
- Ecological Assessment;
- Heritage Assessment (including an updated assessment);
- Memorandum on Site Investigations;
- Mineral Stability Risk Assessment;
- Site Investigation Report;
- Transport Assessment;
- Geo-environmental Interpretive Report;
- Planning Statement;
- Tree Survey;
- Flood Risk Assessment (FRA);
- Phasing Plan;

- Environmental Impact Assessment (EIA) Report covering noise and vibrations, air quality, and landscape and visual impact (LVIA updates were further provided and advertised accordingly during the determination of the application).

4 BACKGROUND

4.1 Application 08/00515/FUL for the erection of 867 dwellinghouses, land for 87 affordable residential units, associated roads, cycleways, landscaping, SUDS pond and detention basin and primary school was refused on 18 February 2009. The reasons for the refusal are summarised as follows:

1. The proposed development does not comprise a healthy mix of units;
2. The site layout and number of dwellings proposed would result in an over development;
3. No added emphasis has been given to the architectural form and style of the buildings within the areas of improved quality;
4. The use within the development of high retaining walls up to 4.1 metres high topped with high boundary walls and fences would appear unduly imposing;
5. There, would be mutual overlooking and loss of privacy to the proposed houses;
6. The SUDS pond and the SUDS basin would not have houses fronting onto them;
7. The positioning of houses within the development with their rear gardens backing onto the proposed SUDS ponds and basin would appear incongruous;
8. There would be mutual harmful overlooking and loss of privacy of Nos. 1 & 2 Lingerwood Farm; and
9. The buffers between the proposed football pitches and existing neighbouring houses and proposed neighbourhood equipped areas for play are inadequate resulting in safety hazards from stray footballs.

4.2 Planning application 08/00515/FUL was in detail. It is noted that the principle of development was not identified as a reason for refusal. It is noted further that the red line boundary of the 2008 application encompassed a smaller area than that of the current application. Most notable is the omission of the field due north of Gowskill. The quantum of development was identified as a reason for refusal. This is further discussed later in this report.

4.3 In response to a screening request (21/00178/SCR) for residential development on the site the Council confirmed on 2 April 2021 that an EIA was required. A subsequent scoping opinion (21/00515/SCO) set out that an EIA was required concerning air quality, noise and landscape and visual impact.

- 4.4 The proposal is classed as a Major Development, as defined by the Town and Country Planning (Scotland) (Hierarchy of Developments) Regulations 2009. Therefore, the applicant has certain obligations in relation to pre-application consultation with the community. The submitted Proposal of Application Notice (21/00179/PAC), setting out the consultation details was reported to the Committee at its meeting of May 2021. The planning application is accompanied by a Pre-Application Consultation Report which details the consultation methodology and the feedback gained from this process.
- 4.5 A Development Brief was prepared in 2005 setting out guidance for the development of the site. The sites within that Development Brief that this application refer to are also known as Q, R and U, however this brief is now outdated and superseded by the MLDP.
- 4.6 The application site area exceeds two hectares. The application therefore constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5 CONSULTATIONS

- 5.1 **The Coal Authority** does not object to the application subject to condition(s) being attached to any grant of planning permission and has stated that their records indicate that, *"the application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application"*. This could affect the safety and stability for the redevelopment of the site. However, the Coal Authority considers that an adequate assessment of the coal mining risks associated with this site has been carried out.

- 5.2 **Scottish Water** does not object to the application but highlighted:

Water Capacity Assessment - There is currently sufficient capacity in the Rosebery Water Treatment Works to service the development. However, further investigations may be required to be carried out once a formal application has been submitted to Scottish Water (this is a separate regulatory process between the applicant and Scottish Water).

Waste Water Capacity Assessment - There is currently sufficient capacity for a foul only connection in the Edinburgh PFI Waste Water Treatment works to service the development. However, further investigations may be required to be carried out once a formal application has been submitted to Scottish Water (this is separate regulatory process between the applicant and Scottish Water).

- 5.3 **NatureScot** does not object to the application but highlighted: *“We welcome the connections for active travel and the permeability with surrounding neighbourhoods. It is good to see the provision of plenty of open and green space and the incorporation of the core path network.”*

And in response to Ecology, *“We agree with the ecological report (Nigel Rudd, 2021) that the development presents opportunities to enhance biodiversity. Given the current Climate Emergency and Biodiversity Crisis, it is important to look for opportunities to deliver a greener and more biodiverse development. We concur with the recommendations in chapter five; these should be secured using suitably worded conditions.”*

- 5.4 The **Scottish Environment Protection Agency (SEPA)** does not object to the application but note that they agree with the recommendations within the submitted FRA that *“once development layouts are known, further investigations relating to potential issues of mine water from these entrances should be carried out to update the Flood Risk Assessment”*.
- 5.5 In relation to Air Quality SEPA state *“The development will worsen air quality at some existing receptors due to increased transport emissions, the significance of these effects has been assessed using EPUK and RTPI guidance as ‘not significant’. This is non-statutory guidance. Professional judgement of the environmental health officers and Planners is required to consider overall significance”*. Although the air quality objectives are expected to be met, SEPA advise that best practice principals are incorporated into the design. They further set out that *“new receptors between the NWH site and Blackcot Drive may be impacted by nuisance dust and/or elevated PM10 levels which are harmful to health. Impact reduces after 100m. A buffer zone between the NWH site and the worst affected residential receptors (those within 40m downwind of the boundary) should be considered to minimise the risk of impacts and protect the health of future residents.”*
- 5.6 **Historic Environment Scotland** does not object to the application.
- 5.7 The **Newtongrange Community Council (NGCC)** has neither objected nor supported the application but make the following comments:
- The provision of 25% affordable housing within the development is welcome, but it should be provide across the site and not within specific parcels;
 - The EIA needs to be updated to take into account new increased operations at Neil William’s Haulage;
 - Existing hedgerows should be protected;
 - Statements in the Ecological Assessment that there are no mature trees on the site needs analysis;
 - Consultation with Scottish Water in respect of capacity of the water system is required;

- The Drainage Assessment was prepared in reference to 920 or 1000 dwellings – this is inconsistent;
- There is a historic drainage problem within Newtongrange;
- There is concern over the traffic increases that Crawlees Road would experience;
- Road connections should not be made between Lingerwood Road to Crawlees or from Wester Suttieslea Terrace to Lothian Terrace;
- The validity of the Geo-environmental Report is questionable due to its age;
- Some proposed house types are not localised housing types;
- There is some potential for reducing coalescence where the quantum of development could be reduced;
- Positive response regarding the proposed retail opportunities;
- Tree planting and open spaces should be secured; and
- Public art locations could be discussed further with the Community Councils.

5.8 The **Mayfield and Easthouses Community Council (M&ECC)** has neither objected nor supported the application but make the following comments:

- Share the developers overall vision - *“the phased development, the three separate new communities, the provision of paths, green network, access to the surrounding countryside, permeability of the development, access to shared greenspace within the development, the provision of affordable housing, public art spaces and retail/commercial/community facilities.”*
- Suggest affordable rented homes are provided as part of the 25% affordable housing allocation within the site;
- Suggest that the proposed retail locations could be clustered together into a small centre;
- Building heights should be to a maximum of two stories;
- Suggest that traffic calming should be introduced to Crawlees Road to minimise speeds and noise;
- The TA represents a lower level of traffic due to the COVID-19 pandemic;
- Scottish Water need to confirm capacity for surface water drainage as Newtongrange suffers from flooding in bad weather;
- Ground contamination needs to be thoroughly addressed;
- New planting should take place early in the development process to preserve biodiversity on the site;
- Large portions of the development would be susceptible to noise disturbance were the proposed mitigation not to be sufficient;
- Infrastructure needs to be implemented at an early stage to minimise construction impact;
- Clarity is required on who would be responsible for the maintenance of open space;
- The local community should be advised of an archaeological assets which in turn could inform public art; and

- Mayfield Town Centre payments to be made public/available.
- 5.9 The **Council's Archaeological Advisor** does not object to the application subject to condition(s) being attached to any grant of planning permission requiring a Programme of Archaeological Works (Targeted Survey and Evaluation).
- 5.10 The **Council's Ecological Advisor - The Wildlife Information Centre (TWIC)** does not object to the application subject to condition(s) being attached to any grant of planning permission requiring an updated bat survey at the appropriate time.
- 5.11 The **Council's Senior Manager Neighbourhood Services (Roads)** does not object to the application but raises concerns regarding the proposed masterplan. Including:
- The proposed development does not utilise the vehicular access route safeguarded in the MLDP;
 - Crawlees Road does not have a footpath. This could be resolved through the provision of a 2m wide footpath on the improved route or remote from the road within the adjacent landscaping. Improvements to Crawlees Road should allow for a wider buffer/separation between its route and Smithy Cottages.
 - The proposed route between Bogwood Road and Crawlees Road could be more direct for greater public transport benefits. It is noted that the road layout at this time is indicative and further discussions would be required at the detailed stage;
 - Improvements would be required at 3 of the junctions:
 - a. Junction 1 - Stobhill Road / Crawlees Road (minor realignment / widening);
 - b. Junction 2 - B6482 Suttieslea Road / Mayfield Industrial Estate (minor widening); and
 - c. Junction 6 - A7 / Stobhill Road (introduction of traffic signals).

Technical details of the proposed improvements would require to be submitted for approval with steps being taken to reduce the anticipated Degree of Saturation (DoS) (*capacity of a junction – 100% is maximum capacity*) of 93.0% at junction 6 to below the accepted level of 85%;
 - Steps should be taken to reduce the DoS level at Junction 5 - A7 and B6482 Dalhousie Road existing traffic signals from predicted 93.2% to 85%;
 - Appropriate phasing for all the required highway improvements should be provided;
 - Active travel routes (both walking and cycling) should be provided within the development providing access to local facilities, schools and bus stops; and
 - At a detailed stage parking for residents and visitors as well as electric vehicle charging should be provided to meet council standards.

- 5.12 In relation to flooding matters the Council's Senior Manager Neighbourhood Services (Flood Officer) does not object to the application subject to the submission of additional details including cross sections through the proposed SUDS features which show water levels and 1:200 year climate change flooding levels.
- 5.13 The **Council's Senior Manager Protective Services** does not object to the application but raises concerns regarding the proximity of new dwellings being delivered close to existing noisy industrial activities at the Mayfield Industrial Estate (MIE). The waste recycling centre within the MIA is currently exceeding its noise limits as set by its SEPA license which means it is difficult to assess the impact the activity will have on the proposed residential development. SEPA is working with the operator to bring the noise levels within the limits of its license and as such it would be appropriate for the developer to undertake up to date noise impact assessments for each phase of development at the detailed design stage(s) of the development.
- 5.14 With regards to contaminated land the Council's Senior Manager Protective Services does not object to the application subject to conditions being attached to any grant of planning permission in respect to ground contamination and previous mineral workings.
- 5.15 The **Council's Land Resource Manager** does not object to the application but highlighted: *"it is illegal to obstruct any known path and therefore a survey of the site should be undertaken so that when the development takes place there are no obstructions to the path network... If it is proposed that any paths will required a temporary diversion then this must be agreed with Midlothian Council at least 3 months before it is proposed any paths require to be diverted."* Further advice is provided on the mechanisms for permanently diverting formal routes.
- 5.16 The **Council's Education Executive Business Manager** does not object to the application. The development would give rise to 259 primary school pupils and 185 secondary school pupils. Developer contributions towards education facilities would be required to mitigate the demand from the proposed development. The catchment schools are:
- Non-denominational primary Mayfield Primary School
 - Denominational primary St Luke's RC Primary School
 - Non-denominational secondary Newbattle High School
 - Denominational secondary St David's RC High School
- 5.17 The Council utilises a primary school pupil product ratio of 0.28 per dwelling and a secondary school pupil product ratio of 0.2 per dwelling when calculating anticipated primary and secondary school pupil numbers from developments and also for the purposes of negotiating developer contributions with applicants.

- 5.18 The consultation responses are available to view in full on the online planning application case file.

6 REPRESENTATIONS

- 6.1 There have been 84 representations received, which can be viewed in full on the online planning application case file. 77 of the representations objected to the application and seven are neutral. A summary of the main points raised are as follows:

- The proposals would be over-development of the site;
- The existing services and infrastructure in the area would not be able to cope with the proposed development;
- The development would result in the loss of significant open space and wildlife;
- The proposed development should deliver more affordable housing;
- It is too difficult to get appointments with GP surgeries as it stands;
- Local roads already struggle with congestion, the proposed development would have a negative impact on traffic;
- There is insufficient spaces in the schools;
- The proposed development would result in the coalescence of Mayfield, Gorebridge and Newtongrange losing their individual character;
- There are few facilities proposed for local people;
- The development would generate additional noise;
- Public transport to the area is poor;
- The development would result in the loss of agricultural land;
- The proposed development would add to existing drainage and flooding problems in Newtongrange;
- The development would result in the loss of green space;
- Emergency services already struggle to cover the area;
- Lack of appropriate cycle infrastructure;
- Modern housing developments lack imagination and design quality;
- There is sufficient other allocated housing land in the Council area;
- Masterton and Common Wood are protected woodlands;
- Development would undermine the historic character of Newtongrange;
- Development would put pressure on adjacent industrial uses to move away;
- The proposed development would result in housing numbers above the sites allocation;
- The development would harm the air quality as a result of increased traffic and construction;

- Insufficient car parking would be provided for the proposed playing fields and this in turn will have a detrimental impact on existing residents;
- Lothian Terrace would become a through street;
- A 30m green corridor adjacent to existing housing and Lingerwood Farm, Lingerwood Farm Steading and Lingerwood Farm Cottages would reduce the impact of development;
- The proposed higher density areas of the development do not reflect the character of existing residential communities;
- Development on this scale would contradict the Council's Climate Change Strategy;
- Development would have a detrimental impact on Crawlees Road which already has a high volume of lorry traffic from the industrial estate;
- Development should respect access to existing properties along Crawlees Road;
- Landscaping needs to take place before the development of houses;
- Proposed business uses would generate more traffic;
- The land has historically be used for mining and is unstable;
- The land, due to its past uses, produces gas emissions;
- The existing wall along one side of Lothian Terrace which bordered the old railway line is part of the development site and is in need of repair;
- The development would result in dust deposits impacting on existing dwellings;
- The proposed development has not been subject to sufficient consultation with members of the public;
- The submitted plans do not provide sufficient detail to determine the application;
- The development should provide electric vehicle charging points;
- The development should include bungalows;
- The development would lead to anti-social behaviour; and
- The proposed development in not a 20 minute neighbourhood.

Non-material comments

- Local roads already suffer from inconsiderate parking;
- Loss of views over the site; and
- Development would result in de-valuation of existing properties.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.
- 7.2 The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- 7.3 Policy **1 Tackling the climate and nature crises**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **4 Natural Places**; sets out to protect, restore and enhance natural assets making best use of nature-based solutions.
- 7.7 Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.
- 7.8 Policy **7 Historic assets and places**; sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.
- 7.9 Policy **12 Zero Waste**; sets out to encourage, promote and facilitate development that is consistent with the waste hierarchy.
- 7.10 Policy **13 Sustainable transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.11 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.12 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.13 Policy **16 Quality homes**; sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.

- 7.14 Policy **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.15 Policy **20 Blue and green infrastructure**; sets out to protect and enhance blue and green infrastructure and their networks.
- 7.16 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.17 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- 7.18 Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.
- 7.19 Policy **24 Digital Infrastructure**; sets out to encourage, promote and facilitate the rollout of digital infrastructure across Scotland to unlock the potential of all our places and the economy.
- 7.20 Policy **25 Community wealth building**; sets out to encourage, promote and facilitate a new strategic approach to economic development that also provides a practical model for building a wellbeing economy at local, regional and national levels.
- 7.21 Policy **28 Retail**; sets out to encourage, promote and facilitate retail investment to the most sustainable locations that are most accessible by a range of sustainable transport modes.
- 7.22 Policy **31 Culture and creativity**; sets out to encourage, promote and facilitate development which reflects our diverse culture and creativity, and to support our culture and creative industries.

Other National Policy

- 7.23 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.24 The **Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

Midlothian Local Development Plan 2017 (MLDP)

- 7.25 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP. The development strategy supports the provision of an indicative 735 housing units on sites (h34, h35, h38, h49).
- 7.26 Policy **DEV 1: Community Identity and Coalescence** states that development will be supported where it does not result in the physical or visual coalescence of neighbouring communities. Where coalescence may occur, the development must include mitigation measures to maintain visual separation and protect community identity. Such measures, which may include landscaped buffer zones and other community woodland, will be tailored to the particular circumstances of the location.
- 7.27 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.
- 7.28 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.29 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.30 Policy **DEV6 Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.31 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.

- 7.32 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:
- A Result in a permanent loss of the open space; and/or
 - B Adversely affect the accessibility of the open space; and/or
 - C Diminish the quality, amenity or biodiversity of the open space; and/or
 - D Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.
- 7.33 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that Plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility).
- 7.34 Policy **DEV10: Outdoor Sports Facilities** seeks to protect outdoor sports facilities from re-development except in certain circumstances: where the proposed development is ancillary to the principle use of the site as an outdoor sports facility; the loss is only minor and would not affecting its overall use; the outdoor sports facility is to be replaced either by a new facility of comparable or greater benefit for sport or upgrading of an existing facility on the same site or nearby; or where the sports pitch needs assessment, open space audit and consultation with Sportscotland identify a clear excess of provision to meet the existing or anticipated demand in the area and the overall quality of provision in the locality will be maintained.
- 7.35 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.36 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.37 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.38 Policy **TCR2: Location of New Retail and Commercial Leisure Facilities** states that the Council will apply a sequential town centre first approach to the assessment of applications. This directs retail developments to the following areas in order:
- Town Centre - Bonnyrigg, Dalkeith, Gorebridge, Loanhead, Mayfield, Newtongrange, Penicuik, Shawfair
 - Commercial centre – Straiton Commercial Centre

- Potential out of centre location - Main corridor from Gorebridge/Redheugh to Newtongrange
- Local Centres - Danderhall, Bonnyrigg/Hopefield, Bonnyrigg/Poltonhall, Dalkeith/Thornycroft, Dalkeith/Wester Cowden, Dalkeith/Woodburn, Eskbank Toll, Gorebridge/Hunterfield Road, Bilston, Penicuik/Edinburgh Road, Roslin and Pathhead

Policy TCR2 also states that new shopping facilities, up to a scale of 1,000sqm gross floor area, will be permitted within local centres, provided they do not undermine the vitality and viability of any of Midlothian's town centres. It also states that elsewhere within the built-up area such facilities will be supported where new housing developments are not adequately served by existing centres. Any such development should not have a negative effect on the amenity of the adjoining residential area, including traffic and parking considerations.

- 7.39 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the Midlothian Green Network.
- 7.40 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.41 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.42 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.43 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or

indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.

- 7.44 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.45 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.
- 7.46 Policy **ENV17: Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts.
- 7.47 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.48 Policy **ENV19: Conservation Areas** states that development will not be permitted within or adjacent to conservation areas where it would have any adverse effect on its character or appearance.
- 7.49 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting
- 7.50 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.51 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.52 Policy **IMP1: New Development** This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops

and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.

- 7.53 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.54 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

8 ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 8.1 The EIA Report accompanying the planning application (required by regulations because of the scale and potential impact of the development) considers the findings of an EIA process undertaken by the applicant under The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. This statutory approach considers the likely significant environmental effects associated with the proposed development and outlines measures/approaches in which any significant adverse impacts can be mitigated. A scoping opinion (21/00515/SCO) set out that an EIA was required concerning air quality, noise and landscape and visual impact.
- 8.2 The EIA Report considers a variety of technical matters - providing a detailed assessment of those issues identified as part of the EIA scoping process. Whilst some adverse impacts are identified, the planning application process presents an opportunity to design out such adverse impacts. The EIA Report suggests that the site can accommodate around 1,000 dwellings.

Air Quality

- 8.3 The potential impacts on air quality arising from the development relate primarily to construction works. The assessment of dust and PM10 (particulate matter less than 10um in diameter) effects from the construction phase of the development was subject to a qualitative assessment. The EIA sets out that mitigation measures for dust would be implemented via the approval of a Construction Environmental Management Plan (CEMP) and Dust Management Plan (DMP). With these mitigations the EIA concludes that the impacts from the construction would not be significant.

- 8.4 Traffic generation would be a source of pollutants, however the EIA concludes that this impact is not considered to be significant in line with best practice set by Environmental Protection UK and Institute of Air Quality Management guidance.
- 8.5 Pollutants at future human receptors were also assessed. All but three receptors were predicted to have negligible exposure to pollutants. In three instances a slight impact from NO₂ (nitrogen dioxide primarily from vehicle pollution) concentrations was assessed, but no exceedance was predicted.
- 8.6 An assessment of the dust effects from neighbouring uses, specifically the waste recycling at Neil Williams Haulage (NWH), Mayfield Industrial Estate, was assessed. The detailed assessment found that for the majority of the proposed development there is likely to be a negligible risk of dust impact from the NWH site. However, at those receptors which would be within the closest proximity to activities at the NWH site, there is the potential for slight, but not significant, adverse effects as a result of dust emissions from the NWH site.
- 8.7 SEPA responded in regards to air quality stating that a 40m buffer between new development and the NWH site should be implemented. The proposed masterplan delivers a buffer in excess of 40m.
- 8.8 In light of the above the proposed development is consider to comply with NPF4 policy 23 and MLDP policy ENV17.

Noise

- 8.9 The noise and vibration reporting has been based on the EIA scoping of the development and pre-application discussions with the Council as well as industry standards.
- 8.10 Construction phase noise is assessed to be below threshold levels of adverse impact and is predicted to be short-term, local and of neutral significance. This is based on each phase of the development largely being delivered sequentially. Vibration from construction is assessed to be perceptible within existing dwellings during construction works. The potential of such vibration to cause damage is assessed to be very low and comparable to other residential construction projects.
- 8.11 It will be required that a Construction Environmental Management Plan (CEMP) be provided ahead of each proposed phase of development to be submitted to and approved by the planning authority.
- 8.12 The EIA outlines that the noise generated from the operational phase of development (completed development) by road traffic would only be of negligible impact on sensitive receptors as a result of increased traffic flows.

- 8.13 The site's proximity to industrial uses at the Mayfield Industrial Estate was a concern and as a consequence the impact of noise was scoped into the EIA assessment and will need to be considered in the preparation of future detailed layouts and designs.
- 8.14 One significant use operating in the Mayfield Industrial Estate is Neil Williams Haulage (NWH) waste recycling. The site currently operates under the control of a SEPA waste management licence. This licence specifically implements noise limiting restraints on the site and states:
- Noise levels arising from the waste operations permitted by this licence shall not cause the rating level to exceed the background noise level by more than 5 decibels when measured at least 3.5m from the façade of any façade of any residential property (or 1m from the façade in the case of upper floors) in the direction of the Licensed site.*
- 8.15 In considering the SEPA restrictions on the site, the first goal would be to assess the background level of noise. It was initially held that the noise assessments undertaken by the applicant were not sufficiently robust to be relied upon. As such the Council's Protective Services sought to verify the findings by undertaking their own measurements on site. These found that the applicant's findings were sufficiently accurate of the existing noise environment to support this assessment and to confirm that NWH were not currently complying with their Waste Management License condition in relation to noise.
- 8.16 It is important to note, that NWH has in the last year increased the volume/intensity of the waste recycling use. It is not definitively as a result of this, but both noise surveys undertaken by the applicants and the Council have identified that NWH is in breach of its SEPA licence as set out above. The implication is that the EIA noise assessment submitted with the application has therefore only been able to survey the noise environment whilst NWH has been in breach of its licence. As such, the noise surveys undertaken have not been able to assess a noise environment where activities are in compliance with the SEPA licence. SEPA are working with NWH to reduce noise levels onsite to ensure they comply with the limits set by the license.
- 8.17 It is the applicant's position that it would be unreasonable of the Council to impose on this development mitigation necessary to alleviate the harm of noise generated above that permitted by the NWH waste management licence. It is considered that this is the right position to adopt. However, the Council must also be mindful of 'the agent of change principle' in line with NPF4 policy 23 - the Council should not permit development of a noise sensitive nature in proximity to a lawful and established noise generating use that might result in future pressure/complaints against the established use. Balancing what reasonable mitigation can be required by the proposed development without compromising the agent of change principle and

the established land use of the NWH site is therefore nuanced and complex.

- 8.18 In addition to the above complexity, it must be noted that whilst noise surveys have been conducted their findings represent a scenario where the SEPA waste management licence is in breach. The noise assessments then seeks to identify what mitigation is necessary for a scenario where SEPA's licence is not breached. It is the position of the Council's Protective Services that this means the assessment and mitigation proposed within the applicant are, at best, "likely" to be accurate. As the nature of the final noise environment (on compliance with the SEPA license) is not precisely known, it might be the case that despite the proposed mitigation being implemented additional mitigation might be required. Whilst this is the case, the findings of the EIA are set out below.
- 8.19 The EIA identifies that the proposed development would likely suffer from a potentially significant impact from the waste recycling site. As such, the EIA assessment has sought to model predicted levels of noise based on the SEPA limitations as set out in their waste management licence (+5dB of background levels) and design mitigation for the development accordingly. It is set out that a 6m high acoustic barrier around the NWH waste recycling use be constructed. The barrier should either be a 4m high earth bund with 2m high acoustic fence on top of it, or a 6m high earth bund that would be landscaped.
- 8.20 It is specifically noted that the barrier, in whatever form, would be 6m high relative to the NWH site level. Whilst this proposed mitigation is set out, it is reiterated that the Council's Senior Manager Protective Services has concerns that the mitigation may not be sufficient to mitigate against noise from the site.
- 8.21 Enforcement of the waste management licence imposed on the site is the responsibility of SEPA. SEPA have been engaged throughout the determination of the application and it is known that SEPA are engaging actively with NWH in relation to reducing the noise and removing the breach of licence. It is outwith the scope of this application and any consent to require additional action of SEPA. However, it is acknowledged that considering the above efforts currently being made by SEPA, and any in the future, the noise environment may change over the course of the construction of the residential development.
- 8.22 Given the aforementioned concern, and the possibility that the noise environment may change, it should be conditioned that amended noise impact assessments shall be prepared and submitted prior to the commencement of any individual phase of development. This shall ensure that the proposed development responds effectively with mitigation appropriate to the noise environment.

- 8.23 In relation to phases 5 - 9 (Appendix E of the DAS) amended noise impact assessments shall determine whether noise mitigation proposed in the EIA is sufficient. Such an assessment shall propose additional mitigation to ensure that new housing is not subject to noise levels above that which would be experienced within an environment where SEPA's waste management licence is complied with.
- 8.24 Other industrial uses are also in close proximity to the application site, including the NWH garage which is understood to operate in both day and night time hours. The EIA assesses that both daytime (+11dB compared to background levels) and night time (+19dB compared to background levels) operations would result in significant adverse impact on the proposed residential development. In order to mitigate this impact a 4m acoustic fence barrier is proposed at its boundaries. This is identified to reduce the impact by 10dB. As such, daytime noise would reduce to +1dB compared to background levels, but night time levels would still be +9dB compared to background levels. This is just shy of significant adverse impact according to best practice standard BS 4142:2014+A1:2019. However, It is noted that these readings are external measurements (external of any new properties) and the EIA states that noise criterion suitable for sleep should be considered. The EIA further seeks to calculate an internal level (with partially open windows). It is set out that this would achieve -13dB in line with BS 8233.
- 8.25 Despite the above findings within the EIA the Council's Senior Manager Protective Services has determined the proposed receptors would likely still experience a degree of disturbance due to the intermittent and impulsive nature of noise emitted from the neighbouring sites. As such, further monitoring of noise levels at proposed residential locations should be undertaken prior to any individual phase of development being commenced to inform the final design of acoustic mitigation.
- 8.26 Other operators within the industrial estate were further assessed, including M Kyle Motors. The impact from this source was assessed to be low. International Waste Management Group (IWMG) and Flogas generate negligible levels of noise and were scoped out of the assessment.
- 8.27 Given the site is allocated for housing and there are proposed mitigation measures and recommended conditions, the proposals on balance are acceptable and comply with NPF4 policy 23 and MLDP policy ENV18.

Landscape and Visual Impact

- 8.28 A landscape and visual Impact assessment (LVIA) has been prepared to consider the effects of the proposed development on existing

landscape features and the potential visual amenity impacts associated with the proposed development. The LVIA chapter of the EIA was updated during the assessment of the application and as such was subject to re-consultation.

- 8.29 As is set out within the non-technical summary of the EIA Report the site is located between 115m AOD (Above Ordnance Datum) and 185m AOD. It is therefore in an elevated position and on a valley slope facing south west/west. There is high potential that the development will be visible from outwith the site and have an impact on the character of the landscape.
- 8.30 A mixture of desk based and field work was undertaken to understand the nature and character of the immediate landscape and the wider landscape context. As was agreed within the scoping report previously issued in respect of the development, specific viewpoints were captured to feed into the LVIA. The scoping report further went on to request that visualisation of the development from a selection of viewpoints should be prepared and feed into the assessment.
- 8.31 In general terms the LVIA methodology, findings and the proposed mitigations were acceptable. However, some points of concern were identified as follows:
- Tree Preservation Orders (TPOs) were not identified. There are some such designations within the LVIA 3km study area if not within the application site. These are landscape features that should have been considered in the assessment. However, it is considered that the site has been allocated for significant housing development within the MLDP regardless of these features. Mayfield Ridge TPO and Masterton Wood TPO groups are circa 107m from the edge of the application site. Were these features to have been correctly identified in the LVIA it would have been unlikely to have significant impact on its findings.
 - The LVIA report sets out the perceived importance or key landscape features, elements and characteristics of the site and assigns them a value from “low” to “high”. These values are all accepted with the exception of agricultural land which it is considered to represent a “medium” value (rather than low) owing to its location in immediate contrast to the adjacent Mayfield and Newtongrange settlements and the likely local value that is therefore placed on it for access and recreational use as well as for its use as arable land.
 - The assessment of magnitude (scale of impact) is accepted, with the exception of the magnitude set out for the two settlements of Newtongrange and Mayfield immediately adjacent to the site. It is considered that the magnitude should be set as medium (rather than low) during construction and post 15 years, as the relationship with the rural landscape adjacent will be permanently changed.

- The LVIA in considering potential adverse impacts on the existing landscape and outlines that effects on landscape receptors ranging from major adverse (significant) to negligible. However, the significant impacts are associated with the loss of agricultural land as a result of the proposed development. Other assessed significant effects are predicted on the existing path network across and around the edges of the site during construction. However, such effects are considered to reduce to not significant following completion of the development. In general the landscape effects are accepted.
- 8.32 Despite the above exceptions, it is considered that on the whole the LVIA section of the EIA is appropriate in assessing the landscape's capacity to accommodate the impact of the development on receptors and whilst the above points are considered to vary from the precise findings of the LVIA, these would not have a detrimental bearing on the assessment as a whole.
- 8.33 In assessing landscape character, the LVIA finds that a moderate adverse impact (not significant) is predicted for the Landscape Character Type (LCT) in which the site is located, decreasing to minor adverse for neighbouring LCTs.
- 8.34 It acknowledges that selected landscape features including partial hedgerows are indicatively proposed to be removed to facilitate development as outlined within the masterplan, but that the majority of the existing trees and some hedgerows would be retained and incorporated into the future layout and design of the development.
- 8.35 In assessing the visual impacts of the development, the LVIA identifies that the development would be clearly visible from receptors in close proximity to the site, including existing development at Newtongrange, Mayfield and Gowkshill. It further acknowledges its visibility in the wider landscape, particularly from the west and south. The viewpoints chosen are generally acceptable. It is noted that viewpoint 1 (looking east from Fourth Street, Newtongrange) is partially obscured by grasses in the foreground. This was requested to be re-taken, but has not been. Whilst some longer grass exists at this boundary it is considered that less obscured views of the site are achievable from this view.
- 8.36 Table 5-4 of the LVIA seeks to establish the sensitivity of visual receptors. Viewpoints 3, 9 and 16 are missing from the residential receptor category. These are views from a residential area (viewpoint 3 to a lesser extent). Whilst it is noted that some receptors have not been carried forward for final consideration of visual effects within the LVIA, the methodology and findings on the LVIA are generally acceptable. This is the context in which the site was originally allocated for housing in the 2003 local plan.

- 8.37 The proposed development does seek to mitigate its impact on the wider landscape, predominantly through the introduction of significant new woodland belts at the site's boundaries and internal landscaping that would serve to interrupt the visual impact of a large residential development. The LVIA assesses that the impact of the development on the landscape and other visual receptors generally diminishes with time following the developments completion. The proposed development is therefore considered to comply with NPF4 policy 14 and MLDP policy ENV7.

9 PLANNING ISSUES

- 9.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 9.2 The site is allocated for housing (sites h34, h35, h38 and h49) in the MLDP and is located within the built up area of Mayfield/Newtongrange where there is a presumption in favour of appropriate residential development. The majority of the site has been allocated for housing since the 2003 Midlothian Local Plan (site h49 was allocated in the 2008 Midlothian Local Plan) and contributes towards the Council's housing land supply. No material considerations have been presented to outweigh the presumption in favour of development.
- 9.3 With regard NPF4, although the site is allocated for housing in the MLDP, consideration still needs to be given to the sites location in terms of sustainability. In this regard the site is within close proximity to a range of local services including shops, schools, pharmacy and medical practices, employment opportunities, public transport options and active travel connections and as such is considered to be in a sustainable location in compliance with NPF4.
- 9.4 The site is allocated under four different site references:
- h34: East Newtongrange – indicative capacity of 109 residential units;
 - h35: Lingerwood – indicative capacity of 137 residential units;
 - h38: South Mayfield – indicative capacity of 439 residential units;
 - h49: Dykeneuk, Mayfield - indicative capacity of 50 residential units.
- 9.5 A total indicative capacity for the site therefore totals 735 dwellings. However, the proposed development is seeking up to 1,000 dwellings increasing the capacity of the site by circa 25%.

- 9.6 Site h34 has an indicative allocation of 109 units. When the site was originally allocated for housing in the 2003 Midlothian Local Plan it was for 179 units, however a proportion of the site was developed for 127 units (Wester Suttieslea) under planning permissions 07/00002/FUL and 15/00492/DPP and as such the site unit numbers for the remaining part of site h34 were adjusted in the MLDP on a proportionate land take basis.
- 9.7 Site h38 has an indicative allocation of 439 units. When the site was originally allocated for housing in the 2003 Midlothian Local Plan it was for 499 units, however a proportion of the site was developed for 60 units (Cushat Gardens) under planning permission 12/00339/DPP and as such the site unit numbers for the remaining part of site h38 were adjusted in the MLDP on a proportionate land take basis.
- 9.8 MLDP policy STRAT1 states, "*Midlothian Council will continue to seek the early implementation of all committed development sites, and related infrastructure, facilities and affordable housing*". As such, the site is in principle supported for residential development.
- 9.9 The proposed development does however differ from that set out in the MLDP. Aside from the indicative unit capacity, the proposed development does not include a primary school or land safeguarded for future provision of a school. Whilst this requirement is stipulated in the MLDP, the applicant entered into correspondence with the Council's Education Service in 2019 in respect of the continued need to deliver the proposed school site and as part of pre-application discussions it was confirmed that "*The new primary school in Easthouses will provide capacity for pupils arising from housing developments in Easthouses and Newtongrange as well as Mayfield*". As such, it was determined that primary school provision for the development is met off site subject to securing developer contributions. The Council's Education Service have not objected to the residential proposals without an on-site school option. As such, whilst the MLDP indicates a requirement to deliver a school on the site, it is identified that the position since the examination and adoption of the MLDP has evolved.
- 9.10 Given the above, a comprehensive landscape led masterplan has been prepared. This takes cognisance of various design parameters to establish a clear design framework that would create a strong sense of place. As such, it is considered that the proposed quantum of units is acceptable in this instance, subject to the layout, form and design of the proposed development being acceptable and the impact of the development on infrastructure, including education provision, being appropriately mitigated.

The Supply of Effective Housing Land

- 9.11 The Council is required to maintain a supply of effective housing land (enough land allocated and coming forward for housing to meet its

housing targets) at all times. The number of homes required in a local authority area is set by the Scottish Government in NPF4 and is met by the development strategy and policies of the MLDP and the assessment of individual proposals. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall. With a 10 year housing target being set at 8,850 units (for the life of MLDP2, to be prepared for adoption in 2026/27) it is a reasonable presumption that an annualised target of 885 units will be expected prior to the adoption of MLDP2 – this provides an impetus to support the granting of planning permission for residential development on allocated housing sites such as the one proposed.

Layout, Form and Density

- 9.12 The application is for planning permission in principle. This means that the detailed layout, form and design of the development would be subject to further applications (matters specified in conditions) and assessment if the proposal is granted planning permission. In this case conditions would be imposed requiring the following details to be submitted by way of an application:
- layout, form and design of any proposed buildings – which will dictate the number of residential units;
 - proposed materials to be used in the construction of the dwellinghouses, ground surfaces and ancillary structures – including those to be used in the area of improved quality;
 - details of landscaping and boundary treatments;
 - provision of open space and play areas/facilities;
 - percent for art;
 - sustainable urban drainage systems (SUDS);
 - details of road, access and transportation infrastructure;
 - sustainability and biodiversity details;
 - archaeology mitigation details (if required);
 - the provision of broadband infrastructure;
 - ground conditions/mitigation of coal mining legacy; and
 - construction management, including hours of operation and haulage routes.
- 9.13 Although the application is for planning permission in principle, the applicant has submitted a masterplan setting out the design principles for the scheme and as such it is appropriate to assess the development approach set out.
- 9.14 The proposed layout comprises three development areas in nine phases – the three development areas are Mayfield South (to the south of Mayfield), Easter Newtongrange (to the east of Newtongrange) and “An Clachan” (Lingerwood) a central housing pocket with areas of open

space on either side separating it from the other two development areas. Whilst the development obviously reduces the separation between Mayfield, Newtongrange and Gowkshill there is sufficient open space proposed centrally within the site and at the southern edge of the site that in combination with new and re-enforced tree belts and landscaping provide some separation that will mark the transition from one settlement to another. The proposed masterplan is considered to comply with MLDP policy DEV1.

- 9.15 Whilst development complements the existing edges of the neighbouring settlements, it is largely set back from existing built form with tree belts and other landscaping. At the southern edge of Mayfield development would seek to front the existing greenspace bound by Bogwood Road and Westhouses Road. At the eastern edge of Newtongrange the development seeks to reflect the existing development pattern at Sixth Street to Third Street by delivering an east west build line, whilst allowing some separation to respect the change in levels and the existing boundary wall and footpath. Development is offset from Lothian Terrace and no access or egress to the site from Lothian Terrace is proposed. Existing woodland and tree belts at the developments edges are respected and retained.
- 9.16 The proposed orientation of dwellings seeks to respond to the levels on the site that fall away from the east towards the west boundary. Dwellings are predominantly orientated facing either northwest or west. The orientation allows for development to descend gradually to the west. These matters respond positively to the principles of MLDP policy DEV5.
- 9.17 SUDS features are proposed throughout the development, but are predominantly to the west and north of the site. Open space, play areas and pitches are proposed throughout the development which seeks to deliver a network of open spaces and of connected tree belts. The main areas of open space are located within the heart of the site around the An Clachan residential zone, helping to provide separation between the expansion of Mayfield to the north and Newtongrange to the west.
- 9.18 The layout further seeks to respect existing development within the site boundary at Lingerwood Farm and Cottages, as well as the Smithy Cottages at Crawlees Road. Development is not proposed to directly adjoin these properties thus respecting their former more rural character.
- 9.19 Proposed landscaping includes the retention of existing hedgerows and trees where possible and the planting of new trees and landscaping. The landscaping strategy responds to the levels on the site and includes corridors of planting intruding between pockets of housing to 'break up' the development visually. The south and south east

boundaries respect the agricultural use beyond the site by including substantial structure tree planting to create a strong development edge.

- 9.20 The proposed road layout seeks to respond to the requirements of the allocation set out within the MLDP. The development requirements within the MLDP state that *“There is a requirement for two new/improved roads serving this site (along with h34, h35 and h49), which will ensure connectivity for Mayfield and Newtongrange.”*
- 9.21 There are to be two proposed primary roads within the development. One from Bogwood Road at the north of the site, progressing through the development to the south west and connecting with Crawless Road. This would be the ‘South Mayfield Distributor Road’ required by MLDP policy TRAN2 and henceforth referred to as the distributor road.
- 9.22 The second is proposed as the continuation of the Mayfield Industrial Estate road, connecting to Crawlees Road, which in turn is to be widened and improved. This proposed route is of a different arrangement than that originally envisaged within the MLDP which safeguards an alternate, previously undeveloped route, through the industrial estate. This is known as the ‘Safeguarded Route’. The Safeguarded Road is indicated on the inset on the submitted Masterplan, but is not formerly proposed to be utilised for this development. This matter is further discussed within the Transport and Access section of this report, but it is assessed that whilst the MLDP does safeguard a route for this purpose, the proposed use of the Mayfield Industrial Estate road is considered to fulfil the aims of the development requirements set out in the MLDP. It is acknowledged that the development requirements refer to “new/improved” indicating that improvements to the existing network could be sufficient to achieve the development requirements and network interventions set out in MLDP policy TRAN2. It is therefore considered that the proposed layout does achieve an appropriate vehicular link between the B6482 Bryans Road to Gowkshill.
- 9.23 Internally within the site, the new distributor and link roads would provide access to secondary vehicular routes, providing further access to tertiary routes and access to dwellings further away from the main link roads. A variety of methods including surfacing and traffic calming can be utilised to differentiate these routes. Such detail would be required at a detailed stage. The hierarchy of routes proposed is considered to be appropriate.
- 9.24 A network of pedestrian and cycle links are proposed throughout the site and connect to existing development to the north, east and south. Further connections to the existing path and core path network are further proposed as part of the development. Off road multi user routes are proposed to connect from Mayfield Industrial Estate to Gowkshill along the link road corridor, and from the east to the northwest along the distributor road corridor. Lingerwood Road will not be extended to

connect to Crawlees Road for vehicles, but a multi user route would be proposed to connect the two. Paths are proposed to connect to:

- Core Paths
 - MID/6-28/1 at Blackcot Drive; and
- Other Paths
 - MID/6-51/1 at the south of the site;
 - MID/6-50/4 at the south east of the site;
 - MID/6-52/2 at the east of the site; and
 - MID/6-52/2 at the north of the site.

- 9.25 Details of these routes will be required by condition, but the connectivity delivered by these features is considered to be appropriate for the scale and nature of the development.
- 9.26 The proposed primary roads are predominantly bound by green verges or open spaces creating pleasant movement corridors. Associated landscaping will aid in creating attractive vistas. The DAS indicates the placement of vista stopper buildings and key buildings at prominent locations and whilst detail is not provided at this stage their proposed positioning appears to be appropriate and considered.
- 9.27 The proposed built form is still to be designed in detail, however consideration has been given to the character of the new development. The masterplan does provide detail to indicate future development form. The DAS presents nine character areas. Whilst each have their individual merits, they all seek to provide good connectivity to open space and provide green links. Those to the north east, east and south east are characterised by their connection to larger open spaces, woodland and the wider rural environment. Those to the west, adjoining Newtongrange are denser and more tightly knit, reflecting existing built forms, but also providing green links.
- 9.28 The Easter Monkswood character area abuts Newtongrange and it is shown that terracing would be a common development type at this location. This would be appropriate considering the existing development at Newtongrange. This in turn reflects the Newtongrange Conservation Area to the east of the site. Whilst the DAS indicates that a number of housetypes would be used, it is considered that development closest to the Newtongrange edge should seek to respond to the existing development in character and scale. Whilst 1.5 to 2 storeys are proposed within this character area, the development would be encouraged to include single storey development, reflecting existing built form.
- 9.29 Adjacent to Mayfield are the proposed character areas Blackwood and North Mansfield. Both character areas are to address Blackcot Drive and its existing mature tree planting. Three storey development fronting the proposed distributor road is identified. Caution would be needed when delivering such a scale of development at higher areas of

the site, however it is considered that were such a scale to be sensitively designed and of a high standard it could be appropriate. The North Mansfield character area is the highest point of the site. As such it would be limited to a maximum of two storeys. The submitted DAS reflects this.

- 9.30 An Clachan is located at the heart of the site and is proposed to be of an individual character more reflective of the eastern site at Easter Monkswood and the Newtongrange Conservation Area. It is proposed that it be predominantly 1.5 and 2 storey dwellings laid out on parallel streets. The use of red brick and slate roofing would further be used to reflect Newtongrange. The character area would be outward looking to the east and northwest. Whilst the area would seek to introduce traditional materials and design features, more contemporary housetypes are proposed to be used. Pursuit of such a character area within the heart of the site is considered to be appropriate. It would serve to provide greater character transition from Mayfield to Newtongrange whilst relating positively to the open spaces proposed around it. In a development of nearly 1,000 dwellings, this variation in character is appropriate and beneficial.
- 9.31 Other character areas are identified as having a greater selection of housetypes. As these are generally set within the site or are separated from existing settlements by significant tree belts there is scope for these areas to create a new area and introduce new housetypes. Three storey development is proposed within the housetypes, however design and siting will need to be assessed at a detailed stage.
- 9.32 The DAS sets out that proposed houses would be of high energy efficiency (which will be required by the building warrant process) and sets out a fabric first approach, stating *“Through the use of improved insulation levels and careful design the houses achieve good thermal performance and air tightness.”* The DAS further sets out that Air Source Heat Pumps (for all dwellings), PV Panels and Waste Water Heat Recovery would be implemented. The Council declared a climate emergency in 2019 and as such the proposed inclusion of these measures is considered to be a benefit to the application and complies with NPF4 policy 1.
- 9.33 The proposed layout seeks to deliver private amenity space within the development. The masterplan is not of a level of detail that would allow for assessment of Midlothian’s space standards. However, clear thought has been given to this on a sloped site. The DAS identifies the need for extended plot depths in order to remove the need for inappropriate retaining wall features. It is indicated that gardens can be graded from 1:8, 1:10, and 1:12m slopes. Any proposed grading at 1:8 would have to be limited and appropriately orientated in order to be acceptable. Garden grading upwards of 1:10 would be sought.

- 9.34 The proposed development retains good levels of separation within the development, however this will require assessment at a more detailed stage as the masterplan is not of a scale and level of detail to accurately measure.
- 9.35 The proposed materials are not specified in significant detail with the exception of some of the character areas that would utilise red brick. An appropriate mix of materials will be required for submission at later stages of the planning process.
- 9.36 Locations for Areas of Improved Quality (AIQ) are not specified. As such, additional AIQ locations will be required to ensure that that 20% of all proposed dwellings fall within this category.
- 9.37 The proposed built form is therefore generally considered to respond to the site's characteristics appropriately and would be considered to comply with NPF4 policy 14 and MLDP policies DEV5 and DEV6.

Non-Residential Use

- 9.38 The non-residential uses including retail (Class 1), commercial, leisure and community facility uses are to come forward subject to market demand and are to be located in the eastern half of the site and centrally at the An Clachan.
- 9.39 The MLDP seeks to direct the location of new retail development towards existing centres – in this case the MLDP does not state that a local centre or other uses should be provided within the development. Policy TCR2 states that the Council will apply the sequential approach set out in this policy with reference to the network of centres (Mayfield and Newtongrange identified as “other Town Centres”). Whilst the Council does not support major retail development at any other out of centre locations the proposed uses would appear to be local in their scale. Policy TCR2 does not strictly prohibit local scale retail within new residential development. The scale of the proposed development should further be taken into account and it is considered that some opportunities for retail would provide positive convenience shopping within a large scale development. It is further noted that NPF4 policy 15 states, “Development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods”. This means opportunity to walk to facilities within 10 minutes (circa 800m) of ones dwelling. Whilst the centres of Mayfield and Newtongrange are within 800m of the edges of the site, this would not be the case for all residents. Whilst 800m is a guide the topography of the area should further be taken into account. Returning on foot or bicycle from facilities within Newtongrange in particular would involve a not insignificant incline. It is considered that the proposed uses would therefore contribute towards the creation of a more sustainable development in line with NPF4 policy 25.

- 9.40 The Lingerwood Steading buildings are to be adapted to a range of bespoke house type's which will also enable craft and/or artisan uses in studios or workshops to operate – this could see arts and crafts operating at a very local level in the design and production of art work, craftwork, bespoke clothing and food. MLDP policy ECON6 sets out that home based businesses can be supported where they accord with relevant policies. Such uses are required by the policy not to be retail. This would have to be assessed on the receipt of further details at the matters specified in conditions applications.

Access and Transportation Issues

- 9.41 Three primary access routes connect the site to the local road network. These include vehicular access points to Bogwood Road to the north east, the Mayfield Industrial Estate and thus Bryans Road (B6482) to the north and at the south via Stobhill Road.
- 9.42 The proposed access arrangements would allow for legible, safe and efficient vehicular manoeuvrability to/from and within the site. Furthermore, the Council's Senior Manager Neighbourhood Services (Roads) has raised no objection subject to receipt of the detailed design for corresponding access and road arrangements, proposed junctions, bus service/infrastructure requirements and offsite improvements to the local road network.
- 9.43 Whilst not objecting to the proposals, the Council's Senior Manager Neighbourhood Services (Roads) has advocated the benefits of the Safeguarded Route that would provide a new road through Mayfield Industrial Estate. The benefits advocated would be the ability to provide a 3m wide multi-user route up to Bryans Road to the north, as well as being a more amenable route. Some concern is raised that the use of the Mayfield Industrial Estate road would increase conflict between pedestrians, cyclists and vehicles (a number of which being of an industrial nature).
- 9.44 In addition, the Council's Senior Manager Neighbourhood Services (Roads) raised concerns with the Distributor Road where the masterplan appears to show a number of junctions on its route that would slow traffic through the site and limit the benefits of a primary bus route. It is however indicated within the DAS and Figure 17 (Movement Hierarchy) denotes that other roads diverging off the Distributor Road are of a secondary nature indicating priority is given to the Distributor Road at junctions. A condition should be attached to any grant of planning permission to secure this approach.
- 9.45 As part of any MSC application providing details of the upgrades to Crawlees Road and B6482 to Stobhill Road to the south, it will be required that such designs allow sufficient room for residents of Smithy Cottages (fronting east side of Crawlees Road) safe access and egress and parking at their property.

- 9.46 Further concern was raised in regards to safe routes to school. Whilst Mayfield Industrial Estate road would provide a pedestrian access towards primary schools to the north east of the site and secondary school to the north, it is considered that future occupants of phases six to nine (Appendix E of the Amended DAS) of the development would be required to walk a longer route west to then utilise these pedestrian links. Notwithstanding the nature of Mayfield Industrial Estate road, this arrangement would mean a longer walk for school children prior to the completion of phases eight and nine that would provide connectivity to South Mayfield. As such it is proposed that a condition be applied to any grant of planning permission that would require the delivery of the Distributor Road and an appropriate multi-user route connection to South Mayfield prior to the commencement of dwellings in phases six to nine. The connection of the Distributor Road would further allow swifter access for any bus route extension from Bogwood Road through/into the site.
- 9.47 The site is considered to be in a sustainable location that would encourage sustainable transport choices, including movements by bus – the site will be serviced by a bus service (which already services neighbouring development).
- 9.48 Mayfield Town Centre is located approximately 1km from the site, and a similar distance to Newtongrange town centre. These town centres provide a range of local services, including retail, commercial and community uses. Provision of detailed road designs, visibility splays and pedestrian accessibility details/routes will also be required to accompany applications for matters specified in conditions for any future detailed design.
- 9.49 The proposed development is considered to comply with NPF4 policy 13 and MLDP policy TRAN1.

Landscaping, Trees and Hedges

- 9.50 The application site is characterised by agricultural fields with hedges demarcating their boundaries. Mature trees on the site are limited. Although it is proposed that some trees and hedgerows will be removed as part of the development, where possible trees are sought to be protected and hedgerows retained.
- 9.51 The proposed masterplan is set out within the submitted DAS to be landscape led. The masterplan seeks to introduce a variety of new landscape formats, including structured tree planting, roundels, amenity planting, meadow areas, re-enforcing existing hedgerows, community orchards, allotments and parkland. Additional detail will be required via applications for matters specified in conditions, however the landscaping indicated is significant and provides a framework for

the individual parcels of development. Appropriate maintenance shall be required by condition and legal agreement.

- 9.52 The masterplan seeks to deliver a significant uplift in tree canopy in line with the aspirations of the Council's Climate Change Strategy 2020 which seeks a 21% canopy cover for new development. The proposed quantum of tree planting would significantly eclipse that proposed to be removed. Details of canopy cover would be required within applications for matters specified in conditions.
- 9.53 The proposed masterplan further indicates additional landscaping outwith the site, but land in the ownership of the applicant, connecting it to Masterton Wood to the south of the application site. This improvement of the green network and habitat connectivity is to be welcomed. The landscaping strategy complies with NPF4 policies 3, 4, 6 and 20 and MLDP policies DEV7, ENV2, ENV11 and ENV15.

Contamination and Remediation

- 9.54 A Site Investigation Report and Mineral Stability Risk Assessment have been submitted with the application as the site is located in a high risk area of former coal mining. These submissions have been reviewed by the Coal Authority and the Council's Senior Manager Protective Services.
- 9.55 The Coal Authority acknowledge that coal mining legacy issues are common within the application site and consolidation of the identified shallow coalmine workings will be necessary, together with the treatment of the mine entries located. No objection is raised, so long as a condition is attached to any grant of planning permission requiring a scheme of intrusive site investigations, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity; with any remedial measures necessary being undertaken as appropriate.
- 9.56 The Council's Senior Manager Protective Services has not raised any objections, but requires a condition to be attached to any grant of planning permission requiring a scheme to deal with any contamination of the site and/or previous mineral workings to be submitted to and approved by the planning authority.
- 9.57 The proposed development, subject to appropriate conditions complies with NPF4 policy 23 and MLDP policy ENV16.

Open Space

- 9.58 The table within Appendix 4 of the MLDP outlines open space standards that future development proposals will be required to meet in relation to quality, quantity and accessibility. An initial review of open

space is required to be undertaken against this requirement to ensure that the above parameters can be met, complemented by a comprehensive review once the detailed design of the corresponding phases has been confirmed. Moreover, whilst any assessment of open space shall be reviewed against the current open space provision within Mayfield and Newtongrange, given the scale of the proposed development, and the requisite demand for open space provision in its own right, a standalone review of the proposed open space within the site will be required to ensure that the quantum, form, location and function of open space areas within the site is acceptable.

- 9.59 Overall, the quality of existing open space provision within Newtongrange scores slightly above the qualitative score for all amenity areas. However there are deficiencies in equipped play and playing fields. Mayfield scores well below the qualitative score required for amenity areas and similarly to Newtongrange is deficient in equipped play and playing fields. The applicant has identified various open space areas within the masterplan to help address this (Figure 13 of the DAS indicated areas to be kept free from development), however, additional/amended provision will be sought by condition as outlined below.
- 9.60 Under provision of playing fields in Mayfield, has in part, been addressed by the provision of additional and improved sports pitches adjacent to Newbattle High School. The site itself provides indicatively two areas to be informal play pitches equating to over a hectare of land. The ability of this sloping site to provide level playing pitches without excessive cut and fill is limited.
- 9.61 It is considered, that there is sufficient informal open space in the area along with the proposed areas of amenity space within the development. There is however an under provision of equipped play areas within the wider area, which will be exacerbated by demand from residents within the proposed development. The submitted DAS sets out that “formal play facilities will be located at accessible locations throughout the development”. This is required to be further assessed when detailed infrastructure provision within any future applications for matters specified in conditions are submitted.
- 9.62 Following consultation with the Council’s Land Resources Manager, no objections have been lodged against the proposals.
- 9.63 In terms of on-site open space provision, the masterplan seeks to deliver significant green networks within the site (circa 42.3ha will be free from development). Whilst some of this will be graded or used for structured woodland/tree belts it is considered that sufficient areas of amenity open space with good levels of connectivity to the path network are to be provided within the development.

- 9.64 Not all of the demarcated areas on the masterplan (and included within the open space calculation) are considered to be usable/functional. This includes parts of the woodland edges shown as open space in the masterplan, which will be required for planting/offsets and, for habitat protection and biodiversity enhancement. Future applications will have to demonstrate compliance with the Council's standards or provide justification of non-compliance to the Council's satisfaction.
- 9.65 In light of the significant open space provided within the masterplan and the indicative play and sports opportunities stated the development is considered to comply with NPF4 policy 21 and MLDP policy DEV8.

Flood Risk and Surface Water Drainage

- 9.66 A Flood Risk Assessment (FRA) was submitted with the planning application. Nine indicative locations for sustainable urban drainage system (SUDS) features are included within the masterplan including dry basin features. The Council would usually request that such features be wet ponds due to the biodiversity benefit that they provide. The applicant's justification for the dry basins is largely due to the site levels and the larger land take/requirement necessary for wet pond SUDS features. However, it is noted that some of these proposed locations are in areas that do not have significant level changes, particularly at the west of the site. As such, conditions should be attached to any grant of planning permission requiring SUDS features to be wet ponds, and where they are not, appropriate justification should be provided.
- 9.67 It is stated that *"the surface water system will be designed and constructed in accordance with Sewers for Scotland, and attenuation will be provided so that the greenfield run-off figures referred to in section 4 will be complied with for all events up to the critical 1 in 30-year event. This complies with the current requirements of CIRIA SUDS Manual C753 Chapter 3 in terms of water quantity."*
- 9.68 A number of representations have been submitted on the basis that Newtongrange already suffers from poor surface water drainage in bad weather. Any proposed drainage system will have to include sufficient attenuation and the sewerage system needs to attenuate the flows without flooding the system up to the critical 1 in 30-year event whilst accounting for climate change appropriately. The Drainage Assessment further states that a sensitivity analysis will be carried out on the proposed system for critical events up to the 1 in 200-year event. This can be secured by a condition on a grant of planning permission.
- 9.69 In relation to foul water the Drainage Assessment states *"it is proposed that the new foul water system will connect to the existing foul/combined sewers at various points, suitable outfall points will be chosen depending on topography. Discussions are ongoing with*

Scottish Water with regards to the foul water connection points.”

Scottish Water have raised no objection to the proposed development at this time.

- 9.70 The Council's Senior Manager Neighbourhood Services (Flood Officer) has raised no objection to the proposals, but indicates that further investigations once layouts are known will be required as well as details of the finalised drainage system. These matters can be secured via a condition on a grant of planning permission and matters specified in condition applications.
- 9.71 Subject to the provision of a series of conditions covering the detailed design of the surface water management infrastructure and the aforementioned mitigation measures within the FRA, the proposed drainage, would accord with the corresponding objectives of NPF4 policy 22 and MLDP policy ENV9 and ENV10.

Archaeology & Cultural Heritage

- 9.72 The Council's Archaeological Advisor has raised no objection to the proposed development. During the assessment of the application a revised heritage impact assessment was submitted. Whilst the proposed development site contains several recorded historic environment assets and lies within an area of archaeological potential, the Archaeological Advisor is content that a programme of archaeological works to mitigate the impacts of the proposed development upon the Historic Environment can be secured by condition. The programme of works will include a written scheme of investigation. Based on the above the proposed development is considered to comply with NPF4 policy 7 and MLDP policy ENV24.
- 9.73 The proposed development abuts the Newtongrange Conservation Area and MLDP policy ENV19 states that *“development will not be permitted which would have any adverse effect on its character and appearance”*. Whilst the proposed detailed design of the proposed development is not known at this time the DAS indicated what the proposed built form would be like at the western edge of the site. As has been discussed earlier in this report (see layout, form and density discussion) the layout the masterplan seeks to deliver development of a form and orientation that reflects the conservation area and subsequent development to the north east of the site. The proposed housetypes have further been identified to be terraced units and of a scale reflecting the conservation area. These matters are considered to be appropriate in respecting the conservation area edge and comply with NPF4 policy 7 and MLDP policy ENV19.

Ecology

- 9.74 An Ecological Assessment dated 2021 was submitted with the application and has been reviewed by the Council's Ecological Advisor,

The Wildlife Information Centre (TWIC). In regards to bats, it was identified that no trees with bat roost potential were noted on the site, however it was recommended that a further activity (dawn or dusk) survey for bats is undertaken May to August on building 4 (building 4 forms part of the Lingerwood Steading buildings as identified by the Ecological Assessment) as surveys were undertaken outside of the season. In addition, TWIC recommend that as hedgehogs have been recorded within 50m of the site at both the west and east ends of the site, hedgehog highways in the boundary fences of new gardens should be considered, to ensure gardens are accessible to hedgehogs and other wildlife and to reduce fragmentation of the landscape. Retention and creation of hedgerows within the development will also be beneficial in this regard. Finally, prior to vegetation clearing works, vegetation should be checked for the presence of hedgehog nests/hibernation sites. A condition on a grant of planning permission can be used to secure a biodiversity scheme that secures the above stated recommendations.

- 9.75 NatureScot have further commented on the application and note that there are opportunities to increase biodiversity across the site, setting out that they concur with the recommendations in chapter five (of the Ecological Assessment); and that these should be secured by condition (this can be included in the biodiversity scheme condition mentioned above). With such a condition the proposed development would comply with NPF4 policy 3 and MLDP policy ENV15.

Renewable Energy

- 9.76 The MLDP sets out that “*Through attention to location, development mix, phasing, site and building layout and adaptability of buildings to future use, demand for energy should be limited.*” The principles proposed for the dwellings and set out within the DAS is considered to respond positively to this position. The proposed provision of air source heat pumps, photovoltaic panels and waste water heat capture are to be supported. The schedule of the energy efficiency elements set out in the DAS can be secured by condition on a grant of planning permission.
- 9.77 Midlothian requires a community heating feasibility assessment to be undertaken by the applicant to understand the operational and financial ability to connect to an existing or proposed heating network. MLDP policy NRG6 sets out a presumption in favour of community heating at two sites within Midlothian (Cauldcoats and Newton Farm) - this site is not one of them. A recent appeal decision in Midlothian (PPA-290-2060) at the former Wellington School site, saw a proposed condition for such aforementioned feasibility study removed by the reporter. In that instance the reporter stated “*This has its background in policy NRG6, which refers to two specific allocated sites that are close to a likely thermal waste treatment plan. The policy refers to supplementary guidance but this has not been produced and is not even in draft form.*”

There is therefore no direct policy link to the appeal site.” The same circumstances would exist for the proposed development. However, since this appeal decision NPF4 has been adopted and NPF4 policy 19 states:

Development proposals within or adjacent to a Heat Network Zone identified in a LDP will only be supported where they are designed and constructed to connect to the existing heat network. ...where a heat network is planned but not yet in place, development proposals will only be supported where they are designed and constructed to allow for cost-effective connection at a later date.

- 9.78 As it stands there is no community heating network planned or in existence in proximity to the site. However, it is noted that the site will be constructed over a 10 year period and as such a review of the community heating position should be required at appropriate time/phasing of development intervals.

Developer Contributions

- 9.79 In relation to Midlothian Council, policies relevant to the use of planning obligations are set out in the MLDP and Midlothian Council’s Developer Contributions Guidelines (Supplementary Planning Guidance). If the Council is minded to grant planning permission for the development it will be necessary for the applicant to enter into a planning obligation to secure:

- A financial contribution towards additional primary education capacity;
- A financial contribution towards additional secondary education capacity;
- A financial contribution towards Borders Rail/public transport;
- A financial contribution towards Mayfield Town Centre;
- A financial contribution towards community/leisure facilities;
- A financial contribution towards additional library provision;
- Open space maintenance; and
- The provision of affordable housing (25%).

- 9.80 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the proposed development acceptable in planning terms (paragraph 15);
- serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;

- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
- fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
- be reasonable in all other respects.

9.81 The requirements as set out above for any proposed planning obligation would meet the above tests.

Phasing

9.82 The phasing plan submitted as part of the application indicated which development parcels and associated landscape features would be delivered in association with which phase of development (there are nine phases of development). As well as landscaping the proposed roads and road improvements are proposed in phases. Improvements to Crawlees Road would be delivered in Phase 1 - there is no objection to this approach. However, in respect of the Distributor Road (referred to as Link Road on the phasing plan) it is suggested that this be delivered alongside parcels of development moving east. As such the Distributor Road would not be connected to Bogwood Road until during Phase 8 (North Mansfield). The proposed Distributor Road would form an important bus link for residents of the new development and therefore should be implemented and made safe and available for public use earlier in the process. A condition requiring the implementation of the Distributor Road prior to the commencement of any of the following development areas (as identified in the DAS) can be secured as part of any grant of planning permission:

- Blackwood
- North Mansfield/Upper Slopes
- The Crescents
- An Clachan Lingerwood

9.83 An amended phasing plan can be secured by condition as part of a grant of planning permission.

Community Growing

9.84 The applicant has identified two parcels of land within the masterplan for community growing. One, within the northern part of the site, as a community orchard, and the other, within the centre of the site, to provide allotment space.

9.85 The MLDP settlement strategy for these sites do not specifically require such provision, however, the Council's Green Networks Supplementary Guidance outlines that such areas would form part of a green network. Their proposed provision is thus welcomed as part of the masterplan.

- 9.86 Submitted phasing would indicate that the proposed allotments would be delivered within Phase 6, at which point 450 dwellings are expected to be delivered in Phases 1 – 5. A condition requiring its delivery no later than the commencement of the 450th dwelling should be imposed. The proposed community orchard is proposed to be delivered within Phase 8 after the delivery of the 670th dwelling. However, as the proposed orchard would benefit the residents of the wider development it is considered that this should be delivered earlier in the development. A condition requiring its implementation not later than the commencement of the 600th dwelling should be attached to any grant of planning permission.

Affordable Housing

- 9.87 No specific affordable housing mix has been identified within the masterplan, however, the DAS states that 25% affordable housing provision will be provided, and that “The type of affordable housing will be determined on a site-by-site basis in discussions with Midlothian Council. Mixed tenures will be provided to create a mix of households available for potential residents from apartments to larger family homes and bungalows.”
- 9.88 The tenure mix will be required to be secured by a planning obligation. Further discussions with the Council’s Housing Planning and Performance Manager will be required to confirm the optimum unit mix based on the Council’s Housing List or to address requisite demand within any chosen registered social landlord. The proposed development would comply with MLDP policy DEV3.

Percent for Art

- 9.89 Details of a public art strategy for the proposed development will be required via matters specified in conditions applications to ensure that the percent for art required by MLDP policy IMP1 are met. This can be secured via a condition on any grant of planning permission. The proposed community growing areas do not constitute ‘art’ and therefore additional provision will be required to accommodate new artwork.

Other Matters

- 9.90 Concerns were raised by objectors regarding the existing capacity of general practice medical facilities within the immediate area and the potential impacts of new housing on the capacity of health and care services. This matter is required to be addressed by the Midlothian Health and Social Care Partnership through the provision of sufficient health service capacity. That can involve liaison with the Council as planning authority (and initial discussions on this have been undertaken at a strategic level) but it is not, on its own, a sufficient basis in itself on which to resist or delay the application.

- 9.91 Regarding matters raised by representors and consultees and not already addressed in this report:
- With regard the uplift in operations at NWH Waste Recycling Plant and whether this should be assessed within the EIA. It is noted that the principle concern relates to noise. The NWH site is controlled by a SEPA Waste Licence that limits the noise resulting from the operation. These limits remain in place and were accordingly used within the EIA to ascertain likely significant harm.
 - Clarity was sought over whether the Drainage Assessment was prepared with 1,000 or 920 dwellings in mind. Whilst both figures are mentioned in the report, revisions are documented changing the study area to reflect the application site and 1,000 dwellings. Furthermore, additional assessments will be required once a more accurate housing quantum is known (up to 1,000 dwellings).
 - Concerns that Scottish Water need to be consulted thoroughly on the development. Scottish Water have been consulted on this application and it is set out within the Drainage Assessment that discussions with Scottish Water are ongoing regarding foul water connections.
 - Construction disruption over a long period. Disruption can result from construction. A Construction Environment Management Plan will be required to aid minimising such disruption, and careful management of the phasing of development reduces the sustained impact in a singular location.
 - Modern housing lacks design quality. The proposed submission does not provide detailed design of buildings at this time. Conditions will require that 20% of dwellings are delivered with improved quality materials.
 - Insufficient parking being provided. Details are not provided in this submission as it is an application for planning permission in principle. Detailed parking arrangements (including the number of spaces) and electric vehicle charging provision will be considered as part of a matters specified in conditions application.
 - The proposed development could hinder access to light. The proposed development is considered to be sufficiently separated from existing development to retain existing access to light.
 - More bungalows should be provided as part of the development. The specific house types are not known at this stage but the DAS does state that bungalows can form part of the development.
- 9.92 The following matters have been raised in representations which are not material considerations in the determination of the application:
- The local area already suffers from inconsiderate parking. Whilst this might be the case, the proposed development can seek to deliver a sufficient quantum of parking for its future residents and visitors, however it would not be incumbent on the development to change existing street designs or parking behaviour.

- The development would result in the loss of views from existing properties. Whilst landscape and visual impact are key material considerations, individual rights to a view are not.
- Development would result in the devaluation of properties. This is not be a material consideration of this application.
- The development would result in more anti-social behaviour. Future applications seeking detailed design layout will be assessed from a perspective of being secure by design. However, at this stage it cannot be held that new housing development by its nature would create further anti-social behaviour.

10 RECOMMENDATION

- 10.1 It is recommended that planning permission be granted for the following reason:

The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) where there is a presumption in favour of an appropriate form of development. Whilst the proposed development would deliver in excess of the indicative residential unit capacity set out in the MLDP, the submitted EIA has sufficiently demonstrated that the proposed level of development can be achieved, subject to detailed design and subject to securing developer contributions. The proposed ancillary neighbourhood retail, commercial, leisure and community facilities are a welcome additions and contribute to the provision of a sustainable community in accordance with National Planning Framework 4. The presumption for development is not outweighed by any other material considerations.

Subject to:

- a. the prior signing of a planning obligation to secure:
 - A financial contribution towards additional primary education capacity;
 - A financial contribution towards additional secondary education capacity;
 - A financial contribution towards Borders Rail/public transport;
 - A financial contribution towards Mayfield Town Centre;
 - A financial contribution towards community/leisure facilities;
 - A financial contribution towards additional library provision;
 - Open space maintenance; and
 - The provision of affordable housing (25%).

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application could be refused.

- b. Subject to the following conditions:

1. The development to which this permission relates shall commence not later than the expiration of five years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. No more than 926 residential units shall be erected on the site unless otherwise agreed by way of a planning application. The housing mix, densities across the site and the detailed layout is not approved and is subject to matters specified in conditions application/s, which will determine the final number of dwellinghouses on the site.

Reason: *The application has been assessed on the basis of a maximum of 926 dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure, in particular education provision and local transport routes, and additional mitigation measures may be required. Any such measures would need further assessment by way of a planning application. And, to ensure development is in line with the Environmental Impact Assessment and Masterplan assessed as part of this application.*

3. Notwithstanding the phasing set out within the Design and Access Statement (DAS) (Appendix E) development shall not begin until an application for approval of matters specified in conditions for the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing shall include the delivery of noise mitigation required within section 9 "Mitigation" of the submitted EIA Noise and Vibration report, structural landscaping, residential development, retail and other community use (as identified by Figure 23 of the DAS) development, drainage infrastructure, road infrastructure (on and off site), community growing areas, children's play provision, percent for art, and multi user and pedestrian paths (including safe routes to school). The phasing shall include a proposed timetable of implementation of the development and phases within. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: *To ensure the development is implemented in a manner which mitigates the impact of the development process on existing, land users and the future occupants of the development and in the interest of safeguarding the character and amenity of the area.*

4. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for the

siting, design and external appearance of all residential units and other structures of that phase has been submitted to and approved in writing by the planning authority for that phase. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: To ensure the proposed development is appropriate in its design and complies with policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017.

5. Development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an application for approval of matters specified in conditions for that phase setting out details regarding the delivery of 20% of proposed dwellings featuring improved quality materials shall be prepared and submitted to the planning authority for approval in writing. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: To ensure that future development meets the requirement of policy DEV6 of the Midlothian Local Development Plan 2017.

6. Development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an application for approval of matters specified in conditions, for separate scheme(s) to deal with noise mitigation. This shall include the submission and approval of updated noise impact assessments for corresponding phases to provide details of stand-off distances, acoustic bunds, acoustic fencing and any other attenuation measures to address proposed in section 9 “Mitigation” of the submitted EIA Noise and Vibration report, updated to accord with the following:
 - i. Rated sound levels from adjacent existing commercial uses, when measured and assessed in compliance with BS4142:2014 Methods for rating and assessing industrial and commercial sound, and shall not exceed the background noise level by more than 5dB; and
 - ii. Road Traffic Noise shall comply with the criteria for daytime external garden amenity at 50dB Laeq (16hour) with updated mitigation measures, as necessary.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority. Any recommended noise mitigation measures shall be implemented prior to the occupation of the first dwellinghouse of that phase.

Reason: To protect residential amenity and minimise unacceptable noise impacts to future residents.

7. Development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an application for approval of matters specified in conditions of details, including a timetable of implementation, of 'Percent for Art' has been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

Reason: To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies DEV6 and IMP1 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

8. The proposed South Mayfield Distributor Road shall be a primary route and secondary routes identified at Figure 17 (Movement Hierarchy) of the Design and Access Statement and on the approved Masterplan shall only connect to the distributor road via priority junctions.

Reason: To allow the free flow of traffic along the South Mayfield Distributor Road and prioritise public transport movement along that route.

9. Notwithstanding the proposed phasing set out within the Design and Access Statement (DAS) (Appendix E), the "South Mayfield Distributor Road" (as referred to within the MLDP 2017) proposed to connect from Bogwood Road to Crawlees Road shall be completed in its entirety and made available for public use prior to the first occupation of any dwelling within phases 6, 7, 8 and 9 (as set out within the DAS, Appendix E).
10. Prior to the first occupation of any dwelling within phases 6, 7, 8 and 9 (as set out within the Design and Access Statement, Appendix E) a multi user route connecting to Bogwood Road to Crawlees Road shall be completed (to an adoptable standard) in its entirety and made available for public use.

Reasons for condition 9 and 10: To ensure that direct and safe routes to school are provided and to ensure that the development delivers its public transport credentials in line with the submitted Transport Assessment.

11. Development shall not begin until an application for approval of matters specified in conditions for the proposed improvements to Mayfield Industrial Estate and Crawlees Road shall be prepared

and submitted to the planning authority for approval in writing. The proposed improvements shall include:

- i. Details of a safe and appropriate footpath connection with the existing pavement at Mayfield Industrial Estate; and
- ii. Details of a multi user route, along Mayfield Industrial Estate to the junction of the Mayfield Industrial Estate and B6482 (unless otherwise agreed in writing with the planning authority);
- iii. Details demonstrating sufficient room for safe access, egress and parking at Smithy Cottages for its residents.

Matters under point “i” and “iii” shall be completed prior to the first occupation of any development. Matters under point “ii” shall be completed prior to the occupation of 120th dwelling.

Reason: To ensure that road safety for existing residents and future users of the road network.

12. Development shall not begin until an application for approval of matters specified in conditions for the technical details of improvements to:

- Junction 1 - Stobhill Road / Crawlees Road;
- Junction 2 - B6482 Suttieslea Road / Mayfield Industrial Estate; and
- Junction 6 - A7 / Stobhill Road

shall be prepared and submitted to the planning authority for approval in writing. Details shall include a proposed timetable of works and necessary steps to reduce the anticipated Degree of Saturation of 93.0% at junction 6 to below the accepted level of 90%. Development shall thereafter be carried, out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: To ensure highway safety for existing and future road users.

13. Development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an application for approval of matters specified in conditions of details including the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority for that phase. Details of the scheme, including a programme for completion, shall include:

- i. existing and finished ground levels for all roads, footways and multi-user paths/cycle ways in relation to a fixed datum;
- ii. the proposed vehicular, cycle and pedestrian accesses into the site;

- iii. the proposed roads, footways and turning facilities designed to an adoptable standard) and multi-user paths/ cycle ways including suitable walking and cycling routes;
- iv. details, including cross sections, of any roads/footpaths/cycle paths showing services, verges, tree planting, tree protection, landscape planting embankments/gradients and working areas;
- v. proposed traffic calming measures, lighting and signage;
- vi. proposed residents and visitor car parking arrangements to meet the Council's Parking Standards;
- vii. proposed cycle parking/storage facilities;
- viii. proposed connections to the existing highway and path network;
- ix. Resident and visitor parking to meet current council standards; and
- x. A network or publicly available rapid-charging electric vehicle charging points within the development.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site. Also to ensure that a network of electric vehicle chargers is provided in line with Policy TRAN5 of the Midlothian Local Development Plan 2017.*

14. Development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works for that phase has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. A written design brief for each character area to demonstrate how the proposed landscaping for any given phase is appropriate and responds to the landscaping strategy set out within the Design and Access Statement including a landscape framework drawing and palette of hard and soft landscape materials, colours and tree/ shrub species for each individual character area/ phase. recommendations for enhancement of existing landscape features, green network connections, appropriate species and management interventions;
 - ii. existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
 - iii. Updated Arboricultural Impact Assessment including a Tree Protection Plan and an Arboricultural Method

- Statement for works and construction access near/ within the RPA of existing trees/ hedgerows to be retained;
- iv. existing trees, landscaping features and vegetation to be retained, removed, protected during development and in the case of damage, restored;
 - v. tree root protection areas, construction exclusion zones and dwelling standoffs overlaid on corresponding detailed landscape plans;
 - vi. proposed new planting in communal areas and open space, including trees, shrubs, hedging, bulbs and grassed/ meadow areas;
 - vii. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - viii. schedule of plants to comprise species, plant sizes, mixes and proposed numbers/density;
 - ix. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses on adjoining plots are occupied;
 - x. proposed car park configuration and surfacing;
 - xi. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - xii. proposed cycle parking facilities;
 - xiii. Landscape specification with standards of workmanship for soft landscape operations (e.g. planting seeding);
 - xiv. construction details for landscape elements tree and planting, fencing with mammal passage points, woodland planting mix, habitat features,
 - xv. specifications for roadside planting features including cross sections of roads, footpaths, drainage swales and utilities with adequate rooting volume for street trees;
 - xvi. Specification for drainage features including cross sections of SUDS ponds/ basins and planted bio-swales with details of engineered slopes, margin features (e.g. hummocks, pools, boulders) and finishes, planting and seed mixes to create diverse semi-natural habitats and optimise biodiversity value; and
 - xvii. green network arrangements showing alignment, widths, footpaths, verges and planting.

Thereafter and in relation to 'ix' above any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

15. The proposed sustainable urban drainage system (SUDS) basins shall include a minimum of 50% wet ponds unless otherwise agreed in writing by the planning.

Reason: To ensure that biodiversity uplift is secured through SUDS provision and to ensure the proposed development is compliant with policy ENV15 of the Midlothian Local Development Plan 2017.

16. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for a scheme of effective drainage and flood management for that phase has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i. Drainage and surface water management arrangements to manage surface water runoff within each catchment to including a 'wet' pond(s); and
 - ii. Sensitivity tests demonstrating 1:200 (allowing for climate change) year event capacity.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: The planning application is in principle and the details required are to ensure the surface water from the site can be appropriately treated and to ensure that levels on the site are appropriate in relation to flood risk and to ensure biodiversity enhancement associated with such infrastructure.

17. Prior to the commencement of development impacting upon Building 4 as identified in the Ecological Assessment (Nigel Rudd, October 2021) a further bat activity survey shall be undertaken by qualified person(s) in respect of it. The survey shall include any necessary mitigation and recommendations and shall be submitted to the planning authority for approval in writing.

Reason: To verify the findings of survey completed outside of bat survey season and to ensure compliance with policy ENV15 of the Midlothian Local Development Plan 2017.

18. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an

application for approval of matters specified in conditions for a scheme of biodiversity enhancement shall be prepared and submitted to the planning authority for approval in writing. The scheme shall include the delivery of recommendations set out within chapter 5 of the approved Ecological Assessment (Nigel Rudd, October 2021) and the results of the additional bat survey required by condition 17 above.

Reason: *To support the movement of small mammals and other wildlife within the development and to comply with policy ENV15 of the Midlothian Local Development Plan 2017.*

19. Prior to the commencement of the 450th dwelling, or the commencement of phase 6 (as set out within the Design and Access Statement, Appendix E), whichever is earliest, an application for approval of matters specified in conditions for a scheme, including a programme for development and a management plan, for the proposed allotments shall be submitted to and approved by the planning authority. Development shall thereafter be carried out in accordance with the approved details and maintained in accordance with the approved management plan. The community growing facilities shall be available for use prior to the occupation of the 450th dwelling.

Reason: *To ensure an appropriate design and the timely delivery of community growing facilities required by the approved development.*

20. Prior to the commencement of the 600th dwelling, or the commencement of phases 8 or 9 (as set out within the Design and Access Statement (DAS), Appendix E), whichever is earliest, an application for approval of matters specified in conditions for a scheme, including a programme for development and a management plan, for the proposed community orchard shall be submitted to and approved by the planning authority. Development shall thereafter be carried out in accordance with the approved details and maintained in accordance with the approved management plan. The community orchard shall be available for use prior to the occupation of any dwelling within phases 7, 8 or 9 (as set out within the DAS, Appendix E).

Reason: *To ensure an appropriate design and the timely delivery of community growing facilities required by the approved development.*

21. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of ultra-fast speed fibre broadband has been submitted to and approved in

writing by the planning authority or such alternatives as may be agreed in writing with the planning authority. The details shall include delivery of superfast speed fibre broadband prior to the occupation of each dwellinghouse. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

22. No building shall have an under-building that exceeds 0.5 metres in height above ground level unless otherwise agreed in writing by the planning authority.

Reason: *Under-building exceeding this height is likely to have a materially adverse effect on the appearance of a building.*

23. No retention walls or other retention features in excess of 1 metres are be permitted unless otherwise agreed in writing with the planning authority.

Reason: *To preserve the visual amenity of future residents in accordance with policy DEV6 of the Midlothian Local Development Plan 2017.*

24. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority for that phase. The CEMP shall include:

- i. Details of a separate construction access;
- ii. signage for construction traffic, pedestrians and other users of the site;
- iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
- iv. details of piling methods (if employed);
- v. details of any earthworks;
- vi. control of emissions strategy;
- vii. a dust management plan strategy;
- viii. waste management and disposal of material strategy;
- ix. temporary construction drainage details / sustainable urban drainage system;
- x. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
- xi. prevention of mud/debris being deposited on the public highway;

- xii. material and hazardous material storage and removal; and
- xiii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

25. The development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
 - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential/commercial purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment and to ensure compliance with policy ENV16 of the Midlothian Local Development Plan 2017.*

26. On completion of the decontamination/remediation works referred to in Condition 25 above and prior to any dwellinghouse being occupied, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No dwellinghouse shall

be occupied unless or until the planning authority have approved the required validation.

Reason: *To ensure compliance with policy ENV16 of the Midlothian Local Development Plan 2017.*

27. Prior to the commencement of development a scheme of intrusive site investigations, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity (mine entries) shall be prepared and submitted to the planning authority for approval in writing. The scheme shall include a report of findings arising from the intrusive site investigations and any remedial and / or measures necessary, including the submission of the proposed layout plan which identifies the location of any on-site mine entries (if found present) including appropriate zones of influence for all mine entries, and the definition of suitable 'no-build' zones.
28. No development shall commence until the remediation works and/or mitigation measures required / identified by the scheme of intrusive site investigations and associated report of findings have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. The remedial works shall be carried out in accordance with authoritative UK guidance.
29. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the local planning authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason for conditions 27 and 29: *To ensure that appropriate measures have been taken to ensure the site is safe from the impacts of its historical mining legacy.*

30. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (field evaluation by trial trenching) has been carried out at the site by a professional archaeologist in accordance with details submitted to and approved in writing by the planning authority. The area to be investigated should be no less than 10% of the total site and should also target the locations of the heritage assets identified in the Heritage Assessment that have the potential to be impacted.

This includes the following historic environment assets from the Heritage Assessment:

- Old Lingerwood (MEL11081)
- Lingerwood Colliery (MEL5010)
- Lingerwood Colliery structures (MEL11082)
- A post-medieval road (RPS 3)
- Former Masterton House (MEL8539)

Thereafter the programme of archaeological works shall be implemented and all recording and recovery of archaeological resources shall be undertaken to the satisfaction of the planning authority. The archaeological works may be carried out in phases.

Reason: To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policy ENV25 of the Midlothian Local Development Plan 2017.

31. Prior to the commencement of development details and timeframes for implementation of woodland and other planting proposed outwith the application site, but within the applicant's ownership, specifically:
- i. Landscape connection from the sites southern boundary to Masterton Wood; and
 - ii. Along field boundaries between Masterton Wood and the east edge of Gowkshill

shall be submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: to ensure that the proposed planting beyond the site boundary and the benefits associated with them are delivered in accordance with policy ENV2 and DEV7 of the Midlothian Local Development Plan 2017.

32. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an application for approval of matters specified in conditions for a Woodland Management Plan and programme is submitted to and approved by the planning authority to show existing woodland, trees and hedgerows to be retained and new areas of woodland and tree planting for that phase. The plan/ programme shall include a list of proposed operations with relevant timescales and locations, and shall refer to proposed quantities, numbers or volumes when estimating required tree thinning. Replacement planting shall also be quantified, specified (including proposals for protection of new woodland planting) and indicative locations be identified. The Management Plan shall include those areas proposed for planting outwith the application site, connecting the site to Masterton Wood as required to be provided by condition 31.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

33. No residential dwelling shall be within 40m of the Neil Williams Haulage Waste Recycling Centre site boundary.

Reason: *To ensure adequate air quality for residential dwellings in line with SEPA's comments and policy ENV17 of the Midlothian Local Development Plan 2017.*

34. Proposed "other uses" as identified by figure 23 of the Design and Access Statement (DAS) for retail, commercial, leisure and community facility potential shall be built and ready for occupation in accordance with the following:
- Unit within Phase 1 (as indicated by Appendix E of the DAS) shall be completed prior to the commencement of development on Phase 3 unless otherwise agreed in writing with the planning authority; and
 - Unit within Phase 6 (as indicated by Appendix E of the DAS) shall be completed prior to the commencement of development on Phase 7 unless otherwise agreed in writing with the planning authority.

Reason: *To ensure the timely delivery of such opportunities within the development and promote 20 minute neighbourhoods and local living.*

35. Development shall not begin on Phase 5 as identified by the Design and Access Statement (DAS) (Appendix E) or the 371st dwelling until an application for matters specified by condition for details of Lingerwood Steading conversion shall be submitted to and approved in writing by the planning authority. Thereafter development shall accord with approved details. Development should be completed and made available for occupation prior to the first occupation of any dwelling within Phase 5 (as identified by the DAS Appendix E).

Reason: *To ensure the timely delivery of space for community facilities and other ancillary uses.*

36. Development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an

application for approval of matters specified in conditions, for separate scheme(s) to deal with noise mitigation. This shall include the submission and approval of updated noise impact assessments for corresponding phases to provide details of stand-off distances, acoustic bunds, acoustic fencing and any other attenuation measures to address proposed in section 9 "Mitigation" of the submitted EIA Noise and Vibration report, updated to accord with the following:

- i. Rated sound levels from adjacent existing commercial uses, when measured and assessed in compliance with BS4142:2014 Methods for rating and assessing industrial and commercial sound, and shall not exceed the background noise level by more than 5dB; and
- ii. Road Traffic Noise shall comply with the criteria for daytime external garden amenity at 50dB Laeq (16hour) with updated mitigation measures, as necessary.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority. Any recommended noise mitigation measures shall be implemented prior to the occupation of the dwellinghouses of that phases.

Reason: *To protect residential amenity and minimise unacceptable noise impacts to future residents.*

37. Notwithstanding the Sustainability Statement setting out within the submitted Design and Access Statement, development shall not begin on any individual phase of development (identified in compliance with Condition 3) until an application for approval of matters specified in conditions with and Energy Statement setting out the Low/Zero Carbon Technologies that are proposed to be delivered within any occupied structure within that phase is submitted to and approved in writing by the planning authority. The Statement shall include a review of any new proposals for district/community heating or new low carbon technologies and assess any benefits of connection or incorporation into this development. The development shall thereafter be in accordance with the approved details.

Reason: *To ensure that the proposed development delivers low carbon energy technologies and responds to the most up to date low carbon technologies.*

38. Development shall be carried out in accordance with the approved drawings and supporting information hereby listed:

1. Location Plan MI02(SW)LP01 1:2500@A0 Rev A (Submitted 17/01/2022);

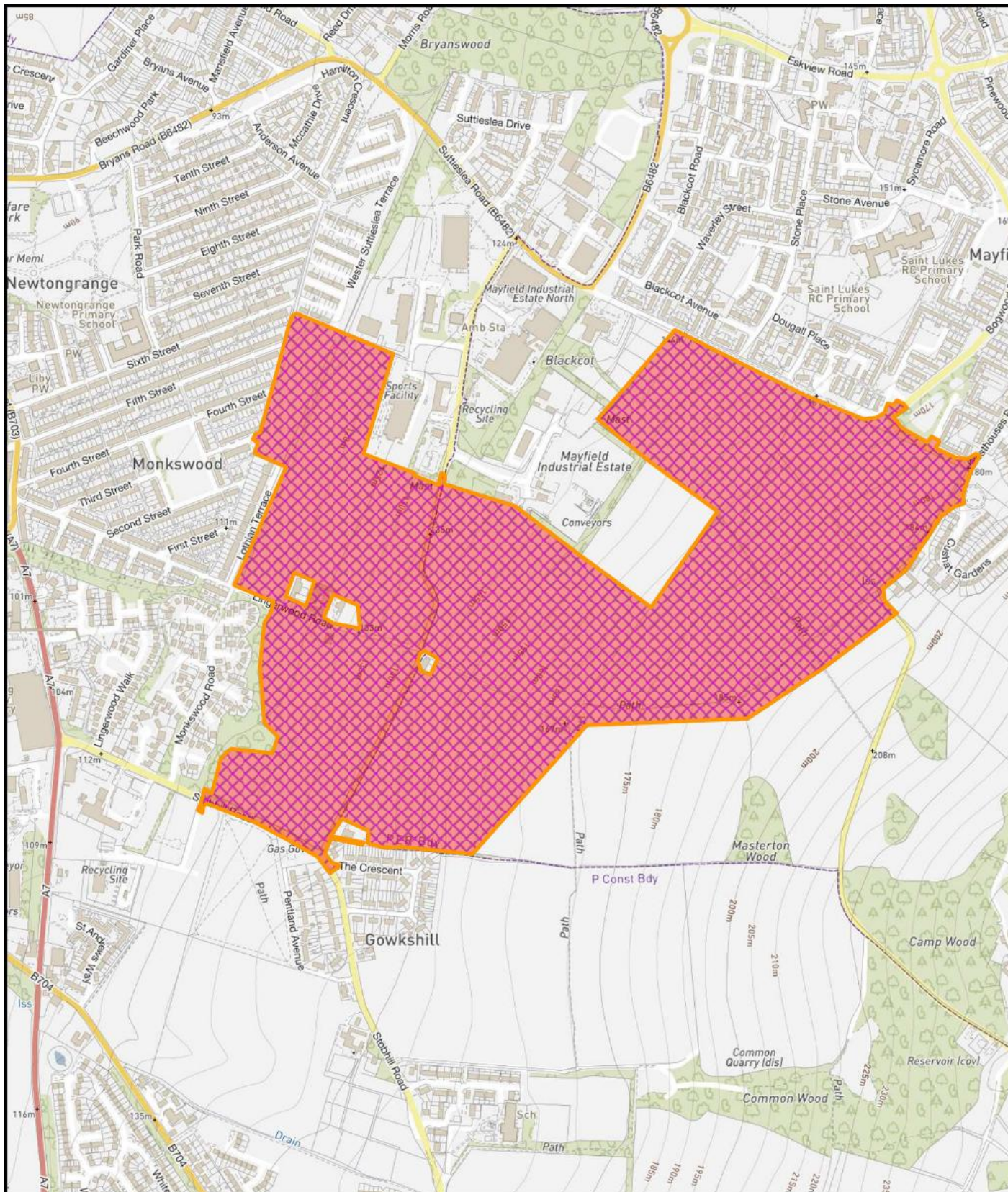
2. Existing Site Plan Including PAN Boundary MI02(SW)LP03 1:2000 @ A0 Rev A (Submitted 17/01/2022);
3. Masterplan Layout Including PAN Boundary MI02(SW)MP01 1:2000 @ A0 Rev B (Submitted 17/10/2022);
4. The Masterplan: Design and Access Statement and the plans therein. (Submitted 17/10/2022);
5. Environmental Impact Assessment Report (Submitted 17/01/2022);
6. Landscape and Visual Impact Assessment (EIA) (Submitted 17/10/2022);
7. Environmental Impact Assessment (Noise and Vibration) (Submitted 17/01/2022);
8. Environmental Impact Assessment (Air Quality Assessment) (Submitted 17/01/2022);
9. Drainage Assessment Rev B (Submitted 17/01/2022);
10. Geo-Environmental Interpretive Report (Submitted 17/01/2022);
11. Site Investigation Report (Submitted 17/01/2022);
12. Tree Survey and Arboricultural Constraints (Submitted 10/08/2022);
13. Transportation Assessment (Submitted 17/01/2022);
14. Transportation Statement on Routes to School (you may take the view that this was submitted for information and does not need to be approved) (Submitted 02/12/2022);
15. Mineral Risk Assessment (Submitted 17/01/2022);
16. Pre-Application Consultation Report (Submitted 17/01/2022);
17. Heritage Assessment (Submitted 17/01/2022);
18. Updated Heritage Assessment (Submitted 07/04/2022);
19. Flood Risk Assessment (Submitted 17/01/2022);
20. Education Statement (Submitted 29/07/2022); and
21. Planning Statement (Submitted 17/01/2022).

Reason: *To ensure that the development is carried out in terms of the drawings and supporting information which were assessed in terms of this application.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2023

Application No: 22/00027/PPP
Applicant: Springfield Properties Ltd
Agent: Joe Larnar (Holder Planning)
Validation Date: 25 January 2022
Contact Person: Hugh Shepherd
Email: hugh.shepherd@midlothian.gov.uk
Background Papers: 08/00515/FUL, 21/00178/SCR, 21/00515/SCO



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Residential Development Land South of Mayfield and East of Newtongrange

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Midlothian Council Licence No. 100023416 (2018)

File No.22/00027/PPP

Scale: 1:10,000



- Legend**
- Proposed residential development parcels
 - Shop / retail unit opportunities / mixed use opportunities
 - Proposed street network (inc. roadside paths / shared)
 - Proposed path network (segregated)
 - Public Right of Way (PRoW)
 - Crossings
 - Proposed woodland and hedgerow planting (structure)
 - Existing woodland and hedgerows
 - Proposed tree planting (indicative)
 - Amenity grassland and open space
 - Meadows
 - Playing fields
 - Community orchards
 - Allotments
 - Green corridors and verges
 - Community gardens
 - Play areas
 - View points and public art locations
 - Additional public art and wayfinding features
 - 'An Clachan' streets (common theme)
 - Vehicular access locations to site
 - Access to/from site and the path network
 - Elevated 'features' to form viewpoints
 - Earth bund to form noise barrier (6m + 3m height) with ground modelling features to bund / terracing
 - Potential SUDS basins locations (TBC)
 - Lingerwood farm house and steading
 - Noise bund landform / slopes
 - Preliminary proposed ground levels



- Existing Hedgerows**
- 1A-1I** Existing hedgerows
 - 1A-1E** Existing hedgerows bounding the site and existing roads to be retained subject to any additional infrastructure requirements
 - 1F-1I** Existing hedgerows within the site will be retained where possible subject to the detailed planning of the development and the necessary cut and fill ground operations that will be associated with the need to install infrastructure and create accessible development plots

Updated plans for design consultation. No works are to commence on site until all relevant approvals have been obtained. Any deviations to the approved plans have to be reported to the office. Contractors to check all dimensions on site prior to commencement of work. Green dimensions only to be used. 50% (1:2000) Scale. The design of the drawing and design within the site property of Springfield Properties Plc and must not be used for any other purpose without the written consent of Springfield Properties Plc.

mccreadie design

Application Boundary

Rev	Date	Remarks	Revisions	By	Ch.
1	03.10.22	Updated following comments from Midlothian Council		SH	AJY
2	21.12.21	General amendments		SH	AJY

Springfield
Springfield Properties Plc

Elgin Office
Alexander Fleming House,
8 Southfield Drive,
Elgin, Moray,
IV30 6GR
Tel: 01343 552 550
Fax: 01343 551 776
Email: info@springfield.co.uk

Larbert Office
Springfield House,
3 Central Park Avenue,
Larbert,
FK8 4RX
Tel: 01324 555 526
Fax: 01324 574 880
Email: larbert@springfield.co.uk

Project
MI02 - Lingerwood

Drawing
Masterplan Layout
Including PAN Boundary

Scale 1:2000 @ A0	Date Dec. 2021	Drawn by SH	Checked by AJY
Drawing no. MI02/SW/MP01			Rev B



**APPLICATION FOR PLANNING PERMISSION 22/00345/DPP FOR THE
CHANGE OF USE OF LAND TO WASTE TRANSFER SITE; AND
ERECTION OF ASSOCIATED PLANT AND MACHINERY AT ELDIN
INDUSTRIAL ESTATE, EDGEFIELD ROAD, LOANHEAD**

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The application is for a change of use of land to a waste transfer site (comprising washer plant to clean and separate soils from waste, and a crusher to break down stone, brick and rubble into aggregate) and the erection of associated plant and machinery. The site is a concrete surfaced yard at Eldin Industrial Estate, Edgefield Road, Loanhead.
- 1.2** There have been 215 representations and consultation responses from the Coal Authority, Scottish Water, Scottish Environment Protection Agency (SEPA), Scottish Gas Network (SGN), Scottish Power Energy Networks, the Loanhead and District Community Council, the Council's Ecological Advisor (TWIC), the Council's Land Resource Manager, the Council's Senior Manager Neighbourhood Services (Roads) and the Council's Senior Manager Protective Services.
- 1.3** The relevant development plan policies are policies 1, 2, 3, 8, 9, 12, 13, 22, 23, 26 and 33 of the National Planning Framework 4 (NPF4) and policies STRAT1, DEV2, DEV8, ECON1, ECON5, TRAN2, ENV1, ENV4, ENV9, ENV10, ENV11, ENV14, ENV15, ENV16, ENV17, ENV18 and WAST1 of the Midlothian Local Development Plan 2017 (MLDP).
- 1.4** The recommendation is to grant planning permission subject to conditions.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The site is situated at the northern edge of Eldin Industrial Estate, approximately 100 metres south of the A720 Edinburgh City Bypass. The industrial estate is situated at the northern edge of Loanhead and has grown incrementally over time. It was originally used as a slaughterhouse and for animal products processing until these uses

ceased in the late 1970's and early 1980's. The buildings and land have been re-used for a variety of industrial and business purposes and subsequently planning permissions have been granted for new buildings on the site. The neighbouring site to the south contains a waste transfer facility.

- 2.2 The application site measures 1.4 hectares in area and consists of an open yard surfaced with concrete and type 1 hardcore. The yard is basically level with slight falls (0.5m or less) from south to north and from west to east. There is modern open-sided picking shed at the southern boundary of the site, a modern industrial unit at the eastern boundary of the site and two modular buildings in the south west corner of the site. There are a number of shipping containers located at various points along the eastern boundary. The applicant has been storing dis-assembled plant and machinery on the site since late March/early April 2022. A scaffolding firm is operating out of an informal yard at the southern edge of the site. A vehicle repair business operates out of a building at the eastern edge of the site.
- 2.3 The majority of the site was used as a waste transfer station, operated by Caleco Waste, from 2000 to 2016. Prior to 2000 two smaller waste transfer stations operated on the site, the first consent having been granted in 1998. When operated by Caleco the site processed, stored and sorted waste from skips. Part of the site was used for crushing of stone, brick and rubble and storage of aggregates. The Caleco waste business was acquired by NWH Waste Services in 2016 at which point the majority of the waste transfer operations on site were wound down. From 2016 to 2018 Tartan Waste operated from the picking shed at the southern edge of the site. The site was used as contractor's yard, by a telecoms contractor, from late 2019 until some point in 2021.
- 2.4 The western boundary is delineated by timber fencing which separates the yard from the Danderhall to Roslin cycleway. Beyond the cycleway is the northern corner of the, undeveloped, Ashgrove (e33) an allocated economic land supply site and an area of woodland that forms part of the Straiton Pond Local Nature Reserve. To the north of the site is an area of woodland and an informal path at the base of the embankment that supports the A720 Edinburgh City Bypass. To the east of the site is an area of the industrial estate comprising open yard space, various buildings, shipping containers and modular office buildings. Approximately half of the eastern boundary is delineated by a 3m tall railway sleeper wall. To the south is a waste transfer station, operated by Midlothian Skip Hire, with a 4m tall interlocking concrete block wall. The south west of the site is delineated by a galvanised steel palisade fence and gates which separate the site from an access road and industrial units.
- 2.5 Vehicular access to the site is from Edgefield Road via two access routes. The western route passes across the main spine road through Eldin Industrial Estate and accesses the site at the south western

corner, close to an existing weighbridge. The western route is surfaced with tarmacadam, which is in poor condition and breaking up in many areas, hardcore and small areas of concrete. The western route is approximately 310m in length, the first 250m has space for vehicles to pass and the final northernmost 60m is essentially single track due to the width being restricted by circulation and parking spaces associated with the industrial units. The eastern route is approximately 500m in length and also serves St Margaret's Farm (which comprises a dwellinghouse and various smallholding buildings which are used for industrial purposes) and Edgefield Toll Farm (which comprises a dwellinghouse and various smallholding buildings) and the industrial area to the east of the application site. The first 400m is surfaced with road planings and has a number of passing places. The final 100m passes through the industrial yard to the east of the site.

3 PROPOSAL

- 3.1 It is proposed to use the site as a wash plant and screening/crushing plant. The wash plant will wash site debris soil to separate and clean the soils and sands. The soil and sand will then be sold for re-use within the construction industry. 3The screening/crushing plant will crush stone, brick and rubble from demolition and separate the material into various specifications of aggregate for re-use in the construction industry. The supporting information states that the annual tonnage of waste processed will be less than 25,000 tonnes per annum.
- 3.2 Once assembled the machinery for the wash plant will create a plant that is 30m wide and 60m long. The majority of the plant will be between 2m and 6m tall with the tallest point being 10m tall. The wash plant will be situated in the centre of the site with the length of the plant running across the site in a west to east direction. Materials bays will be erected to the south and east of the wash plant. The bays will be formed from interlocking concrete blocks measuring 1.6m long, 0.8m wide and 0.8m tall. The southern bay will be 10m by 16m. To the east of the plant, along the eastern boundary of the site, will be a range of four bays with a total width of 60m and a length of 20m. The concrete blocks will be stacked to create 5m tall walls.
- 3.3 The screening/crushing plant will comprise of a series of machines feeding into each other. The individual machines are approximately 15m long, 3m wide and 3.4m tall. Once assembled the screening/crushing plant will occupy an area approximately 30m by 30m. The screening crushing plant will be situated at the northern end of the site.
- 3.4 As originally submitted the application included a proposal to use the picking area as a waste bulking area. Skips were to be brought to the site for unloading and waste would be temporarily stored on the site before being bulk packed for transfer to the applicant's site at Smeaton where the waste would be processed. In response to the number of

objections the applicant has deleted this element from the proposal which now relates only to the washing plant and the screening/crushing plant.

- 3.5 As is noted above, in paragraph 2.3, parts of the site were used as a waste transfer station for approximately 20 years from 1998. The site was then used as a contractor's yard, whilst that use did not have planning permission it does represent an intervening use. Planning case law has determined that intervening uses, even if unauthorised (where no enforcement action has been taken), constitute abandonment of a consented use. The approximate two year period when the yard was used as a contractor's yard means that the waste transfer use (i.e. Class 5 – General Industry) must be considered to be abandoned. The proposed use therefore requires an application for planning permission.
- 3.6 If the Class 5 use was still extant the screening/crushing plant would have been permitted development under class 24 (1) 9a) (development carried out on industrial land for the purposes of an industrial process consisting of the installation of additional or replacement plant or machinery). The wash plant would not have been permitted development as its height means that it would materially affect the external appearance of the premises. Due to their height the concrete block walls would not have been permitted development.
- 3.7 The application is accompanied by:
- Coal Mining Risk Assessment;
 - Flood Risk Assessment and Surface Water Management Plan;
 - Noise Impact Assessment;
 - Planning Statement;
 - Preliminary Ecological Appraisal;
 - Response to Objections; and
 - Transport Statement.

4 BACKGROUND

- 4.1 Eldin Industrial Estate has grown incrementally over time. It was originally used as a slaughterhouse and for animal products processing until these uses ceased in the late 1970's and early 1980's. The buildings and land have been re-used for a variety of industrial and business purposes and subsequently planning permissions have been granted for new buildings on the industrial estate. The following applications relate to the application site and adjoining land; unless otherwise noted all permissions were implemented.

Application site

- 4.2 Planning permission 0173/98 for a change of use to a waste transfer station at Unit 23 Eldin Industrial Estate was granted on appeal in June

1999. The consent relates to an area of ground at the southern edge of the application site.

- 4.3 Planning permission 99/00508/FUL for a change of use of part of haulage yard to waste transfer station was granted in March 2000. The consent relates to an area of ground at the northern edge of the application site.
- 4.4 Planning permission 00/00262/FUL for the erection of a waste transfer building and amendment of condition of existing planning permission (ref 0173/98) to remove personal permission was granted in November 2000. The consent relates to the same area of ground as planning permission 0173/98.
- 4.5 Planning permission 08/00680/FUL for permanent use of land for waste transfer station, change of use of agricultural land to industrial use and erection of ancillary buildings (part retrospective) was granted permission by the Committee at its meeting of June 2009. Following registration of a legal agreement to secure developer contributions towards the Edgefield Relief Road the consent was issued in January 2012. This consent includes all of the land within the application site plus land immediately to the north east.
- 4.6 Planning permission 12/00390/DPP to amended condition 10 of planning permission 08/00680/FUL to allow working from 6am seven days a week. The application was originally refused under delegated powers, but was subsequently granted permission by the Local Review Body at its meeting in June 2013.
- 4.7 Planning permission 12/00742/DPP for the erection of an industrial shed was granted in March 2013. This permission was not implemented.
- 4.8 Planning application 12/00794/DPP sought consent for the removal of conditions 4 and 5 of planning permission 08/00680/FUL to allow operations to continue without the erection of the angled profiled metal canopy referred to in said conditions. The application was refused in May 2013.
- 4.9 Planning permission 13/00534/DPP for the erection of an extension to the existing picking shed was granted consent in November 2013. The consent relates to an extension to the eastern side of the existing picking shed at the southern boundary of the application site. The permission was not implemented.
- 4.10 Planning permission 13/00535/DPP for the erection of a waste receiving unit was granted consent in November 2013. The consent relates to an area of ground, situated approximately 100m north of the picking shed, at the western edge of the application site. This permission was not implemented.

Land to North of Edgefield Toll Farm

- 4.11 Planning permission 12/00796/DPP was granted for a temporary change of use from agricultural land to open storage. The application was originally refused under delegated powers, but was subsequently granted permission by the Local Review Body at its meeting in June 2013. The consent relates to a 1.35 hectare area of ground to the north of Edgefield Toll Farm and to the north east of the industrial land that adjoins the eastern boundary of the application site. The consent was temporary for a period of 18 months and was for the land to be used for the storage of crushed stone, brick and rubble.
- 4.12 Application 14/00655/DPP was submitted in September 2014 and sought permission to vary condition 2 of planning permission 12/00796/DPP to allow storage of material on site until 3 January 2016. The application was withdrawn in December 2014.
- 4.13 Planning permission 14/00741/DPP for the temporary change of use of land to waste transfer station with associated open storage was granted in November 2014. This application was submitted following the serving of a Notice by SEPA which required the removal of all of the waste on the site as the waste did not comply with the approved waste categories. To facilitate the removal of the waste it was necessary to sort and process the waste, and hence planning permission was required for a temporary use as a waste transfer station.
- 4.14 Planning permission 16/00206/S42 to amend condition 1 of planning permission 08/00680/FUL was granted in May 2016. The permission amended condition 1 to allow a temporary expansion of the area within which waste transfer operations could take place. The temporary permission was required to enable compliance with a Planning Enforcement Notice. The area north of Edgefield Toll Farm was cleared of waste in the middle of 2016 and has not been used for storage or waste processing since then.
- 4.15 As part of the assessment of the current application the planning authority issued a screening opinion for the current proposals on 23 June 2022. The screening opinion confirmed that an Environmental Impact Assessment (EIA) was not required.

Land to the South (Midlothian Skip Hire)

- 4.16 Planning permission 11/00591/DPP (retrospective) was granted for a change of use of an industrial yard to a waste transfer station. The decision was issued in January 2012 and two of the conditions attached to the decision notice were amended by the Local Review Body at its meeting of July 2012.

- 4.17 Planning permission 16/00689/DPP (part retrospective) was granted for the erection of a picking station, sectional concrete wall and fence and alterations to an existing bund. The decision was issued in December 2016.
- 4.18 Planning permission 17/00929/DPP (retrospective) was granted for the erection of office, staff and store buildings; erection of associated walls and access steps; and the erection of a gate. The decision was issued in January 2018.
- 4.19 Application 19/00305/S42 to amend condition 5 of planning permission 11/00591/DPP in order to amend the hours of operation was submitted in April 2019 and withdrawn in March 2021.

Edgefield Relief Road and new housing

- 4.20 The Midlothian Local Plan 2008 (MLP) allocated a 10 hectare economic land supply site (encompassing the currently undeveloped land to the east of the Relief Road plus the land now occupied by Mayflower Gardens) and an 11 hectare housing site (encompassing land now occupied by Cala's Mayburn Park development and Dandara's Ashgrove development). The allocations required the prior construction of the Edgefield Relief Road which was intended to provide access to the existing industrial estates and the new developments, and also divert larger industrial vehicles away from the existing narrow local road network.
- 4.21 Outline planning application 09/00354/OUT for residential development and classes 4 (Business), 5 (General Industry) and 6 (Storage or Distribution) economic development was approved by Committee at its meeting of 9 March 2010.
- 4.22 Planning permission 09/00353/FUL was granted for the construction of the relief road and associated landscaping, drainage and infrastructure. The consent was issued in February 2010. The duration of the permission was extended in January 2013 via the issuing of permission 12/00731/DPP. The Relief Road opened late 2014/early 2015.
- 4.23 Taylor Wimpey's Ashgrove Fields development (now known as Mayflower Gardens) received permission (13/00804/MS) in March 2014.
- 4.24 Cala's Mayburn Park development (now known as Ashgrove Gardens and Ashgrove Crescent) received permission (15/00754/MS) in February 2016.
- 4.25 Dandara's Ashgrove development (now known as St Margaret's Avenue and St Gellert Gardens) received permission (18/00243/MS, 18/00469/MS and 18/00556/MS) in November 2018, December

2018 and April 2019. A further consent (20/00694/MSC) was issued in July 2021. Development commenced in mid-2019.

Procedural matters

- 4.26 The application is a Local Development as defined by Class 4 (Waste Management Facilities) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. This is due to the fact that the supporting statements state that the annual tonnage of waste processed will be less than 25,000 tonnes per annum.
- 4.27 The application has been called to Committee for determination by Councillor Parry. The planning reason for call-in is as follows:
- Ruin the local environment and have an impact on the character of the area.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application. The response states that the built development falls outwith of the Coal Authority's defined High Risk area and consequently it would not be reasonable to condition a scheme of intrusive site investigations. The response recommends that an informative note be attached to a decision notice.
- 5.2 **Scottish Water** does not object to the application. Scottish Water records indicate that there is live infrastructure (a 450mm diameter concrete combined sewer) in the proximity of the development area. Therefore the applicant must identify any potential conflicts with Scottish Water assets and contact Scottish Water. Written permission must be obtained before any works are started within the area of Scottish Water's apparatus (this is a separate regulatory process between the applicant and Scottish Water). The infrastructure location is shown in the plans contained in the Flood Risk Assessment and Surface Water Management Plan and the location of the wash plant has been sited to avoid the route of the infrastructure.
- 5.3 The **Scottish Environment Protection Agency (SEPA)** does not object to the application. SEPA is satisfied that there will be a low risk of flooding to or from the development and that no development will be built over the culvert that contains the Park Burn. If the applicant wishes to abstract water from the Park Burn they should discuss that with SEPA's local team. With regard to a Waste Management Licence for the site the response included the following paragraphs:

The site was previously subject to waste management operations, and indeed Tartan Waste still hold a Waste Management Licence for this site.

Any proposed new operations would therefore have to make an application, in conjunction with the current Licence holder, to transfer the Licence. Depending on the proposed operations, the conditions of the Licence may have to be modified to reflect that and to ensure that adequate protection is given to sensitive receptors. It should be noted that there are sensitive receptors, in the form of residential dwellings and commercial units, in very close proximity to this site, and indeed a nearby waste transfer station is subject to frequent complaint about noise, dust, litter and out of hours operations. This being the case, it may be necessary to impose fairly tight WML conditions to ensure, as far as is practicable, adequate protection is afforded.

We will address all matters relating to regulation by SEPA at such time as the appropriate regulatory application is made and cannot guarantee that regulatory consent will be granted until the submission and determination of the relevant application. It is an applicant's responsibility to ensure their proposals will meet all relevant regulatory requirements and they are working within regulatory guidelines. We consider it to be at the applicant's commercial risk if planning permission is granted for a development/process which cannot gain authorisation from SEPA or if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. As such, we would direct the applicant to the waste section of our website and advise them to make early contact with our waste permitting team at waste.permitting@sepa.org.uk

- 5.4 **Scottish Gas Network (SGN)** (the owner and operator of high pressure gas pipelines) initially provided a holding objection due to the site's proximity to a pipeline that runs to the north of the site. Having considered the detailed plans SGN confirmed that it does not object to the application.
- 5.5 **Scottish Power Energy Networks** does not object to the application.
- 5.6 The **Loanhead and District Community Council** has submitted a neutral representation. The Community Council states that it has been advised that some businesses at Eldin Industrial Estate did not receive neighbour notification. The Community Council asks that the following points are considered:
- The application site has not been used as a waste transfer site for some time;
 - There is already a separate waste transfer site operating on Eldin Industrial Estate;
 - The proposed change of land use is a concern for current small businesses operating from this industrial estate and nearby properties;
 - The planning statement notes, vehicles from the proposed waste transfer site will use Edgefield Road and the B702 as a given route

- these are residential roads. The creation of Edgefield Relief Road was to ensure all commercial/industrial vehicles bypass residential roads and Loanhead town centre. Commercial vehicles must use Edgefield Relief Road.

- The planning statement states the proposed new plant machinery will draw water from the local burn. We object to this particular issue. We feel this is totally unacceptable and would have an adverse effect on the local wildlife and plant life in the immediate area and will affect the natural ecology and water quality for miles around. A commercial enterprise this size, with the amount of projected tonnage throughput, should have its own independent mains water supply.

5.7 The **Council's Ecological Advisor - The Wildlife Information Centre (TWIC)** does not object to the application, but has confirmed that the Preliminary Ecological Appraisal submitted in support of the application is thorough and has been undertaken to a professional standard. The appraisal contains details of invasive non-native species (Giant Hogweed and Japanese Knotweed) and remediation measures are recommended. The appraisal contains mitigation measures to reduce/eliminate potential impacts on Straiton Pond, bats, badgers and nesting birds and it also contains suggested biodiversity enhancements.

5.8 The **Council's Land Resource Manager** does not object to the application. The cycleway adjacent to the site is contained in the Midlothian Core Paths Plan and should not be blocked or otherwise obstructed during development or site operations.

5.9 The **Council's Senior Manager Neighbourhood Services (Roads)** does not object to the application. The response includes the following paragraph relating to transportation matters:

The operation of a waste transfer station within this established industrial estate does not raise any major road safety or traffic management issues. A waste recycling unit has operated from this site in the past and the proposed HGV route to and from the site, as shown in fig.3-2 of the Transport Statement, uses the Edgefield Relief Road which was constructed to provide a suitable vehicle access to the industrial estate. The opening of the Edgefield Relief Road allowed the removal of most of the industrial estate traffic from the residential section of Edgefield Road and the 20mph zone at Loanhead primary school. Edgefield Relief Road has a separate cycleway / footpath along its residential edge separated from the road by a 2m wide grass verge. The relief road does not have a record of road accidents and the additional traffic generated by this proposed use does not raise any specific road safety issues.

5.10 The **Council's Senior Manager Protective Services** does not object to the application. The predicted noise levels within the assessment

are likely to have a low impact on noise sensitive receptors, however prior to the use commencing the applicant should demonstrate that the measured noise impact of the combined plant noise is low when assessed using British Standards methodology. It is also recommended that hours of operation are restricted to 8am to 6pm.

6 REPRESENTATIONS

6.1 There have been 215 representations received, all objecting to the application, which can be viewed in full on the online planning application case file. A summary of the main points raised are as follows:

- The number of daily HGV movements is unacceptable due to congestion, noise, pollution and risk to road safety;
- The Noise Impact Assessment doesn't take account of HGV movements;
- The Transport Statement pays insufficient attention to Personal Injury Collision data;
- Straiton Pond Nature Reserve will be seriously affected by noise, air pollution and vermin;
- The cycleway will be unusable during the day due to noise, dust and air pollution;
- Air quality in Loanhead will be affected;
- Water supply, usage and drainage are inadequately described;
- The private access road from Edgefield Road is unsafe and in poor condition;
- The site is too close to local housing.
- The characteristics of the surrounding area have changed since the site was last used as a waste transfer station;
- The Edgefield Relief Road is the main access to some residential areas;
- Existing HGV traffic in the surrounding area is a road safety threat, due to speeding, and the proposal will worsen the situation;
- The use of local roads by HGVs will reduce the effectiveness of initiatives to increase active travel;
- There is a food warehouse opposite the potential site;
- The proposed use will encourage vermin;
- The proposal will have a detrimental impact on local wildlife;
- The proposal will have a detrimental impact on property values in the surrounding area;
- There are primary schools in the surrounding area and children walking to school will be put at risk from increased traffic and air pollution;
- The use will result in congestion within the industrial estate which will make it harder for existing businesses to receive customers and deliveries;

- The traffic generated on the access road will create excessive dust and pollution that will harm existing businesses;
- The proposal is contrary to the Council's vision as stated in the Single Midlothian Plan 2022-23;
- Insufficient information has been provided on surface water flooding;
- The proposal threatens the stability of the culvert that contains the Park Burn;
- The traffic generated will damage the internal road within Eldin Industrial Estate;
- Vehicle speeds on Edgefield Link Road need to be controlled;
- The proposal does not include any details of dust suppression;
- Facilities like this should not be built so close to residential areas;
- The section of Edgefield Road linking the Relief Road to Foundry Lane is in poor condition and has no pedestrian footways;
- The noise from HGVs on Edgefield Relief Road has not been assessed;
- The applicant has breached regulations at other sites;
- Midlothian Skip Hire trucks regularly exceed the speed limit on Edgefield Relief Road;
- The character of the surrounding area has changed from industrial to residential over the last 10 years;
- The annual capacity should not be allowed to exceed 25,000 tonnes;
- The proposed use should be sited on a truly industrial site;
- The proposed use should be sited at a more remote location away from residential properties;
- Building more waste facilities leads to less incentive to create less waste; and
- There are better sites in Midlothian for this proposal.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.
- 7.2 The following policies are relevant to the proposal:
- National Planning Framework 4 (NPF4)
- 7.3 Policy **1 Tackling the climate and nature crisis**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.

- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **8 Green belts**; sets out to encourage, promote and facilitate compact urban growth and use the land around our towns and cities sustainably.
- 7.7 Policy **9 Brownfield, vacant and derelict land and empty buildings**; sets out to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development.
- 7.8 Policy **12 Zero waste**; sets out to encourage, promote and facilitate development that is consistent with the waste hierarchy.
- 7.9 Policy **13 Sustainable transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.10 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- 7.11 Policy **23 Health and safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.
- 7.12 Policy **26 Business and industry**; sets out to encourage, promote and facilitate business and industry uses and to enable alternative ways of working such as home working, live-work units and micro-businesses.
- 7.13 Policy **33 Minerals**; sets out to support the sustainable management of resources and minimise the impacts of extraction of minerals on communities and the environment.

Other National Policy

- 7.14 The Scottish Governments **Planning Advice Note 51: planning, environmental protection and regulation** (PAN51) sets out how the planning system should interact with other environmental protection regimes. To minimise overlap or duplication of controls it is essential that planning authorities and other protection agencies work together so that controls are applied in a complementary way. Whilst many environmental protection decisions are based on quantitative standards planning decisions have to take into account a much wider range of material considerations and the weight accorded to them.

- 7.15 The Scottish Government's **Planning Advice Note 1/2011: planning and noise** (PAN 1/2011) provides advice on the role of the planning system in helping to prevent and limit the adverse effects of noise.
- 7.16 The Scottish Government's **Assessment of noise: technical advice note** (TAN) provides guidance on the technical evaluation of noise assessment and mitigation.
- 7.17 The Scottish Government's **Planning and Waste Management Advice** provides advice on how development planning and development management can assist in the delivery of Scotland's Zero Waste Plan.
- 7.18 Scottish Government advice Circular 4/1998 (The use of conditions **in planning permissions**) sets out six tests which planning conditions must comply with:
- Necessary;
 - Relevant to planning;
 - Relevant to the development to be permitted;
 - Enforceable;
 - Precise; and
 - Reasonable in all other respects.

Midlothian Local Development Plan 2017 (MLDP)

- 7.19 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, including sites in the established economic land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.20 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.
- 7.21 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:
- A. Result in a permanent loss of the open space; and/or
 - B. Adversely affect the accessibility of the open space; and/or
 - C. Diminish the quality, amenity or biodiversity of the open space; and/or
 - D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.
- 7.22 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses against loss to non-business or industrial uses. Alternative uses for such sites will only be

permitted if there is no net detriment to the overall supply of economic land.

- 7.23 Policy **ECON5: Industries with Potentially Damaging Impacts** states proposals for industrial developments of a kind which may give rise to environmental problems will be assessed with regards to the relevant policies and proposals; to expected economic benefits; and to any benefits to the wider environment of locally harmful industrial operations. The Council will require to be satisfied that any such site is either uniquely suitable for technical reasons or has been selected with a view to minimising environmental impact, and not primarily because of the availability of the land to the intended developer or operator.
- 7.24 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the safeguarding of the route of the Millerhill-Loanhead rail line.
- 7.25 Policy **ENV1: Protection of the Green Belt** advises that development will not be permitted in the Green Belt except for proposals that:
- A. are necessary to agriculture, horticulture or forestry; or
 - B. provide opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
 - C. are related to other uses appropriate to the rural character of the area; or
 - D. provide for essential infrastructure; or
 - E. form development that meets a national requirement or established need of no other site is available.

Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt which is to maintain the identity and landscape setting of Edinburgh and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence.

- 7.26 Policy **ENV4: Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.27 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.28 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.29 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.30 Policy **ENV14: Regionally and Locally Important Nature Conservation Sites** states that development will not be permitted where it could adversely affect the nature conservation interest of such sites, unless it can be demonstrated that appropriate mitigation measures are in place.
- 7.31 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.32 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.
- 7.33 Policy **ENV17: Air Quality** states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts.
- 7.34 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.35 Policy **WAST1: New Waste Facilities** states that the Council will support the formation of new facilities for waste in principle, where they contribute to the sustainable treatment of waste set out in the waste hierarchy and the Zero Waste Plan. The location of waste facilities is supported on sites in the established economic land supply that are allocated for business, general industrial or storage and distribution uses, subject to the Council being satisfied that there is no adverse impact on sensitive uses, including from the transport movements associated with the development.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of development

- 8.2 The site is part of an identified economic land supply site (site e31) in the MLDP and is located within the built up area of Loanhead where there is a presumption in favour of appropriate economic development. The overall Eldin Industrial Estate site has a long history of industrial use dating back more than 50 years and the application site was used as a waste transfer site for approximately 20 years from 1998. Whilst there has been significant residential development at the northern edge of Loanhead over the last 10 years, those sites were allocated and/or consented whilst large scale waste transfer operations were taking place at the application site. The planning authority has always expected that the housing allocations in the vicinity of the Relief Road and the industrial sites at Eldin and Edgefield industrial estates would coexist. The planning authority has never envisaged the residential developments requiring the cessation of activities at the industrial sites.
- 8.3 As is noted above the MLDP identifies the site as being within the built-up area of Loanhead, however the site adjoins the Green Belt to the north west and north and the Straiton Ponds Nature Reserve is a safeguarded open space as identified by policy DEV8 of the MLDP. The development will be contained within the existing site boundaries and will not result in the loss of any land within the Green Belt or protected by policy DEV8.
- 8.4 The principle of development on the site is supported by the MLDP. No material considerations have been presented to outweigh the presumption in favour of development.
- 8.5 With regard to NPF4, although the site forms part of the established economic land supply identified consideration still needs to be given to the site's location and the proposed use in terms of sustainability. The site is close to areas of development activity within Midlothian, Edinburgh and the Lothians and is close to key transport corridors such as the A720 and A701, whilst the use will generate vehicle movements the scale of those movements will be reduced when compared to more remote sites. The use of the site will enable materials to be recycled which will reduce the need for landfill and for new mineral extraction. The location and use is compliant with the sustainability intentions of NPF4.

Transportation and access

- 8.6 The Transport Statement submitted in support of the application estimates that the proposed use will create a maximum daily HGV trip generation of 50 trips, i.e. 25 loads in and 25 out. The statement has been assessed by the Council's Senior Manager Neighbourhood Services (Roads) who has not raised any issues with the Statement's methodology or conclusions. Information submitted in support of an earlier application (reference 08/00680/FUL) for a waste transfer use at the site indicated that the area that now forms the application site was to be used to house 11 skip lorries and 60 trucks belonging to a road haulage firm. That consent was granted and the businesses did operate from the site, the estimated trip generation for the current application is significantly less than the figures generated by the movements of 71 HGVs operating from the site. As a 1.4 hectare site that primarily comprises open yard area, any alternative use to the current proposal is likely to, at the very least, generate similar vehicle movements to the current proposal.
- 8.7 The Council's Senior Manager Neighbourhood Services (Roads) is satisfied that the proposed use does not raise any major road safety or traffic management issues. The Relief Road does not have a record of road accidents and its specification, with a separate cycleway/footpath along the residential edge separated from the road by a 2m wide grass verge, complies with modern pedestrian safety standards. The Relief Road has significantly reduced the levels of industrial estate traffic from the residential section of Edgefield Road. The Transport Statement shows the Relief Road as the designated access route to the site, this can be secured via condition.
- 8.8 The use will not result in the loss of any land associated with the cycleway that currently follows the line of the safeguarded Millerhill to Loanhead rail route and therefore the proposal complies with policy TRAN2 of the MLDP. Whilst users of the cycleway may experience increased noise, when compared to the current situation, when passing the site it must be acknowledged that the cycleway is immediately adjacent to an actively used industrial estate so some noise is to be expected.

Noise

- 8.9 The application is supported by a Noise Impact Assessment which includes baseline sound surveys at the nearest noise sensitive receptors (St Margaret's Farm Cottage and Edgefield Toll Farm), operational wash plant noise survey results carried out at a similar facility at another Hamilton Waste site and details of additional noise sources calculated using manufacturer data sources. The noise impact assessment has been carried out in line with the methodology set out in the relevant British Standard, BS 4142:2014+A1:2019 *Methods for Rating and Assessing Industrial and Commercial Sound*. The Assessment concludes that the predicted rating level does not exceed

the existing background sound at any of the receptors and consequently the proposed development will have a low impact on the receptors, with regard to noise.

- 8.10 The assessment has been assessed by the Council's Senior Manager Protective Services who has not raised any issues with the assessment's methodology or conclusions. A condition requiring the applicant to carry out a validation survey once the plant has been assembled and is operational is required to demonstrate that the operations would have a low impact. The planning authority has concerned that the proposed condition did not meet the six tests of conditions specified by Circular 4/1998, with particular concerns about precision, enforceability and reasonableness – however as an alternative a condition can be used to specify that noise levels must not exceed background levels by more than 5 decibels.
- 8.11 Furthermore, the Council's Senior Manager Protective Services recommended that the hours of operation be restricted to 8am to 6pm Monday to Saturday. The Planning Statement submitted in support of the application states that the applicant wishes to operate the wash plant and crushing/screening plant from 7am to 6pm Monday to Friday and 7am to 6pm for the wash plant only on a Saturday. The previously consented waste transfer operations at the site had approved hours of operation, granted by the Local Review Body, of 6am to 10pm Monday to Friday, 6am to 6pm Saturday and 6am to 12 noon Sunday. The neighbouring Midlothian Skip Hire site has approved hours of operation of 7am to 10pm Monday to Friday, 7am to 6pm Saturday and 8am to 12 noon Sunday. Having considered the planning history of both the application site and the neighbouring site it is not reasonable to restrict the start time to 8am in the context of the surrounding industrial estate and therefore the applicant's proposed hours are acceptable.

Impact on existing businesses

- 8.12 The existing main access road to Eldin Industrial Estate is a private road and the maintenance and upkeep of the road is a private legal matter between the various parties that have rights of ownership and/or access to the road. Vehicle movements of trucks entering and exiting the application site may cause disruption to other businesses at Eldin Industrial Estate, however the narrow access road and its unsurfaced condition mean that potential disruption to neighbouring businesses must be considered to be a natural consequence of the piecemeal fashion in which development has occurred at Eldin throughout its history. The access to the application site via the western route was in use during the previous waste transfer use and no information has been presented to the planning authority to suggest that the applicant does not have a right to use the access.

Visual impact

- 8.13 The existing buildings at Eldin Industrial Estate are generally 5 to 6 metres in height and in this context the plant, machinery and concrete block wall will not appear out of scale. The tallest point of the wash plant will be approximately 10 metres in height and whilst this is taller than the majority of buildings at Eldin it will be lower than the leading edge of the existing picking shed at the application site which is 11.55 metres tall. The plant and machinery will have an obviously industrial appearance but this will not be out of character when seen in the context of the existing appearance of Eldin Industrial Estate. Some aspects of the completed development will be visible from the cycleway once completed however the cycleway sits between 1.4 and 2.2 metres above the level of the yard and this will reduce the impact of the taller structures. It should also be noted that the rear elevations of the 6 metre tall buildings immediately to the south of the application site currently abut the verge of the cycleway and will consequently be more obvious visual features, when viewed from the cycleway, than the proposed development at the application site.

Neighbour Notification

- 8.14 Neighbour notification was sent to all notifiable addresses within 20 metres of the boundary of the application. Like many industrial estates various units have been sub-divided and/or consolidated over time and the data held on the planning authority's address system, which utilises the National Street Gazetteer, does not match the on the ground situation. The planning authority sent notification to all notifiable addresses for which it held address data.
- 8.15 Neighbour notification was not sent by the planning authority to residential properties in the wider surrounding area as those properties are outwith the 20 metres notification buffer specified by Scottish Government regulations. A neighbouring business at Eldin Industrial Estate leafletted the surrounding community to advise of the submission of the application and how to object.

Dust

- 8.16 No details of dust suppression were supplied with the application. Dust suppression systems using water are common features on modern waste transfer sites and details can be secured via condition.

Biodiversity

- 8.17 The Council's Ecological Advisor, The Wildlife Information Centre (TWIC) has assessed the Preliminary Ecological Appraisal submitted in support of the application and has confirmed that it is thorough and has been undertaken to a professional standard. The appraisal concludes that subject to mitigation measures to control dust, light pollution and water pollution the proposal will not have a detrimental impact on the

Straiton Pond Nature Reserve. The suggested mitigation measures can be secured via condition.

Flood Risk

- 8.18 SEPA is satisfied that the Flood Risk Assessment submitted in support of the application demonstrates that the risk of flooding from the Park Burn is low and that flood risk will not be increased by the new development. The Council's Senior Manager Neighbourhood Services (Roads) is satisfied that the proposals will not result in any significant change in surface water run-off when compared to the existing situation. Finalised details of surface water management including source control measures.

Other Matters

- 8.19 The following matters have been raised in representations which are not material considerations in the determination of the application:
- Existing HGV traffic in the surrounding area is a road safety threat, due to speeding, and the proposal will worsen the situation (speeding is a matter for the Police);
 - The proposed use will encourage vermin (vermin is controlled under non-planning regulations);
 - The proposal will have a detrimental impact on property values in the surrounding area (property values are not a planning matter);
 - The traffic generated will damage the internal road within Eldin Industrial Estate (the maintenance of the private internal road is the responsibility of the landowner);
 - Vehicle speeds on Edgefield Link Road need to be controlled (speeding is a matter for the Police);
 - The applicant has breached regulations at other sites (the planning application must be considered on its own merits and the 'behaviour' of the operator is not a material planning consideration);
 - Midlothian Skip Hire trucks regularly exceed the speed limit on Edgefield Relief Road (speeding is a matter for the Police – this relates to a neighbouring site and different operator); and
 - There are better sites in Midlothian for this proposal (the planning authority has to assess the current application on its own merits).

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The site forms part of the established economic land supply and the proposed use is in keeping with the scale and character of the surrounding industrial estate where there is a presumption in favour of

an appropriate form of development. Appropriate conditions will ensure that the amenity of residential properties in the surrounding area will be safeguarded. The proposal complies with the relevant policies of the Development Plan and the presumption for development is not outweighed by any other material considerations.

Subject to the following conditions:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. The annual capacity of waste brought onto the site shall be less than 25,000 tonnes.
3. Quarterly returns, detailing the waste brought onto the site in the relevant quarter, shall be submitted to the planning authority.

Reason for Conditions 2 and 3: *The application has been assessed as a Local Development with a capacity of less than 25,000 tonnes.*

4. The site shall be used as a soil wash plant; for the screening/crushing of stone, brick and rubble; and for the storage of unprocessed and processed materials associated with these operations.

Reason: *For the sake of clarity.*

5. No materials (either unprocessed or processed) shall be stored at a height greater than 5 metres above the level of the ground adjoining any materials pile.

Reason: *In the interests of visual amenity.*

6. No operation of plant or machinery shall be carried out on any part of the site and no HGV's shall enter or leave the site outwith the following hours unless otherwise approved in writing by the planning authority on a temporary basis:

Monday-Saturday 07:00-18:00

Reason: *In the interests of safeguarding the amenity of local residents.*

7. The rating level (LAeq,T) from the wash plant, crusher, screener and associated dust suppression systems (when operating simultaneously, individually or in any combination thereof) shall not exceed the background noise level (LA90,T) by more than +5 dB at any time when measured at the nearest noise sensitive premises (as identified in the approved Noise Impact Assessment). Noise measurements and assessments should be compliant with BS 4142:2014+A1:2019.

Reason: *To ensure that noise levels are controlled in a manner that is precise and enforceable.*

8. Prior to development commencing the following details shall be submitted to and approved in writing by the planning authority:
- Details of a dust suppression strategy;
 - Details of a surface water management strategy; and
 - Details of the location, height and specification of any lighting to be erected.

Development thereafter shall comply with the approved details.

Reason: *To safeguard the amenity of local residents and to safeguard the natural environment.*

9. Unless otherwise approved in writing by the planning authority on a temporary basis HGV access to the site shall be via the Site Access Route shown in Figure 3.2 of the approved Transport Statement.

Reason: *In the interests of road safety.*

10. No plant, machinery or concrete block walls shall be erected within 5 metres of the line of the culverted watercourse (Park Burn).

Reason: *To safeguard the culvert in the interests of flood safety*

11. Development shall comply with the mitigation measures contained in Chapter 4 of the approved Preliminary Ecological Appraisal or such alternatives as may be agreed in writing by the planning authority.

Reason: *To safeguard local biodiversity.*

12. Development shall be carried out in accordance with the approved drawings and supporting information hereby listed:

No.	Drawing Description	Drawing number & Scale	Date
1	Aerial Site Plan	ED13642-003-A 1:2000	15/07/2022
2	Anaconda Floor Plan		19/05/2022
3	Concrete Block Wall		28/06/2022

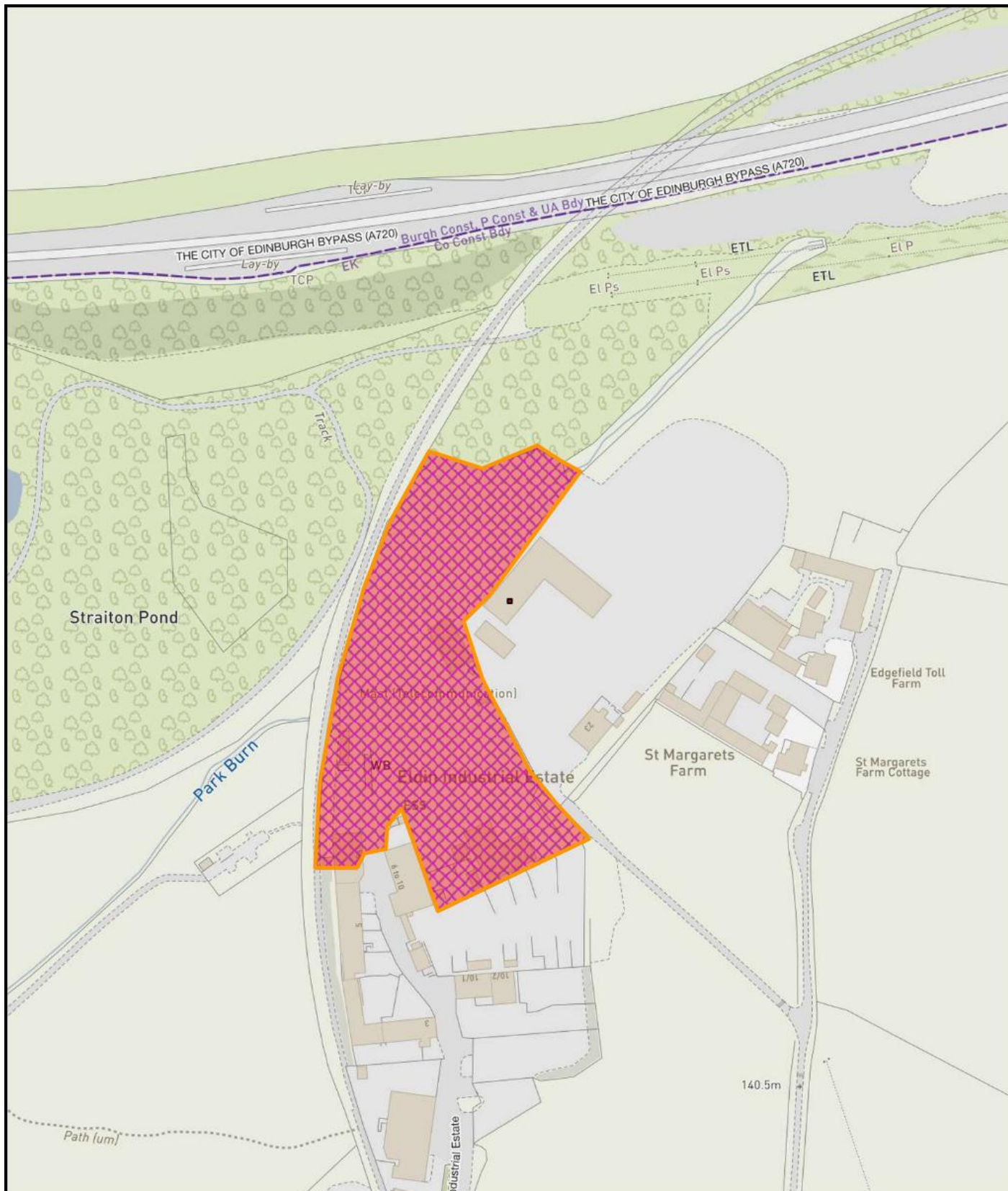
	Specification		
4	Crusher Detail		19/05/2022
5	Ecohog Windshifter Specification		19/05/2022
6	Existing Site Plan	ED13642-002-A 1:2000	15/07/2022
7	Location Plan	ED13642-001-A 1:25,000	15/07/2022
8	Screener Detail		19/05/2022
9	Site Plan – Concrete Block Walls	ED13642-002D	28/11/2022
10	Static Picking Station Detail	2578D nts	19/05/2022
11	Tracked Picking Station Detail	TPS GA nts	19/05/2022
12	Trommel Fines Wash Plant with Barrel Separator	19866-1-J 1:150	19/05/2022
13	Wash Plant with Barrel Separaror	19866-1-F 1:150	19/05/2022
14	Coal Mining Risk Assessment		19/05/2022
15	Noise Impact Assessment	V5	01/11/2022
16	Planning Statement	July 2022 version	19/07/2022
17	Preliminary Ecological Appraisal	V0.1	05/10/2022
18	Response to Objections		19/07/2022
19	Transport Statement	Revision R2	02/08/2022
20	Flood Risk Assessment and Surface Water Management Plan	V1.2	18/11/2022

Reason: To ensure that the development is carried out in terms of the drawings and supporting information which were assessed in terms of this application.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2022

Application No: 22/00345/DPP
Applicant: Hamilton Waste and recycling
Agent: Wardell Armstrong LLP
Validation Date: 7 June 2022
Contact Person: Graeme King
Email: graeme.king@midlothian.gov.uk
Background Papers: Multiple applications see Section 4 of report



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Change of use to waste transfer station Eddin Industrial Estate, Edgefield Road, Loanhead

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File No.22/00345/DPP

Scale: 1:2,500





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DO NOT SCALE FROM THIS DRAWING



Site boundary

A	Revision to site boundary	13.07.22	AB	AB	NS
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REVISION	DETAILS	DATE	DRN	CHKD	APPD
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CLIENT
HAMILTON WASTE & RECYCLING LTD

PROJECT
LOANHEAD WASTE MANAGEMENT SITE

DRAWING TITLE
AERIAL SITE PLAN

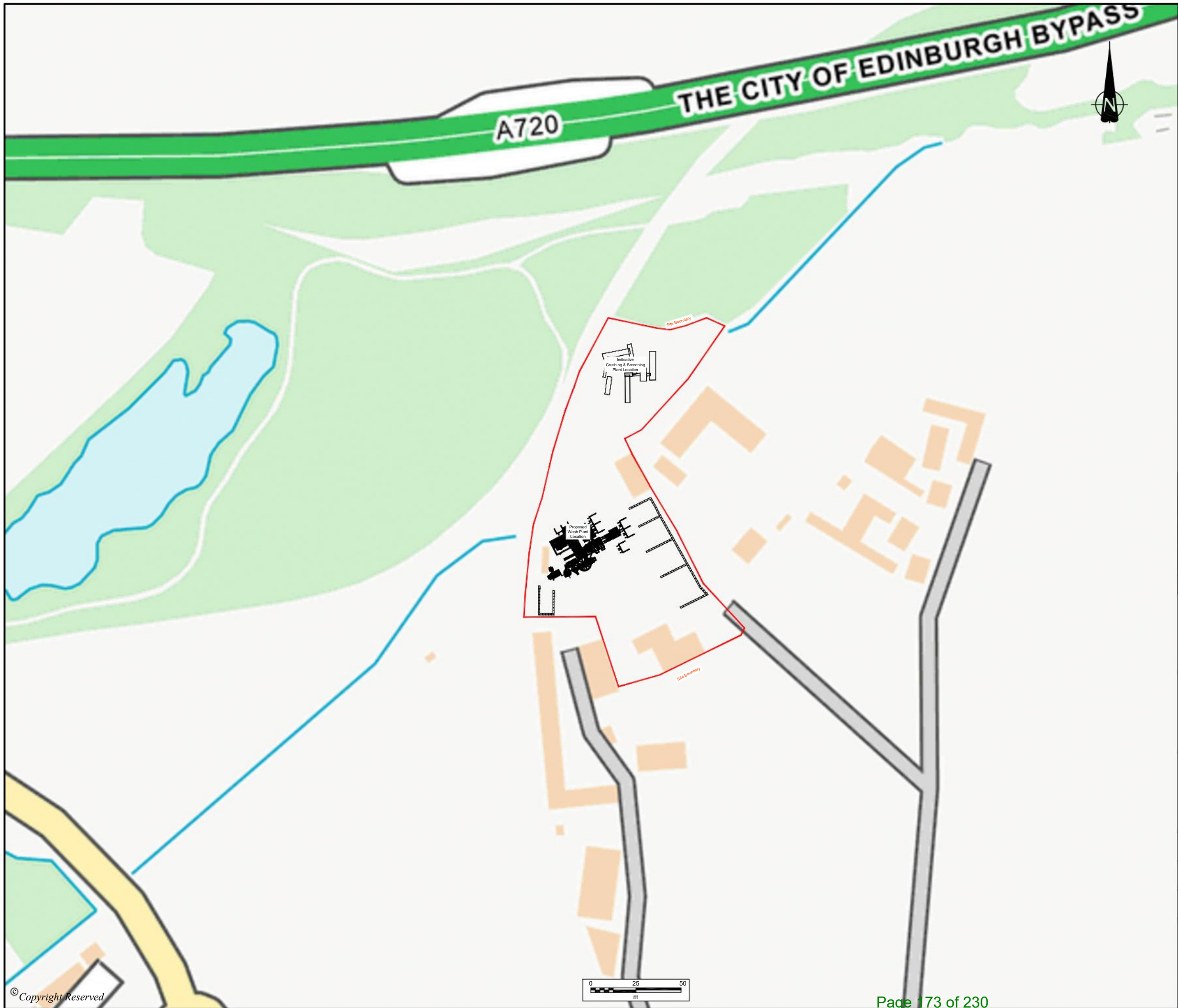
DRG No.	ED13642-003	REV	A
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DRG SIZE	A3	SCALE	1:2,000	DATE	25/04/2022
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DRAWN BY	AB	CHECKED BY	AB	APPROVED BY	NS
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<input type="checkbox"/> BIRMINGHAM	<input type="checkbox"/> GLASGOW
<input type="checkbox"/> BOLTON	<input type="checkbox"/> LEEDS
<input type="checkbox"/> BRISTOL	<input type="checkbox"/> LONDON
<input type="checkbox"/> BURY ST EDMUNDS	<input type="checkbox"/> MANCHESTER
<input type="checkbox"/> CARDIFF	<input type="checkbox"/> N-U-T
<input type="checkbox"/> CARLISLE	<input type="checkbox"/> STOKE ON TRENT



DO NOT SCALE FROM THIS DRAWING

 Site boundary

Note: Block storage area walls
built to max height of 5m

D	Storage Area Amended	14.11.22	BO	AB	SH
C	Updated Plant Layout	14.11.22	BO	SH	SH
B	Modular storage areas added	02/11/22	ED	SH	SH
A	Revision to site boundary	13.07.22	AB	AB	NS
REVISION	DETAILS	DATE	DRN	CHKD	APPD

CLIENT

HAMILTON WASTE & RECYCLING LTD

PROJECT

LOANHEAD WASTE MANAGEMENT SITE

DRAWING TITLE

SITE PLAN

DRG No. ED13642-002		REV D
DRG SIZE A3	SCALE 1:2,000	DATE 25/04/2022
DRAWN BY AB	CHECKED BY AB	APPROVED BY NS



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☐ N-U-T

☐ STOKE ON TRENT

MACHINE OPTION WEIGHTS		
OPTION NO	DESCRIPTION	WEIGHT
CC0051	HOPPER LINERS	+552 Kgs
CC0052	EXTENDED HOPPER DOORS	+697 Kgs
CA0245	JACKING LEGS	+760 Kgs
CB0230	LIGHT MAST & CABINET LIGHTS	+13 Kgs
CA0175	WATER PUMP	+22 Kgs
CA0170	REMOTE DIESEL PUMP	+16 Kgs
CA0171	CENTRAL AUTOLUBE	+10 Kgs
CA0191	HYDRAULIC BREAKER C/W HAMMER	+920 Kgs
CJ0133	JAW LEVEL SENSOR	+7 Kgs
CJ0025	BELT PROTECTION PLATE	+67 Kgs
J4870000	HEAVY DUTY TOGGLE PLATE	+18 Kgs
CJ0110	TALL TOOTH JAW PLATES	+58 Kgs
CJ0111	18% JAW PLATES	+5 Kgs
CJ0112	20% JAW PLATES	+630 Kgs
CD0097	MAIN CONVEYOR DUST COVER	+52 Kgs
CD0094	MAIN CONVEYOR HEAD DRUM GUARD	+94 Kgs
CA0173	STOCKPILE SENSOR	+5 Kgs
CA0151	STANDARD MAGNET	+1015 Kgs
CA0216	HEAVY DUTY TWIN POLE MAGNET	+1444 Kgs
CD0089	MAGNET CHUTE UNI-DIRECTIONAL	-4 Kgs
CD0091	MAGNET CHUTE BI-DIRECTIONAL	-6 Kgs
CE0005	NATURAL FINES CONVEYOR	+609 Kgs
CE0039	NATURAL FINES CONVEYOR HEAD DRUM GUARD	+58 Kgs
QJ3413BPP	CAT 3B POWERPACK	+325 Kgs
QJ3414PP	CAT T4 POWERPACK (INC. DEF TANK)	+532 Kgs
QJ341V4PP	VOLVO T4 POWERPACK (INC. DEF TANK)	+380 Kgs

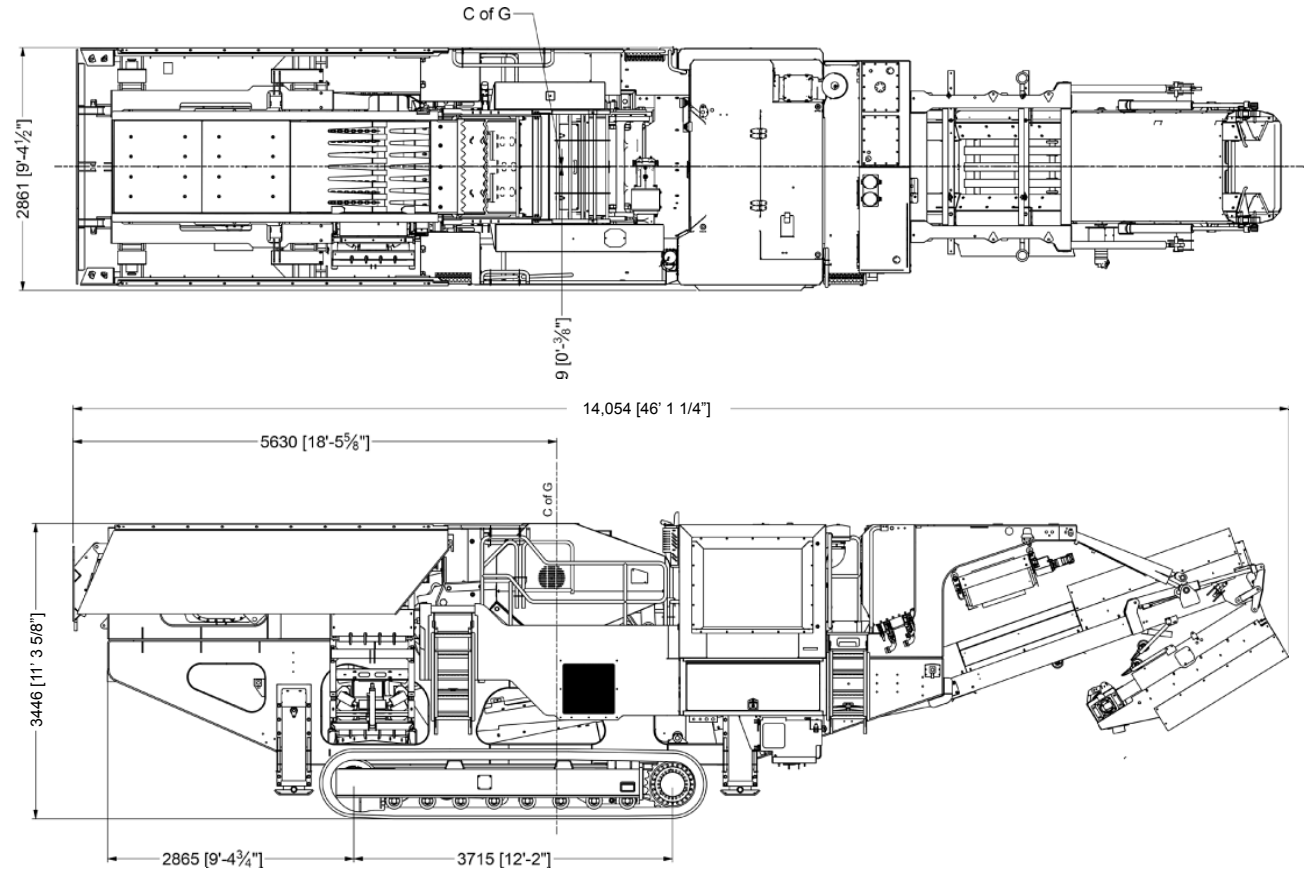
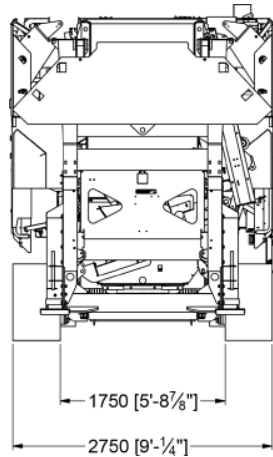
TRANSPORT POSITION

LENGTH STD HOPPER - 14,054 mm / 46' 1 1/4"

WIDTH STD HOPPER - 2861 mm / 9' 4 1/2"

HEIGHT - 3446 mm / 11' 3 5/8"

MACHINE WEIGHT (3A ENGINE, NO OPTIONS) - 45, 233 Kgs / 99,722 lbs



WORKING POSITION

LENGTH STD HOPPER - 15,814 mm / 51' 10 1/2"

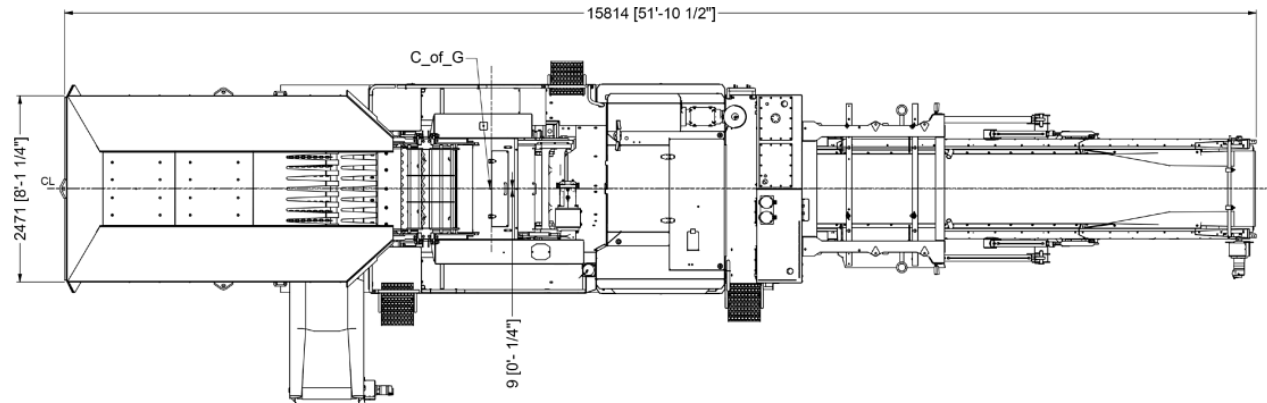
WIDTH STD HOPPER - 3504 mm / 11' 6"

WIDTH STD - 3504 mm / 11' 6"

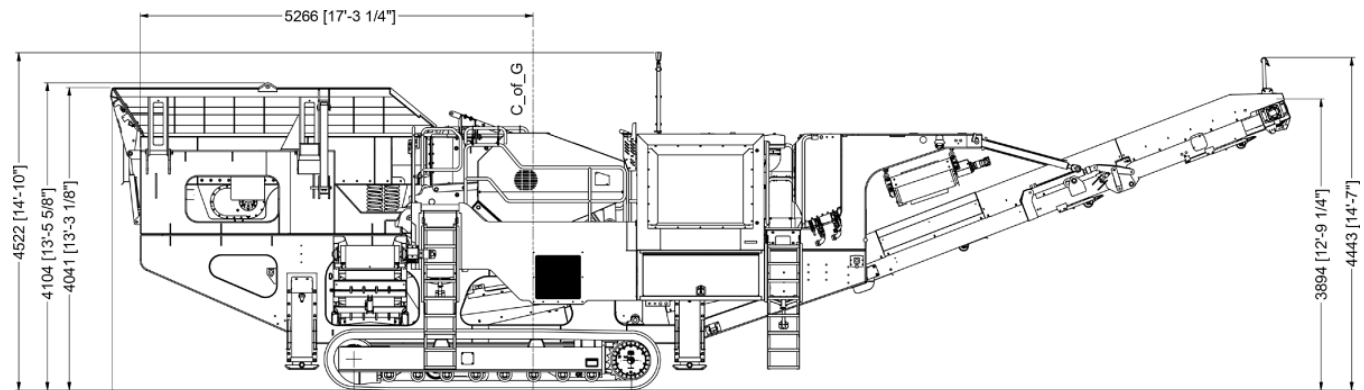
WIDTH NF CONVEYOR - 4527 mm / 14' 10"

HEIGHT STD HOPPER - 4443 mm / 14' 7"

MACHINE WEIGHT (3A ENGINE, NO OPTIONS) - 45,233 Kgs / 99,722 lbs



MACHINE OPTION WEIGHTS		
OPTION NO	DESCRIPTION	WEIGHT
CC0051	HOPPER LINERS	+552 Kgs
CC0052	EXTENDED HOPPER DOORS	+697 Kgs
CA0245	JACKING LEGS	+760 Kgs
CB0230	LIGHT MAST & CABINET LIGHTS	+13 Kgs
CA0175	WATER PUMP	+22 Kgs
CA0170	REMOTE DIESEL PUMP	+16 Kgs
CA0171	CENTRAL AUTOLUBE	+10 Kgs
CA0191	HYDRAULIC BREAKER C/W HAMMER	+920 Kgs
CJ0133	JAW LEVEL SENSOR	+7 Kgs
CJ0025	BELT PROTECTION PLATE	+67 Kgs
J4870000	HEAVY DUTY TOGGLE PLATE	+18 Kgs
CJ0110	TALL TOOTH JAW PLATES	+58 Kgs
CJ0111	18% JAW PLATES	+ 5 Kgs
CJ0112	20% JAW PLATES	+ 630 Kgs
CD0097	MAIN CONVEYOR DUST COVER	+52 Kgs
CD0094	MAIN CONVEYOR HEAD DRUM GUARD	+94 Kgs
CD0123	MAIN CONVEYOR UNDER GUARDS	+300 Kgs
CA0173	STOCKPILE SENSOR	+5 Kgs
CA0151	STANDARD MAGNET	+1015 Kgs
CA0216	HEAVY DUTY TWIN POLE MAGNET	+1444 Kgs
CD0089	MAGNET CHUTE UNI-DIRECTIONAL	-4 Kgs
CD0091	MAGNET CHUTE BI-DIRECTIONAL	-6 Kgs
CE0005	NATURAL FINES CONVEYOR	+609 Kgs
CE0039	NATURAL FINES CONVEYOR HEAD DRUM GUARD	+58 Kgs
QJ3413BPP	CAT 3B POWERPACK	+325 Kgs
QJ3414PP	CAT T4 POWERPACK (INC. DEF TANK)	+532 Kgs
QJ341V4PP	VOLVO T4 POWERPACK (INC. DEF TANK)	+380 Kgs



All specifications subject to change without prior notice

WORKING POSITION

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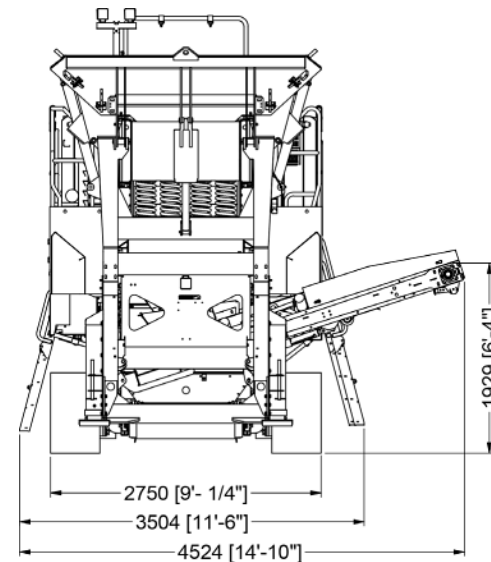
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WIDTH NF CONVEYOR - 4524 mm / 14' 10"

HEIGHT STD HOPPER - 4443 mm / 14' 7"

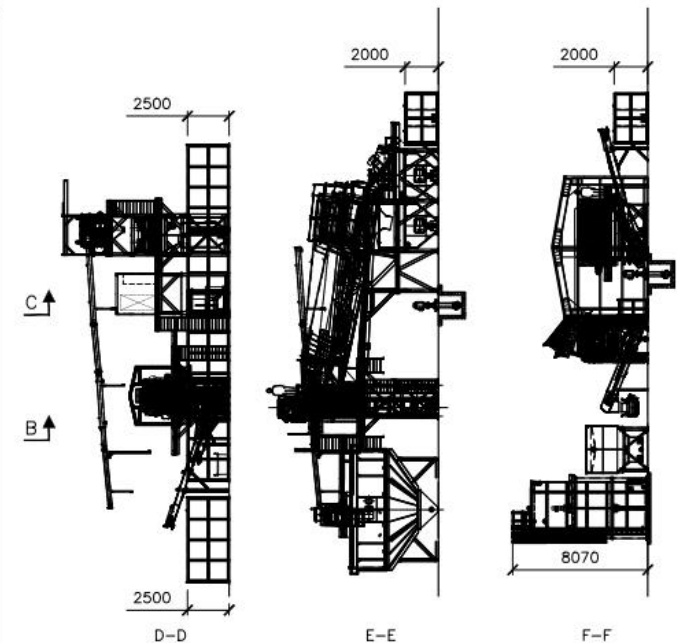
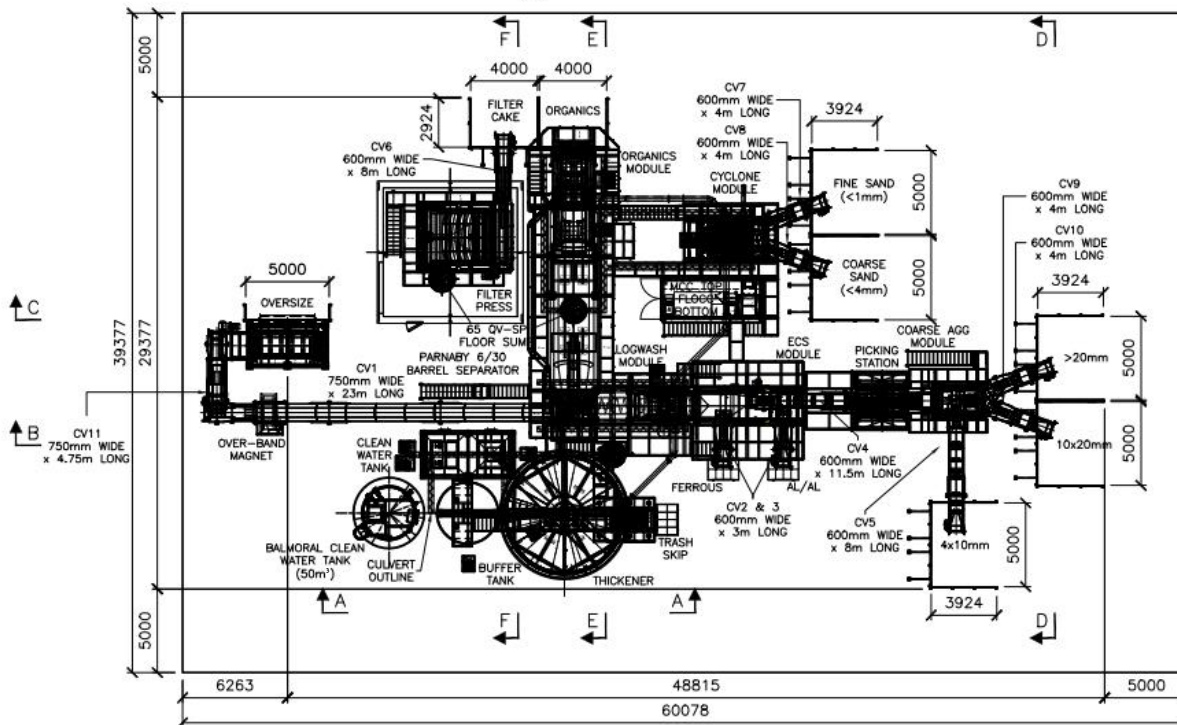
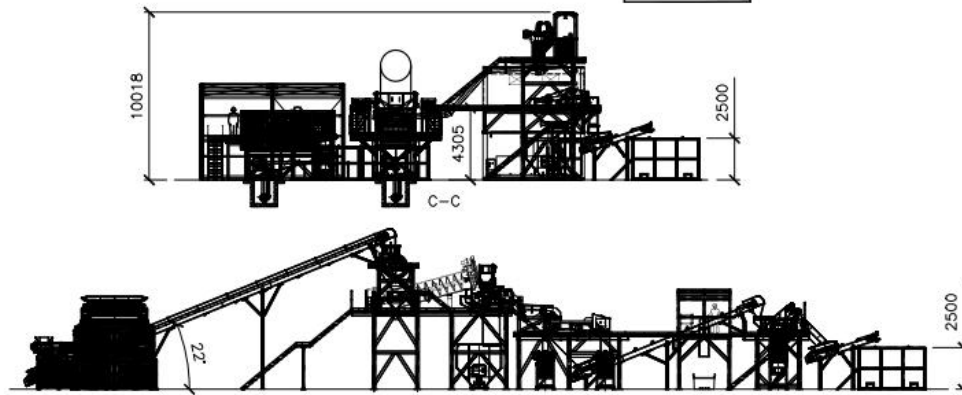
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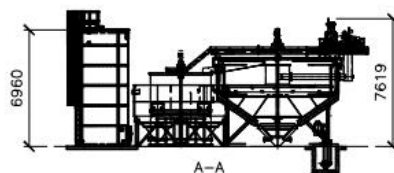
IF IN DOUBT, ASK!



SEE DRAWING 20237 FOR CIVILS DETAILS

NOTES

- STEELWORK FINISH TO BE AS MARKED. IF NO FINISH IS MARKED PLEASE CHECK TO CONFIRM WITH PARNABY.
- ALL DIMENSIONS ARE IN MILLIMETRES
- ALL HOLES Ø19 UNLESS NOTED OTHERWISE (U.N.O.)
- ALL WELDING TO BS EN1011-1:2009 (6 C.F.W. U.N.O.)
- ALL STEELWORK MATERIAL TO BE TO BS EN 10025:1993 S275 (U.N.O.)
- REMOVE ALL SHARP CORNERS.
- DRAWING No. & ITEM No. TO BE MARKED CLEARLY ON ALL COMPONENTS, e.g. <12345/1>
- PARNABY CYCLONES RESERVES THE RIGHT TO MAKE CHANGES TO THIS DRAWING AS REQUIRED AND WHERE NECESSARY.



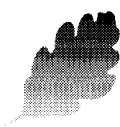
THIS DRAWING IS THE PROPERTY OF DEREK PARNABY CYCLONES INTERNATIONAL LIMITED AND MUST NOT BE USED, LOANED OR COPIED WITHOUT WRITTEN PERMISSION FROM THE COMPANY.

REVISION
DATE BY
J - FEEDER ORIENTATION CHANGED.
SITE CHANGED. SEE REV I FOR PREVIOUS REVISION NOTES.
30.03.22 JM

Page 177 of 230

TOLERANCES TO BE AS SPECIFIED BELOW (U.N.O.)									
MACHINING					FABRICATION AND PLATEWORK				
UP TO 15mm	15mm TO 25mm	25mm TO 40mm	40mm TO 60mm	60mm TO 100mm	UP TO 15mm	15mm TO 25mm	25mm TO 40mm	40mm TO 60mm	60mm TO 100mm
±0.15mm	±0.40mm	±0.60mm	±1.00mm	±1.50mm	±1.00mm	±1.50mm	±2.00mm	±3.00mm	±5.00mm

ESTIMATED WEIGHT =		<input type="checkbox"/> SHOT BLASTED, PRIMED & FINISHED COAT - RAL		<input type="checkbox"/> GALVANIZED	
Derek Parnaby Cyclones International Limited CHILTON INDUSTRIAL ESTATE Tel: +44 (0)1388 720849 CHILTON Fax: +44 (0)1388 721415 COUNTY DURHAM Co. Reg. 1124062 (England) DL17 0SH (UK) Email: design@parnaby.co.uk Web: www.parnaby.co.uk					
Customer	HAMILTON WASTE		Drawn By	BP	Date
Location	EDINBURGH, UK		Checked By	-	Date
Scale	1:150		Approved By	-	Date
Drawing No.	19866		Contract Number	-	Revision
GA OF 40TPH C&D & TROMMEL FINES WASH PLANT WITH BARREL SEPARATOR			Sheet No.	1	J



**APPLICATION FOR PLANNING PERMISSION 20/00899/DPP FOR THE
ERECTION OF 14 DWELLINGHOUSES, FORMATION OF ACCESS
ROADS AND CAR PARKING AND ASSOCIATED WORKS AT LAND AT
ROBERTSON BANK, GOREBRIDGE**

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of 14 dwellinghouses, formation of access roads and car parking and associated works. The site is situated to the south of Lady Brae, Gorebridge, and to the west of the Borders Rail line.**
- 1.2 There have been six representations and consultation responses from the Coal Authority, Scottish Water, Network Rail, SP Energy Networks, the Gorebridge and District Community Council, the Council's Archaeological Advisor, the Council's Ecological Advisor (TWIC), the Council's Senior Manager Neighbourhood Services (Roads), the Council's Senior Manager Protective Services, the Council's Land Resources Manager and the Council's Education Executive Business Manager.**
- 1.3 The relevant development plan policies are policies 1, 2, 3, 6, 7, 9, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23 and 24 of the National Planning Framework 4 (NPF4) and policies STRAT1, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN5, IT1, ENV9, ENV10, ENV11, ENV14, ENV15, ENV16, ENV18, ENV25, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.1 The recommendation is to grant planning permission subject to conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is situated in the south of Gorebridge on an area of open ground immediately to the west of the Borders Rail line. The vehicular access is from Lady Brae at the northern end of the site, the access is adjacent to the bridge that carries Lady Brae over the railway line. The site measures 0.898 hectares and comprises two distinct areas. The northern part of the site is approximately 105 metres in length and 7 to**

18 metres wide. It comprises a metalled access track, the base of a former store/workshop building and a steeply sloping area of woodland. The southern area measures approximately 205 metres in length and between 28 and 44 metres wide. It has a more open character and comprises a large area of scrubland grass, an extension of the metalled track, the base of a former store/workshop building and an area of made ground. The scrubland grass slopes steeply downhill from east to west with a fall of 8 metres across the widest part of the site.

- 2.2 The site is bounded to the north west by the Borders Rail line with the boundary being defined by a 2 metre high galvanised mesh fence. There are modern residential properties (Louis Braille Way) on the opposite side of the railway line. To the north east the site is bounded by Lady Brae. To the south west the site is bounded by mature woodland on steeply sloping ground. Beyond the woodland are three houses and a scrapyard on Robertson Bank, these properties are accessed from Lady Brae; an unsurfaced footpath runs along the banks of the Gore Water. The south east of the site is bound by a scrub grassland meadow area. There is unrestricted pedestrian access to the site and an informal path network linking Robertson Bank and a modern footbridge over the railway line. The site forms part of a larger allocated housing site (h51) which has an indicated capacity of 55 units.

3 PROPOSAL

- 3.1 It is proposed to erect 14 dwellinghouses on the southern area of the site. The existing metalled access track will be replaced with a combination of tarmacadam and paving. There will be two house types, a 4 bed house comprising 2 ½ storeys of which there will be 8 units and a 3 bed house comprising 2 storeys of which there will be 6 units. The houses will be split into 7 blocks each of 2 houses linked via their garages. The houses will have a split level design with the main access to the houses being into the living accommodation on the upper floor. Each house will be allocated parking via driveways and visitor parking will be accommodated in parallel parking bays on the access road. An area of wildflower seeded grassland at the south of the site will provide a link to the existing scrub grass open space to the south.
- 3.2 The application is accompanied by the following documents:
- Coal Mining Risk Assessment;
 - Design and Access Statement;
 - Drainage Statement;
 - Ecology Report;
 - Heritage Impact Assessment;
 - Noise and Vibration Impact Assessment;
 - Planning Statement; and,
 - Tree Survey.

4 BACKGROUND

- 4.1 Application 05/00811/FUL for the erection of 30 dwellinghouses at land at Robertson Bank was submitted on 5 October 2005. The application was withdrawn on 17 March 2006. The application boundary included the current application site and also included additional ground to the west and to the south.
- 4.2 The Midlothian Local Plan 2008 included allocated housing site H9 which relates to a site at Robertson Bank and includes the current application site. The allocated site included woodland to the west of the current site and open ground to the south, but did not include all of the land that was the subject of application 05/00811/FUL. The indicative capacity of the site was 55 units.
- 4.3 The Midlothian Local Development Plan 2017 (MLDP) included site H9 as part of the established housing land supply. The MLDP re-named the site as h51 and retains the indicative capacity of 55 units. The settlement statement for Gorebridge includes the following:

The final capacity of the site should be established through the development brief and/or planning application process. The development is required to be sensitive to the wooded environment, taking into account the steep slope of the site and proximity of the Gore Water and any flood risk. The majority of the existing woodland on site should be retained and brought under management; significant structural landscaping will be required on the south-eastern boundary to define the long-term boundary of Gorebridge. The development will be required to make developer contributions to primary and secondary school capacity.

- 4.4 As part of the assessment of the current application the planning authority issued a screening opinion for the current proposals on 24 December 2020 confirmed that an Environmental Impact Assessment (EIA) was not required.
- 4.5 The application has been called to committee by Councillor Scott. The reasons for call-in are as follows:
- The proposed entrance to these houses is on one of the most dangerous blind corners in Gorebridge – there have been accidents on Lady Brae at various places.
 - It has been noted in previous planning applications that the secondary educational infrastructure is already very stressed and strained.
 - There is severe flooding at the bottom of Lady Brae/Powdermill Brae. I would like to ensure that the sewer drains will not add to this problem and that this problem would in fact be resolved.
 - I would like to see evidence that the embankment for these houses will not deteriorate or slide through time and will not affect any existing houses below.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application subject to conditions to secure a scheme of intrusive investigation to establish the risk posed to the development by past coal mining activity and, if required, remediation works and/or mitigation measures.
- 5.2 **Scottish Water** does not object to the application. The water supply will be fed from Rosebery Water Treatment Works. The foul water drainage will be dealt with by the Gorebridge Waste Water Treatment Works. Both have sufficient capacity at present, however it is not possible to reserve capacity for future developments (this is a separate regulatory process between the applicant and Scottish Water).
- 5.3 For reasons of sustainability, and to protect Scottish Water customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into the combined sewer system. There may be limited exceptional circumstances where they would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical and technical challenges.
- 5.4 In order to avoid costs and delays where a surface water discharge to the combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request.
- 5.5 **Network Rail** does not object to the application subject to conditions to ensure that no sustainable urban drainage system (SUDS) infrastructure is sited within 10 metres of the railway boundary and to ensure that tree planting adjacent to the railway boundary complies with Network Rail's planting recommendations.
- 5.6 **SP Energy Networks** does not object to the application. However it should be noted that SP Distribution has high voltage overhead lines in the vicinity of the proposals and reserves the right to protect and/or deviate apparatus at the applicant's expense.
- 5.7 **Gorebridge and District Community Council** does not object to the application and welcomes the use of brownfield land for development. However, the Community Council has three concerns:
- The existing access road from Lady Brae is a popular walking route. Safe access to this route should be maintained;
 - The single car width entrance to the site raises road safety concerns; and
 - The new junction will further complicate access for pedestrians on Lady Brae. A signal controlled pedestrian crossing should be considered.

- 5.8 The **Council's Archaeological Advisor** does not object to the application subject to condition(s) being attached to any grant of planning permission requiring a Programme of Archaeological Works (Targeted Survey and Evaluation).
- 5.9 The **Council's Ecological Advisor - The Wildlife Information Centre (TWIC)** does not object to the application and has confirmed that the Ecology Report submitted with the application includes a comprehensive field survey and data search. The report concludes that there will be no effects on protected species or habitats and includes recommendations for biodiversity enhancements.
- 5.10 The **Council's Senior Manager Neighbourhood Services (Roads)** does not object to the application subject to details concerning the visibility splay at the access; the width of the access road; service strips; turning circles for HGVs; and surface water drainage being secured by condition(s).
- 5.11 The **Council's Senior Manager Protective Services** does not object to the application subject to conditions to secure site investigations and, if required, remediation works to identify and address contaminated land issues; details of acoustic barriers; and to ensure that glazing specifications on elevations facing the railway line meet the specifications set out in the acoustic report.
- 5.12 The **Council's Land Resource Manager** does not object to the application and has confirmed that the development does not encroach on the Right of Way identified as LM58.
- 5.13 The **Council's Education Executive Business Manager** does not object to the application. The development would give rise to four primary school pupils and three secondary school pupils. Developer contributions towards education facilities would be required to mitigate the demand from the proposed development. The catchment schools are:
- Non-denominational primary Gorebridge Primary School
 - Denominational primary St Andrew's RC Primary School
 - Non-denominational secondary Newbattle High School
 - Denominational secondary St David's RC High School
- 5.14 The Council utilises a primary school pupil product ratio of 0.28 per dwelling and a secondary school pupil product ratio of 0.2 per dwelling when calculating anticipated primary and secondary school pupil numbers from developments and also for the purposes of negotiating developer contributions with applicants.
- 5.15 The consultation responses are available to view in full on the online planning application case file.

6 REPRESENTATIONS

- 6.1 There have been six representations received, all objecting to the application, which can be viewed in full on the online planning application case file. A summary of the main points raised are as follows:
- There is insufficient foul water drainage capacity to accommodate the development;
 - The works risk the stability of banking above the properties at 1 to 9 Robertson Bank;
 - The development will result in a loss of privacy for numbers 3 to 9 Robertson Bank;
 - The applicant has previously deposited building waste on the site, this raises questions about their behaviour during any future development;
 - There is a considerable need for affordable housing stock regardless of the size of the development;
 - The development will have a detrimental impact on local biodiversity;
 - The development will result in the loss of trees and threaten remaining trees;
 - The development risks polluting the Gore Water;
 - The access track crosses several adits, shafts and culverts associated with former mining activity. The stability of these features should be assessed;
 - Litter from the development site should be controlled;
 - The visibility at the proposed access is inadequate;
 - Pedestrian access across the right of way should be maintained;
 - The loss of open space will have a detrimental impact on the amenity of the community;
 - The development will increase surface water run-off;
 - The proposed access road is not wide enough;
 - Tree planting along the railway embankment should be increased;
 - The site contains contaminated waste that should be removed from the site; and
 - Insufficient consideration has been given to reducing carbon emissions. All of the houses should include solar photovoltaic panels.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.
- 7.2 The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- 7.3 Policy **1 Tackling the climate and nature crises**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.
- 7.7 Policy **7 Historic assets and places**; sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.
- 7.8 Policy **9 Brownfield, vacant and derelict land and empty buildings** sets out to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development.
- 7.9 Policy **12 Zero Waste**; sets out to encourage, promote and facilitate development that is consistent with the waste hierarchy.
- 7.10 Policy **13 Sustainable Transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.11 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.12 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.13 Policy **16 Quality homes**; sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.

- 7.14 Policy **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.15 Policy **20 Blue and green infrastructure**; sets out to protect and enhance blue and green infrastructure and their networks.
- 7.16 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.17 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- 7.18 Policy **23 Health and safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.
- 7.19 Policy **24 Digital infrastructure**; sets out to encourage, promote and facilitate the roll-out of digital infrastructure across Scotland to unlock the potential of all our places and the economy.

Other National Policy

- 7.20 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.21 The **Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

Midlothian Local Development Plan 2017 (MLDP)

- 7.22 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP. The development strategy supports the provision of an indicative 55 housing units on sites (h51).
- 7.23 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.
- 7.24 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be

acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.

- 7.25 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.26 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.27 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.28 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that Plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility).
- 7.29 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.30 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.31 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.32 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.33 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.34 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.35 Policy **ENV14: Regionally and Locally Important Nature Conservation Sites** states that development will not be permitted where it could adversely affect the nature conservation interest of such sites, unless it can be demonstrated that appropriate mitigation measures are in place.
- 7.36 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.37 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.
- 7.38 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.39 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.40 Policy **IMP1: New Development**. This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural

and conservation interests affected; archaeological provision and 'percent for art' provision.

- 7.41 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.42 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SuDS) to be incorporated into new development.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of development

- 8.2 The site is part of an allocated housing site (site h51) in the MLDP and is located within the built up area of Gorebridge where there is a presumption in favour of appropriate residential development. The site has been allocated for housing since the 2008 Midlothian Local Plan and contributes towards the Council's housing land supply. No material considerations have been presented to outweigh the presumption in favour of development.
- 8.3 With regard NPF4, although the site is allocated for housing in the MLDP, consideration still needs to be given to the site's location in terms of sustainability. In this regard the site is within close proximity to a range of local services including shops, schools, pharmacy and medical practices, employment opportunities, public transport options and active travel connections and as such is considered to be in a sustainable location in compliance with NPF4.

The supply of effective housing land

- 8.4 The Council is required to maintain a supply of effective housing land (enough land allocated and coming forward for housing to meet its housing targets) at all times. The number of homes required in a local authority area is set by the Scottish Government in NPF4 and is met by the development strategy and policies of the MLDP and the assessment of individual proposals. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for

residential development should be considered as possible additional sites to make up the shortfall. With a 10 year housing target being set at 8,850 units (for the life of MLDP2, to be prepared for adoption in 2026/27) it is a reasonable presumption that an annualised target of 885 units will be expected prior to the adoption of MLDP2 – this provides an impetus to support the granting of planning permission for residential development on allocated housing sites such as the one proposed.

Layout, Form, Design and Materials

- 8.5 The houses will have a traditional form with pitched roofs and will be positioned in a linear arrangement along the proposed access road. The design and detailing includes contemporary design features such as areas of full height glazing and the use of timber cladding. The roofs will be finished with slate and the walls will be finished in a mix of off white render and grey facing brick. The houses will have a split level design and terraced gardens in order to accommodate the sloping terrain of the site.
- 8.6 The terraced gardens will ensure that the houses will be provided with adequate levels of usable outdoor space. The distance between the proposed houses and those at 1 to 9 Robertson Bank, and the fact that there will be intervening woodland between the houses, will ensure that the new houses will not result in an unacceptable loss of privacy when compared to the existing situation.
- 8.7 The design and layout will ensure variety and interest in views of both the front and rear elevations. The development will be visible in wider views of Gorebridge from the west but it will be seen in the context of the housing developments to the east which will create a backdrop of residential development. The development will not appear as unduly prominent in wider views of Gorebridge.

Access and transportation

- 8.8 The site is well served by public transport links with easy access to Gorebridge railway station and to regular bus services on Powdermill Brae. The layout maintains a pedestrian route through the site and an alternative route during construction which can be secured by condition on a grant of planning permission.
- 8.9 The access junction for the site will be situated on the outside of an existing curve in the road. This will ensure that the junction will have adequate visibility to the west, towards Powdermill Brae, and to the north east, towards Louis Braille Way and beyond. Finalised details of the junction and access road can be secured by condition on a grant of planning permission. In the context of the surrounding area a development of 14 houses will not result in significant numbers of additional trip generation.

Surface and foul water drainage

- 8.10 The Scottish Water consultation response confirmed that it has no objection to the proposal. The response also confirms that there is currently sufficient capacity at Rosebery Water Treatment Works (this part of the response relates to the provision of water to the site); it is recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. It is also confirmed the Gorebridge Waste Water Treatment Works (i.e. foul water waste) has sufficient capacity for a foul only connection. Finally the response also confirms that Scottish Water will not accept connection of surface water drainage into their combined sewer system, except for limited exceptional circumstances on brownfield sites.
- 8.11 These are all common consultation responses from Scottish Water and do not indicate any fundamental issues with the application site. It is Scottish Water's standard approach to provide a no objection response for planning consultations and advise that the applicant should submit a Pre-Development Enquiry (PDE) to Scottish Water.
- 8.12 The topography of the site means that surface water currently drains in three directions with the access track draining towards Lady Brae, the main development area draining into the woodland to the west and the very southern end of the site draining southwards into the open meadow area. The indicative drainage strategy proposes using source control (bioretention areas and permeable road surfaces) to deal with road and roof rainwater. Road levels will ensure that surface water run-off from the roads within the site is directed to controls within the site, any existing run-off towards Lady Brae will be re-directed into the site. The source control elements will have flow-controlled outlets with conveyance pipes to the site control element of the scheme. The site control will consist of a filter trench and strip along the western boundary of the site which will mimic the current greenfield run-off to the woodland but at reduced discharge rates and volumes.

Woodland and landscaping

- 8.13 The h51 site is characterised by a combination of woodland and scrub grassland. The majority of the woodland is outwith the boundary of the current application site. The area that will accommodate the proposed housing will require the felling of one sycamore tree which is in poor condition. Selective felling and pruning will be necessary along the western edge of the access track. Planting along the eastern edge of the site will have to comply with Network Rail species and planting guidance in order to ensure that leaf fall does not disrupt rail services. Disturbed ground at the southern end of the site will be re-seeded with wildflower meadow mix.

Archaeology

- 8.14 The application submission includes a Heritage Impact Assessment which identifies that the site may have formed part of the Gorebridge Gunpowder Works and there is medium potential for finds or remains from the post-medieval period to be present on site. Having considered the Heritage Impact Assessment the Council's Archaeological Advisor has recommended that a planning condition be used to secure a programme of archaeological works consisting of a written scheme of investigation, a targeted survey of a potential location of a site associated with the gunpowder works and a field evaluation by trial trenching.

Biodiversity

- 8.15 The Council's Ecological Advisor, The Wildlife Information Centre (TWIC) has confirmed that the Ecology Report submitted with the application includes a comprehensive field survey and data search. The report concludes that there will be no effects on protected species or habitats and includes recommendations for biodiversity enhancements consisting of the incorporation of swift brick and bat boxes on the houses.

Potential impact of railway noise

- 8.16 The site is immediately adjacent to the Borders Railway line and there is a longstanding car breaker's yard approximately 15 metres west of the site. The application submission includes a Noise and Vibration Impact Assessment which assesses the potential impact of both these uses on the amenity of the future residents. The assessment recommends that railway noise is mitigated via a combination of acoustic barriers and glazing/ventilation specification, and that the potential breaker's yard noise is mitigated via an acoustic barrier. The Council's Senior Manager Protective Services has reviewed the assessment and agrees with its conclusions. Finalised details of the mitigation measures can be secured by condition on a grant of planning permission.

Ground conditions

- 8.17 Like the majority of Midlothian's settlements the site falls within a Coal Authority defined Development High Risk Area. The Coal Authority has recommended a scheme of intrusive site investigations to identify any ground stability issues associated with the area's history of coal mining. Should the intrusive investigations identify any issues that require remediation then the works will need to be completed prior to the occupation of the houses. It is standard practice within Midlothian, and other planning authorities, to deal with these matters via condition(s) on a grant of planning permission and further consultation with the Coal Authority.

- 8.18 The Council's Senior Manager Protective Services has recommended a scheme of investigation (a desk top study followed, if required, by intrusive investigations) to identify any potential contaminated land issues associated with former uses of the site. Such a scheme of investigation will identify if any of the building debris on the site is contaminated. Remediation and mitigation measures can be determined following the assessment of the survey work. It is standard practice within Midlothian, and other planning authorities, to deal with these matters via condition(s) on a grant of planning permission and further consultations with the Council's Senior Manager Protective Services.
- 8.19 Other than the statutory requirement relating to coal mining history the stability of land during and after construction is not a matter that is assessed as part of the planning process. The structural stability of developments is assessed as part of the building warrant process. Any damage caused to neighbouring properties during construction is a private legal matter between the parties involved and is not a material planning consideration.

Education Provision

- 8.20 The consultation response from the Council's Education Executive Business Manage has confirmed that developer contributions will be required towards primary and secondary education provision. The site is within the catchment areas of Gorebridge and St Andrew's RC primary schools and Newbattle and St David's RC high schools. The development is estimated to generate a pupil product of four primary pupils and three secondary pupils. Given the scale of the development, the size of the anticipated pupil product and the fact that the site has been allocated for housing since 2008 it would not be reasonable to seek to refuse the application on grounds of uncertainty of education provision.

Developer contributions and affordable housing

- 8.21 In relation to Midlothian Council, policies relevant to the use of planning obligations are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance). If the Council is minded to grant planning permission for the development it will be necessary for the applicant to enter into a planning obligation to secure:
- A financial contribution towards additional primary education capacity;
 - A financial contribution towards additional secondary education capacity;
 - A financial contribution towards Borders Rail/public transport;
 - A financial contribution towards improvements within Gorebridge town centre;

- A financial contribution towards community facilities; and
- A financial contribution towards off site children's play.

8.22 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:

- Necessary to make the proposed development acceptable in planning terms (paragraph 15)
- Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
- Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
- Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
- Be reasonable in all other respects

8.23 The requirements as set out above for any proposed planning obligation would meet the above tests.

8.24 As is noted above the site was first allocated in the Midlothian Local Plan 2008. At that time policy HOUS4 stated that for sites (both allocated and windfall) of less than 15 units no affordable housing provision would be sought. Policy DEV3 of the MLDP amended this approach to require affordable housing provision for all allocated sites irrespective of unit numbers, the exemption for developments of less than 15 units remains for windfall sites. Notwithstanding this fact, as is noted in paragraph 8.22 there is a test of reasonableness that the planning authority must apply in determining whether or not to seek developer contributions. NPF4 continues a requirement to provide affordable units in connection with residential developments where demonstrated as being necessary.

8.25 Draft Heads of Terms (the document setting out the requirements of a planning obligation) were first provided to the applicant in February 2021 and since this time there has been extensive negotiations on the requirements of the planning obligation (if planning permission were to be granted). The applicant's agent has submitted information to demonstrate that, due to the limited size of the scheme and the technical difficulties of the site, the project would not be viable with the inclusion of contributions towards affordable housing. After due consideration of this position it is considered that the scheme would not be viable with the affordable housing requirement and as such the Council must reach a decision in terms of supporting the proposal or refusing it on the basis of not providing affordable housing. In this case, and on balance, it is recommended to support the proposal.

9 RECOMMENDATION

9.1 That planning permission be granted for the following reason:

The proposed development site will contribute to the sustainable delivery of housing in compliance with the policies of National Planning Framework 4 and is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) where there is a presumption in favour of an appropriate form of development. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.

Subject to:

a. the prior signing of a planning obligation to secure:

- A financial contribution towards additional primary education capacity;
- A financial contribution towards additional secondary education capacity;
- A financial contribution towards Borders Rail/public transport;
- A financial contribution towards improvements in Gorebridge town centre;
- A financial contribution towards community facilities;
- A financial contribution towards off site play.

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.

b. the following conditions:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. The development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:

- i. the nature, extent and types of contamination on the site;
- ii. measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk

- to the wider environment from contamination originating within the site;
- iii. measures to deal with contamination encountered during construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.
3. On completion of any required decontamination/ remediation works, referred to in Condition 2, and prior to any dwelling house on the site being occupied, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No dwelling house on the site shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 2 and 3: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

4. Development shall not begin until:
- i. A scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity; and
 - ii. any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full to ensure that the site is made safe and stable for the development proposed

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

5. Prior to the occupation of any part of the development a validation report prepared by a suitably competent person shall be submitted to and approved in writing by the planning authority. The report shall confirm that the site is, or has been made, safe and stable for the approved development; and shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason for conditions 4 and 5: To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to further development commencing.

6. Development shall not begin until the applicant has undertaken and reported upon a programme of archaeological (Targeted Survey and Evaluation) work in accordance with a written scheme of

investigation which has been submitted by the applicant (or their agent) and approved by the planning authority.

Reason: *To ensure the development does not result in the unnecessary loss of archaeological material*

7. Development shall not begin until a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings, roads, parking areas and paths in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii details of tree protection measures, complying with BS5837:2012, for all trees that are to be retained;
 - iv proposed new planting including trees, shrubs, hedging and grassed areas;
 - v location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - vi schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vii programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the development being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); unless a suitably qualified ecologist has carried out a walkover survey of the felling/removal area in the 48 hours prior to the commencement of felling/removal, and confirmed in writing that no breeding birds will be affected;
 - viii proposed car park configuration and surfacing;
 - ix details of the location, design, height and specification of proposed street lighting within the development; and
 - x proposed footpaths.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vii). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policy DEV7 of*

the Midlothian Local Development Plan 2017 and national planning guidance and advice.

8. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i. Details of the visibility splay at the access junction, unless otherwise approved in writing by the Planning Authority the visibility splay shall be 2.4m by 70m;
 - ii. Details of the access road showing the first 12m of the access road formed at a minimum width of 6.0m;
 - iii. The access road will require a 2m wide service strip along the housing frontage;
 - iv. Details, including AutoTrack, of an HGV turning area at the southern end of the development; and
 - v. Details of an alternative route to accommodate pedestrians should path 8-35 (as identified on the Midlothian Core Path Plan) need to be closed to pedestrians during construction.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

9. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *In the interest of protecting the character and appearance of the area so as to comply with policies DEV2 of the Midlothian Local Development Plan 2017.*

10. Development shall not begin until details of the provision and use of electric vehicle charging stations have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.*

11. Development shall not begin until details, including a timetable of implementation, of superfast fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast fibre broadband prior to the occupation of the building. The delivery of superfast fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure; and to comply with policy IT1 of the Midlothian Local Development Plan 2017.*

12. Development shall not begin until details of a scheme to deal with surface water drainage has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure that the development is provided with adequate surface water drainage; and to ensure that development complies with policies ENV9 and ENV10 of the Midlothian Local Development Plan 2017.*

13. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to an approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies in the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

14. Development shall not begin until details of the following noise mitigation measures have been submitted to and approved in writing by the planning authority:
- i. Details of the location, height and specification of acoustic barriers to address noise for the Borders railway line to the east and the car breaker's yard to the west; and
 - ii. Details of window and ventilation specifications for the eastern facades of all houses.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To safeguard the amenity of future residents.*

15. Development shall not begin until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
- i. Details of construction access routes;
 - ii. signage for construction traffic, pedestrians and other users of the site;
 - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
 - iv. details of piling methods (if employed);
 - v. details of any earthworks;
 - vi. control of emissions strategy;
 - vii. a dust management plan strategy;
 - viii. waste management and disposal of material strategy;
 - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
 - x. prevention of mud/debris being deposited on the public highway;
 - xi. material and hazardous material storage and removal; and
 - xii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

16. Development shall be carried out in accordance with the approved drawings and supporting information hereby listed:

No.	Drawing Description	Drawing Number & Scale	Date
1	House Type A - Elevations	HD995-PL-110A 1:50	21/12/2020
2	House Type A and B Floor Plans	HD995-PL-010A 1:50	21/12/2020

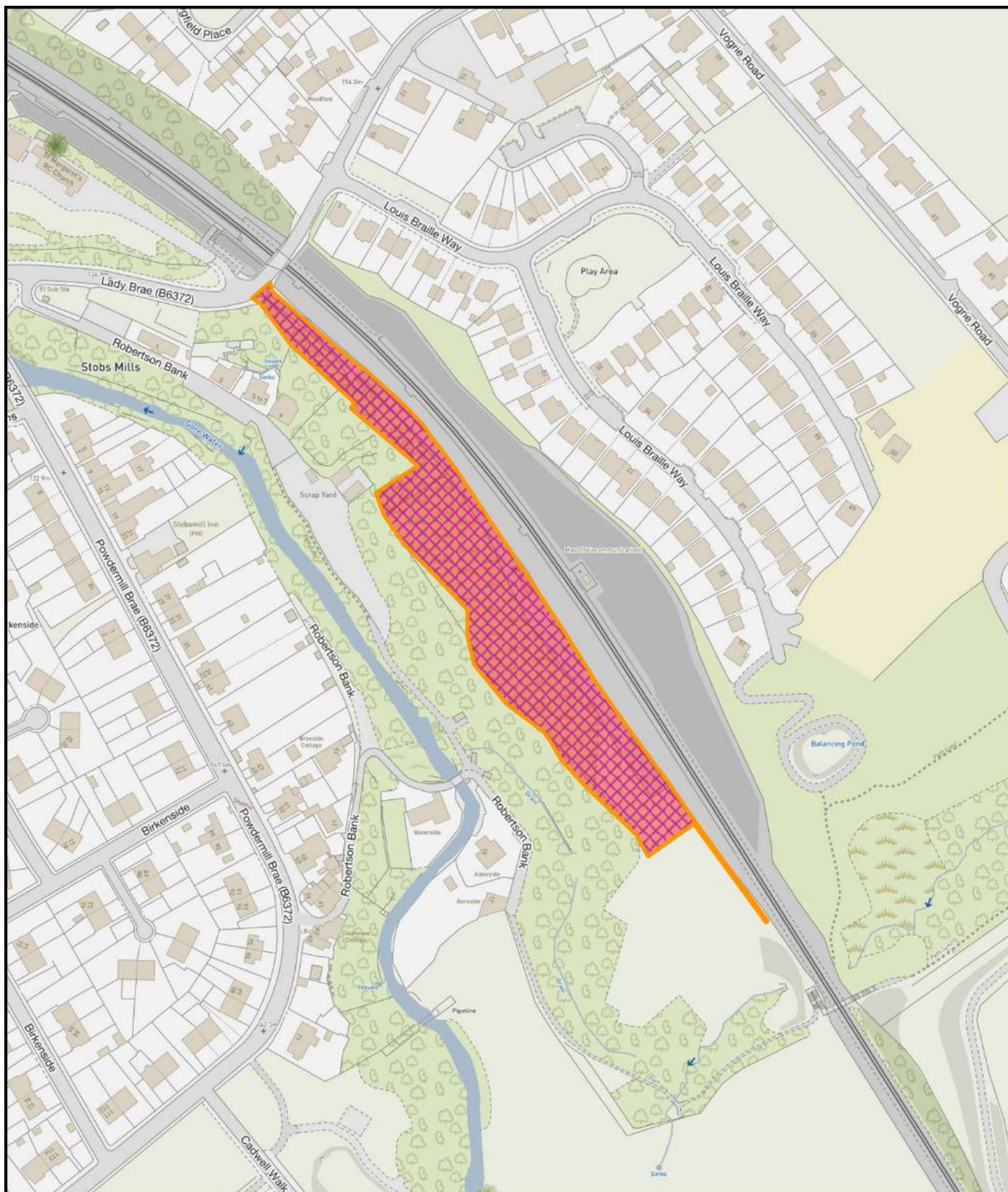
3	House Type B - Elevations	HD995-PL-111A 1:50	21/12/2020
4	Illustration/Photograph	HD995-PL-010A nts Indicative 3D view from site entrance	21/12/2020
5	Location Plan	HD995-PL-001A 1:1250	21/12/2020
6	Site Elevations 1	HD995-PL-010A 1:125	21/12/2020
7	Site Elevations 2	HD995-PL-101A 1:125	21/12/2020
8	Site Plan	HD995-PL-003B 1:750, 1:250	13/12/2022
9	Site Sections	HD995-PL-200A 1:200	21/12/2020
10	Topographic Survey	HD995-PL-002A 1:750	21/12/2020
11	Acoustic and Vibration Report		21/12/2020
12	Coal Mining Risk Assessment		21/12/2020
13	Coal Mining Risk Assessment Addendum	Geovia Response to Coal Authority	19/02/2021
14	Design and Access Statement		21/12/2020
15	Drainage Statement	Surface Water Options Report	08/02/2021
16	Ecology Report Appendix		21/12/2020
17	Ecology/Wildlife Report/Survey		21/12/2020
18	Heritage Impact Assessment		21/12/2020
19	Supporting Planning Statement		21/12/2020
20	Tree Report		21/12/2020

Reason: To ensure that the development is carried out in terms of the drawings and supporting information which were assessed in terms of this application.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2022

Application No: 20/00899/DPP
Applicant: Carlsson Properties Ltd
Agent: Hackland + Dore
Validation Date: 21 December 2020
Contact Person: Graeme King
Email: graeme.king@midlothian.gov.uk
Background Papers: None



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Erection of 14 dwellinghouses Land at Robertson Bank, Gorebridge

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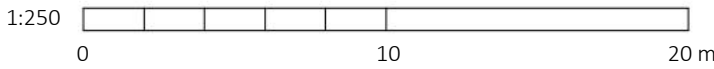
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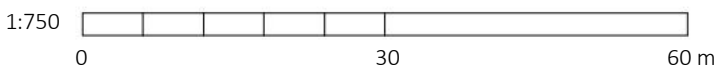




SITE PLAN
1 : 250



SITE PLAN
1 : 750



- EXISTING GRASS AREA TO BE SEEDED WITH WILD FLOWER MEADOW MIX WHERE GROUND IS DISTURBED
- TARMAC
- PAVING
- PAVING - VISITOR PARKING
- GARDEN AREA
- SHRUB AND SMALL TREE PLANTING
- 2.0m HIGH ACOUSTIC FENCE

NOTES

- FORM NEW BELLMOUTH JUNCTION WITH 4.5 x 70m VISIBILITY SPLAY
- TYPICAL 5.5m WIDE ACCESS ROAD WITH 3m WIDE LANES TO MAXIMISE RETENTION OF EXISTING SOFT LANDSCAPE
- SHARED SURFACE - MIXTURE OF TARMAC AND PAVING
- RETENTION TO ENGINEER DESIGN
- 1.8m HIGH ACOUSTIC FENCE TO BOUNDARY WITH RAILWAY LINE
- VEHICLE TURNING AREA
- 1.8m HIGH TIMBER FENCING TO REAR GARDENS
- 300mm HIGH TIMBER RAILING BETWEEN FRONT GARDENS
- STEPS FROM ACCESS LEVEL TO GARDEN LEVEL WITH INTEGRATED PLANTING AREAS AND HEDGING
- 1.8m HIGH METAL RAILING WITH ACCESS GATE
- GARDEN SLOPED AT 1:20 WITH STEPS BETWEEN PLATS
- EXISTING DENSE TREE COVER
- EXISTING INFORMAL TRACK TO FOOTBRIDGE TO BE MAINTAINED
- TOTAL 2no. ELECTRIC VEHICLE CHARGING POINT INSTALLED TO VISITOR CAR PARKING SPACE

SCHEDULE

TYPE A - 3 STOREY HOUSE	x8	158.2m² GIA
TYPE B - 2 STOREY HOUSE	x6	125.9m² GIA

TOTAL 14 DWELLINGS

PARKING

IN-CURTILAGE DRIVEWAY TO EACH PROPERTY PROVIDING 2 PARKING SPACES = 28 SPACES
ON STREET VISITOR PARKING FOR 7 CARS

TOTAL 35 SPACES (250%)

B	MM	Distance between retaining wall and site boundary at North West of site increased. Geometry of turning head to South East of site amended.	13-12-2022
A	JW	Planning issue.	17-12-2020

Revision By Details Date

Hackland

Dore

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Edinburgh EH7 4AN
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e: admin@hackland-dore.com
w: www.hackland-dore.com

Client Carlsson Properties

Project Residential Development
Robertson Bank, Gorebridge

Drawing SITE PLAN

Scale As indicated	Size A1
Drawn JW	Checked MM
Project number HD995	Date created 30-01-2020
Drawing number PL-003	Revision B

PLANNING

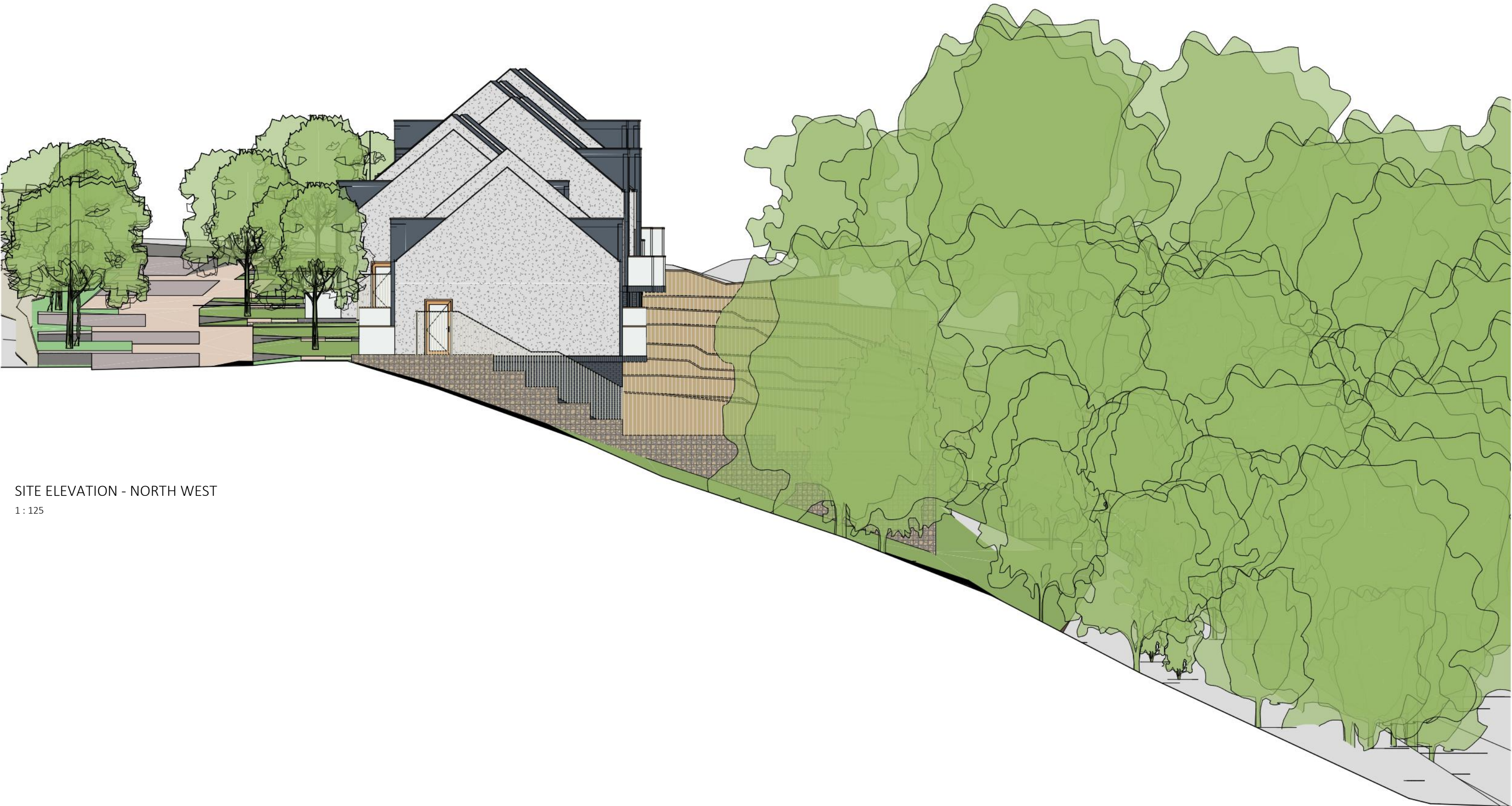
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SITE ELEVATION - STREET - 1 OF 2
1 : 125



SITE ELEVATION - STREET - 2 OF 2
1 : 125



SITE ELEVATION - NORTH WEST
1 : 125



A		JW		Planning Issue		17-12-2020	
Revision	By	Details				Date	
Hackland		Dore		Hackland + Dore Architects 16 Annandale Street Edinburgh EH7 4AN t: 0131 538 7707 e: admin@hackland-dore.com w: www.hackland-dore.com			
Client		Carlsson Properties					
Project		Residential Development Robertson Bank, Gorebridge					
Drawing		SITE ELEVATIONS 1					
Scale		1 : 125				Size	
A1							
Drawn	Checked	Date created					
JW	MM	30-01-2020					
Project number	Drawing number					Revision	
HD995	PL-100					A	
Status		PLANNING					
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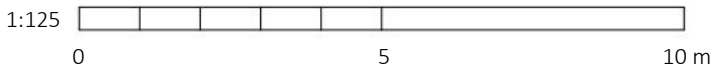
SITE ELEVATION - GARDEN - 1 OF 2
1 : 125



SITE ELEVATION - GARDEN - 2 OF 2
1 : 125



SITE ELEVATION - SOUTH EAST
1 : 125



A		JW	Planning Issue		17-12-2020
Revision	By	Details		Date	
<div><div><div>Hackland</div><div>Dore</div></div></div>		<div>Hackland + Dore Architects</div> <div>16 Annandale Street</div> <div>Edinburgh EH7 4AN</div> <div>t: 0131 538 7707</div> <div>e: admin@hackland-dore.com</div> <div>w: www.hackland-dore.com</div>			
Client		Carlsson Properties			
Project		Residential Development Robertson Bank, Gorebridge			
Drawing		SITE ELEVATIONS 2			
Scale		1 : 125		Size A1	
Drawn	JW	Checked	MM	Date created 30-01-2020	
Project number HD995		Drawing number PL-101		Revision A	
Status		<div>PLANNING</div>			

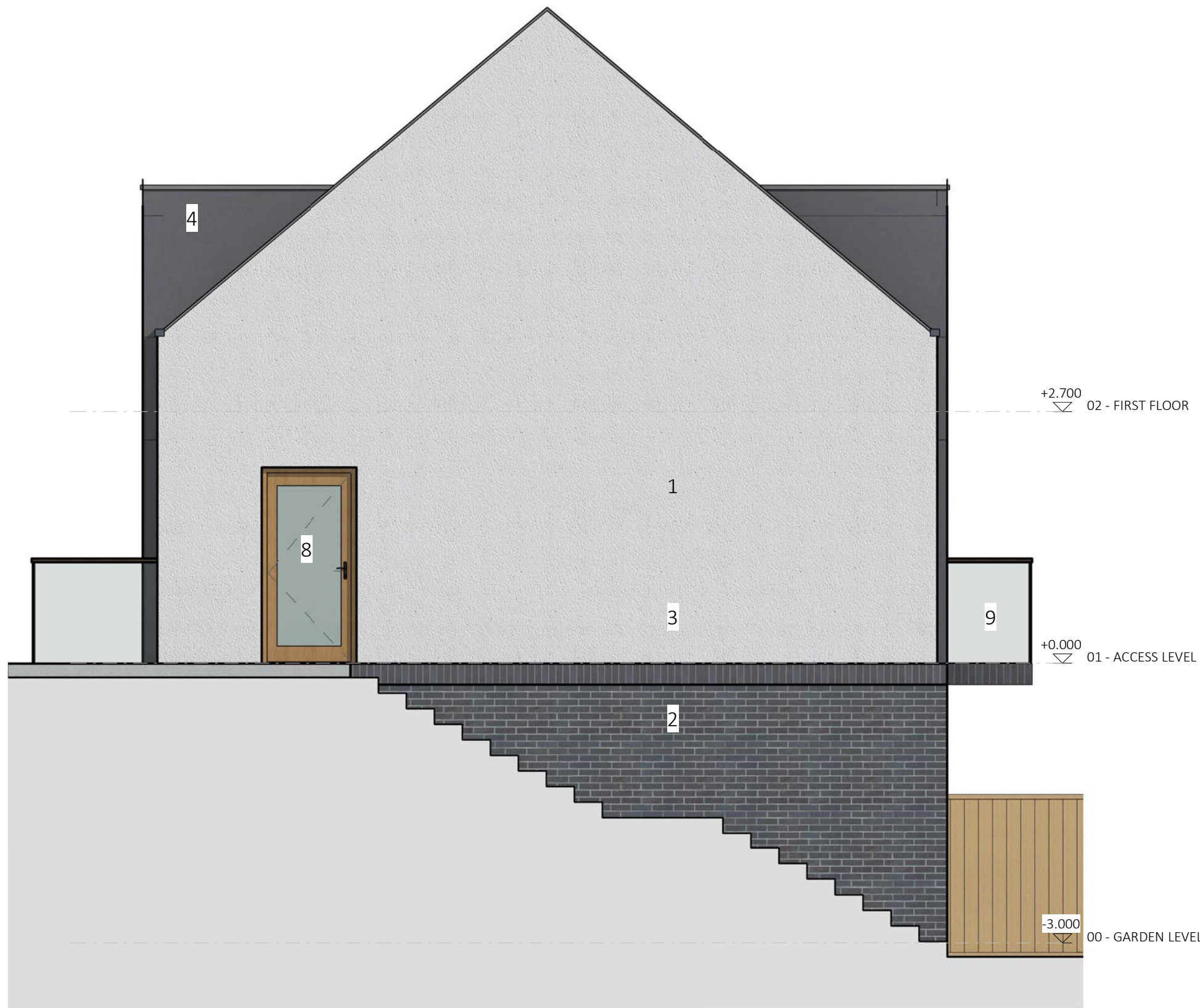
DO NOT SCALE: IF IN DOUBT, ASK

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HOUSE TYPE A - NORTH EAST ELEVATION
1 : 50



HOUSE TYPE A - GABLE ELEVATION
1 : 50



HOUSE TYPE A - SOUTH WEST ELEVATION
1 : 50

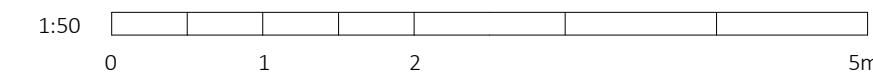


HOUSE TYPE A - GABLE OVER GARAGE
1 : 50

NOTES

1. OFF WHITE RENDER FINISH
2. BRICK TO COMPLEMENT ROOF SLATE COLOUR
3. SOLDIER COURSE
4. DARK GREY CLADDING BOARD
5. TIMBER CLADDING
6. SLATE ROOF
7. POWDER COATED METAL TRIMS AND RAINWATER GOODS
8. TIMBER WINDOWS AND DOORS
9. CLEAR BALUSTRADE
10. ROOFLIGHT
11. SINGLE PLY MEMBRANE TO FLAT ROOF
12. FRONT AND GARAGE DOORS FITTED FLUSH WITH AND FINISHED TO MATCH TIMBER CLADDING

A JW Planning Issue			17-12-2020
Revision	By	Details	Date
<div><div><div>Hackland</div><div>Dore</div></div><div>Hackland + Dore Architects 16 Annandale Street Edinburgh EH7 4AN t: 0131 538 7707 e: admin@hackland-dore.com w: www.hackland-dore.com</div></div>			
Client	Carlsson Properties		
Project	Residential Development Robertson Bank, Gorebridge		
Drawing	HOUSE TYPE A - ELEVATIONS		
Scale 1 : 50		Size A1	
Drawn JW	Checked MM	Date created 01/30/20	
Project number HD995	Drawing number PL-110	Revision A	
Status	PLANNING		
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NOTES

1. OFF WHITE RENDER FINISH
2. BRICK TO COMPLEMENT ROOF SLATE COLOUR
3. SOLDIER COURSE
4. DARK GREY CLADDING BOARD
5. TIMBER CLADDING
6. SLATE ROOF
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11. SINGLE PLY MEMBRANE TO FLAT ROOF
12. FRONT AND GARAGE DOORS FITTED FLUSH WITH AND FINISHED TO MATCH TIMBER CLADDING



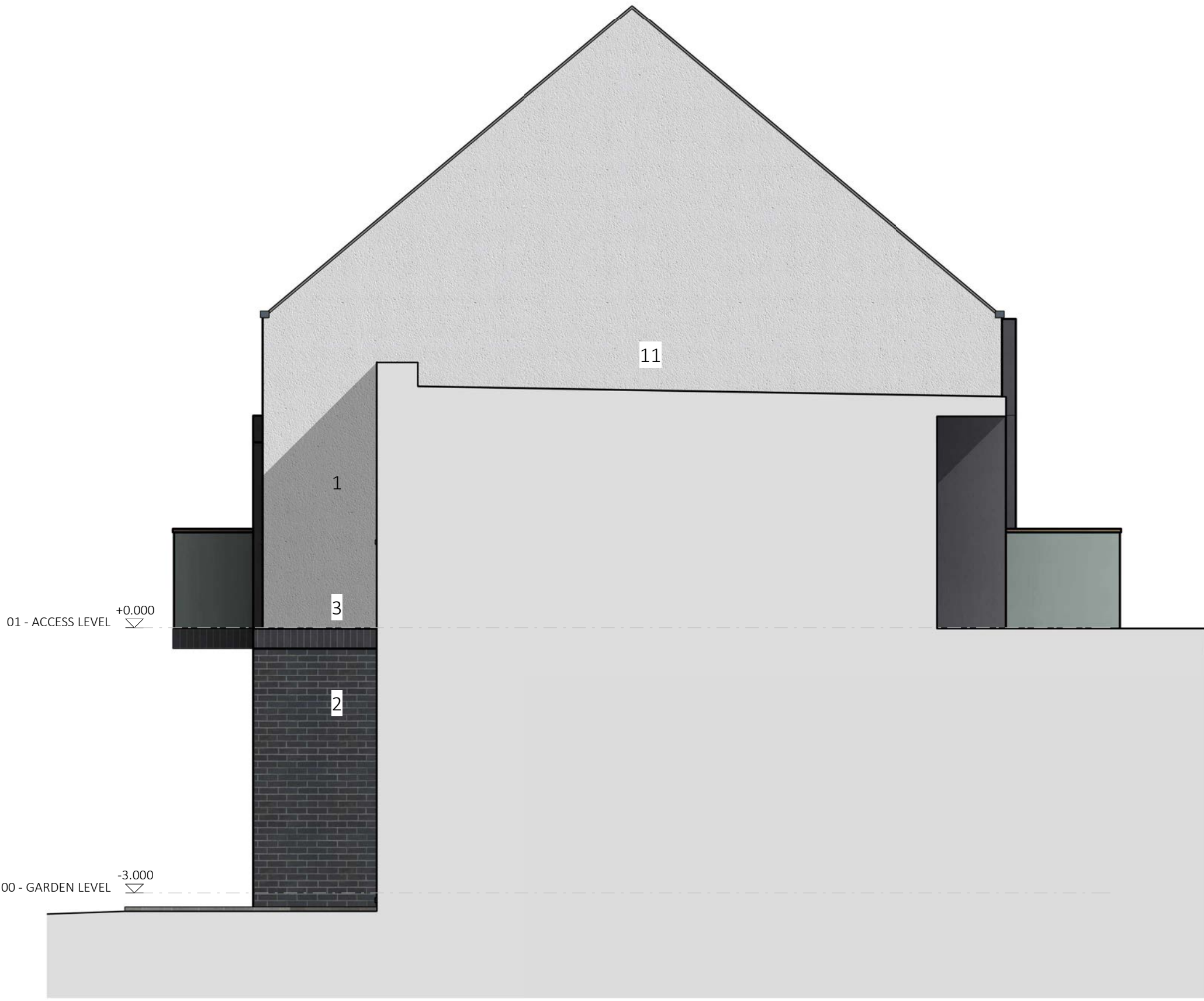
HOUSE TYPE B - NORTH EAST ELEVATION
1 : 50



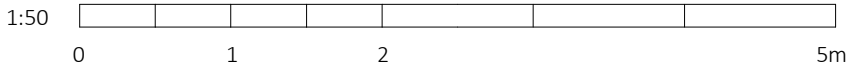
HOUSE TYPE B - GABLE ELEVATION
1 : 50



HOUSE TYPE B - SOUTH WEST ELEVATION
1 : 50



HOUSE TYPE B - GABLE OVER GARAGE
1 : 50



A	JW	Planning Issue	17-12-2020
Revision	By	Details	Date

	Hackland + Dore Architects 16 Annandale Street Edinburgh EH7 4AN t: 0131 538 7707 e: admin@hackland-dore.com w: www.hackland-dore.com
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Client	Carlsson Properties
Project	Residential Development Robertson Bank, Gorebridge
Drawing	HOUSE TYPE B - ELEVATIONS

Scale	1 : 50	Size	A1
Drawn	JW	Checked	MM
Date created	30-01-2020	Revision	A
Project number	HD995	Drawing number	PL-111
Status	PLANNING		

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**APPLICATION FOR PLANNING PERMISSION 22/00721/DPP FOR THE
ERECTION OF TWO-STOREY PRIMARY SCHOOL AND NURSERY;
FORMATION OF MUGA, CAR PARKING AND ASSOCIATED WORKS ON
LAND AT FORMER NEWBATTLE HIGH SCHOOL SITE, EASTHOUSES
ROAD, EASTHOUSES, DALKEITH**

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of a primary school and nursery; formation of a multi-use games area (MUGA), car parking and associated works on the northern part of the former Newbattle High School site, Easthouses Road, Easthouses.**
- 1.2 There have been two representations and consultation responses from the Coal Authority, Scottish Water, the Mayfield and Easthouses Community Council, the Council's Ecological Advisor (TWIC), the Council's Senior Manager Neighbourhood Services (Roads) and the Council's Senior Manager Protective Services.**
- 1.3 The relevant development plan policies are policies 1, 2, 3, 6, 9, 13, 14, 15, 21, 22 and 23 of the National Planning Framework 4 (NPF4) and policies DEV2, DEV5, DEV6, DEV7, DEV8, DEV10, TRAN1, TRAN5, ENV9, ENV10, ENV11, ENV15, ENV16, ENV18, and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.4 The recommendation is to grant planning permission subject to conditions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site measures 2.1 hectares and comprises the northern part of the former Newbattle High School site. It is situated on the west side of Easthouses Road at the southern end of Easthouses. The site slopes down to the west, away from Easthouses Road, by approximately 6.5m, however there are level terraced areas on the site which are the remnants of the previous school use. The previous school buildings have been demolished to ground level. There are a number of trees on the boundary of the site and within the grounds of the site.**

- 2.2 The site is bounded to the north by residential properties and an unsurfaced footpath. To the west the site is bounded by a metalled track beyond which is an agricultural field. To the north west of the site is an area of mature woodland that forms part of Lord Ancrum's Wood. To the south is the remainder of the site of the former Newbattle High School which previously accommodated the school's playing fields and is to be re-developed for Council housing. To the east of the site, on the opposite side of Easthouses Road, is the Newbattle Centre /Newbattle High School and its associated sports pitches, Easthouses Lily football club, a sports pavilion, parking area and woodland planting.

3 PROPOSAL

- 3.1 It is proposed to erect a new primary school, nursery school and additional support needs (ASN) facility. The building will be situated in the centre of the site with its main entrance facing towards Easthouses Road. The primary school and nursery school will be situated in a two storey block at the northern side of the building with the ASN in a single storey block at the southern side. The two wings will be linked by a shared space comprising dining facilities, a multipurpose hall, an arts/movement space, offices and support facilities. The two storey wing and the single storey ASN wing will face each other across a three sided courtyard with a sunken garden. The walls will be finished with buff coloured brick and dark grey standing seam aluminium. The roofs will be a mix of shallow pitches, finished with dark grey standing seam aluminium and very shallow pitches behind parapet walls.
- 3.2 The access road and car parking will be to the south east of the building, with access to Easthouses Road via the existing turning area that served the High School which was previously on the site. To the north west of the building will be a hard surface play area and beyond that a synthetic grass multi-use games area (MUGA) enclosed by weld mesh fencing. To the north east of the building will be outdoors classroom spaces and a grassed area with retained trees. To the south west of the building will be circulation space providing access to footways linking through the housing site that will be constructed on the remainder of the High School site. A further pedestrian access, utilising a former access to the High School, will be available at the north east corner of the site.
- 3.3 The application is accompanied by:
- Design and Access Statement;
 - Drainage Strategy Report;
 - Energy and Carbon Emissions Strategy Statement;
 - Flood Risk Assessment;
 - Landscape Statement;
 - Pre-Application Consultation Report;
 - Preliminary Ecological Appraisal;
 - Transport Statement; and
 - Tree Survey

4 BACKGROUND

Application Site

- 4.1 The applicant carried out a pre application consultation (19/00445/PAC) for the erection of a primary school and associated works in May – August 2019. The pre application consultation was reported to the Committee at its meeting in August 2019. The current proposal was considered to be sufficiently close to the proposal consulted upon in 2019 as to ensure that a further consultation process was not required.
- 4.2 Application 19/00763/DPP for the erection of primary and nursery; formation of MUGA, car parking and associated works was granted consent in April 2020. The permission has not been implemented. Due to the overlap of the building plots it would not be possible to implement both this consent and the current application.
- 4.3 As part of the assessment of the current application the planning authority issued a screening opinion for the current proposals on 10 October 2022. The screening opinion confirmed that an Environmental Impact Assessment (EIA) was not required.

Land to the south

- 4.4 The remaining land within the former high school curtilage has been the subject of three planning applications and a Proposal of Application Notice.
- 4.5 A Proposal of Application Notice (21/00632/PAC) for residential development (flats and dwellinghouses), landscaping, access roads and sustainable urban drainage system/drainage infrastructure which was reported to the Committee at its meeting in October 2021.
- 4.6 Application 21/00877/DPP for the erection of 90 dwellinghouses, the formation of access road, car parking, landscaping and associated works was reported to the Committee at its meeting in March 2022. The consent was issued on 24 March 2022. This application relates to the western side of the site.
- 4.7 Application 21/00876/PPP for planning permission in principle for residential development was registered on 2 November 2021 and is pending determination (subject to the conclusion of a planning obligation). This application relates to the eastern side of the site.
- 4.8 Application 22/00797/DPP for the erection of 12 dwellinghouses and 16 flatted dwellings; landscaping; formation of car parking and access roads; and associated works was registered on 9 November 2022 and is pending consideration. This application relates to the eastern side of the site and if approved will supplant application 21/00876/PPP.

- 4.9 Planning permission (18/00308/DPP) for the erection of 79 dwellinghouses and associated works on land to the south of the former Newbattle High School site was granted in January 2019. The application was presented to Committee at its meeting in October 2018. This development is currently being built out and the construction compound is located on the former artificial pitch associated with the high school.
- 4.10 The application site area exceeds two hectares. The application therefore constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application subject to condition(s) being attached to any grant of planning permission to secure a scheme of intrusive investigations to establish the risk posed to the development by past coal mining activity and, if required, remediation works and/or mitigation measures.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** was not consulted on the application as the character and nature of the development and the site means that the proposal falls below SEPA's threshold for consultation.
- 5.3 **Scottish Water** does not object to the application. The water supply will be fed from Rosebery Water Treatment Works. The foul water drainage will be dealt with by the Edinburgh PFI Waste Water Treatment Works. Both have sufficient capacity at present, however it is not possible to reserve capacity for future developments.
- 5.4 For reasons of sustainability and to protect Scottish Water customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into the combined sewer system. There may be limited exceptional circumstances where they would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical and technical challenges.
- 5.5 In order to avoid costs and delays where a surface water discharge to the combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request (this is separate regulatory process between the applicant and Scottish Water).

- 5.6 The proposed site does not include any of the area occupied by the former playing fields of the High School and therefore the proposal falls below **Sportscotland's** threshold for consultation.
- 5.7 The **Mayfield and Easthouses Community Council** does not object to the application, but have requested that consideration is given to creating a direct footpath link from Lothian Drive to the school.
- 5.8 The **Council's Ecological Advisor - The Wildlife Information Centre (TWIC)** does not object to the application and has confirmed that the Ecology Report submitted with the application is generally thorough and has been completed to an acceptable standard. The report concludes that there will be no effects on protected species or habitats and includes recommendations for biodiversity enhancements (the creation of nesting and roosting opportunities, limitations on the use of artificial lighting and the planting of a hedge along the northern boundary of the site).
- 5.9 The **Council's Senior Manager Neighbourhood Services (Roads)** does not object to the application subject to additional details being provided in relation to car parking and electric vehicle charging; pedestrian and cycling access; cycle parking; and traffic calming measures. These details can be secured by condition on a grant of planning permission.
- 5.10 The **Council's Senior Manager Protective Services** does not object to the application subject to conditions to secure site investigations and, if required, remediation works to identify and address contaminated land issues; details of an acoustic barrier in the vicinity of the MUGA; noise specifications for plant/machinery; and specifications for the MUGA lighting.

6 REPRESENTATIONS

- 6.1 There have been two representations (in support of the application) received, which can be viewed in full on the online planning application case file. A summary of the main points raised are as follows:
- A new primary school in Mayfield/Easthouses is welcome;
 - Good provision of open space;
 - The changes from the previous scheme are positive;
 - The retention of the trees is welcomed;
 - The re-location of the car park will improve residential amenity; and
 - The hedge to the north is owned by a residential property and should not be removed without the residents' consent.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.
- 7.2 The following policies are relevant to the proposal:
- National Planning Framework 4 (NPF4)
- 7.3 Policy **1 Tackling the climate and nature crisis**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.
- 7.7 Policy **9 Brownfield, vacant and derelict land and empty buildings**; sets out to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development.
- 7.8 Policy **13 Sustainable transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.9 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.10 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.11 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.12 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and

reducing the vulnerability of existing and future development to flooding.

- 7.13 Policy **23 Health and safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.

Other National Policy

- 7.14 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.15 The **Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

Midlothian Local Development Plan 2017 (MLDP)

- 7.16 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.
- 7.17 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.18 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.19 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.20 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:
- A. Result in a permanent loss of the open space; and/or
 - B. Adversely affect the accessibility of the open space; and/or
 - C. Diminish the quality, amenity or biodiversity of the open space; and/or
 - D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.

- 7.21 Policy **DEV10: Outdoor Sports Facilities** seeks to protect outdoor sports facilities from re-development except in certain circumstances: where the proposed development is ancillary to the principle use of the site as an outdoor sports facility; the loss is only minor and would not affecting its overall use; the outdoor sports facility is to be replaced either by a new facility of comparable or greater benefit for sport or upgrading of an existing facility on the same site or nearby; or where the sports pitch needs assessment, open space audit and consultation with Sportscotland identify a clear excess of provision to meet the existing or anticipated demand in the area and the overall quality of provision in the locality will be maintained.
- 7.22 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.23 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.24 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.25 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.26 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.27 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.

- 7.28 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.
- 7.29 Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.
- 7.30 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

The principle of development

- 8.2 The site is located within the built up area of Easthouses where there is a presumption in favour of appropriate development. The application site to the west of Easthouses Road is an established school site (the site of the former Newbattle High School) and is situated within a predominantly residential area where the proposed school development would be compatible to the neighbouring land uses subject to the details of the proposed development complementing the character of the area and protecting the amenity of existing neighbouring properties. The consultations carried out have not highlighted any overriding reasons as to why the site could not be redeveloped for the proposed education facilities.
- 8.3 The application site comprises land that previously accommodated the school building, the car park and a reas of grass and hard surface playground. The site does not include any of the former playing field area. The proposal is therefore compliant with MLDP policies DEV8 and DEV10.
- 8.4 With regard NPF4, although the site was previously occupied by a high school, consideration still needs to be given to the site's location in terms of sustainability. In this regard the site is within close proximity to areas of high population, public transport options and active travel connections and as such is considered to be a sustainable location for the siting of a primary school and nursery, in compliance with NPF4.

Layout, Form, Design and Materials

- 8.5 The building will have an approximately U shaped plan with the main entrance, shared facilities and service facilities linking the larger nursery and primary school wing with the smaller ASN wing. The layout provides an obvious principal elevation facing towards the car park and Easthouses Road and a more private courtyard space enclosed on three sides. The rooms will benefit from generous provision of natural light from large areas of window space. The ground floor will be clad with buff coloured brick and the upper floor will be clad with anthracite coloured standing seam cladding. The building will have a contemporary appearance and a contemporary palette of materials.
- 8.6 The revised layout, when compared to the previously approved scheme (19/00763/DPP), moves the car parking and vehicle access from the north of the building to the east of the building. This allows for the retention of the majority of the existing trees on the site which will allow for the creation of attractive external learning spaces. The setting of the building will be enhanced by sympathetic hard and soft landscaping.

Access and transportation

- 8.7 The previous scheme included details of off-site works to Easthouses Road include a humped zebra crossing, a 20mph speed limit (which currently exists at the site given the previous use) and speed humps. These traffic calming measures will also be adopted for the current scheme. The crossing provides access to the Newbattle Centre/Newbattle High School and to Easthouses Park. These improvements will be secured via condition.
- 8.8 The layout provides modern, well-lit and surfaced pedestrian and cycle entrances at the north east corner (on to Easthouses Road) and along the southern boundary (into the new Council housing development). There is a longstanding unsurfaced and unlit path outwith the site immediately beyond the northern boundary. The path links Easthouses Road and Lord Ancrum's Wood. Paths through the wood link to Lothian Drive. These paths are not in the ownership of the Council and the woodland paths pass through an area of protected ancient woodland. It will consequently not be possible to provide an off street access from Lothian Drive to the school, however the traffic calming measures that will be delivered as part of school development will provide a modern safe route to school for pupils, parents and carers.

Surface and foul water drainage

- 8.9 The proposed layout results in an increase in permeable areas when compared to the former Newbattle High School site layout. Surface water will be collected and controlled via filter drains and permeable paving with attenuation via an attenuation tank beneath the MUGA.

Surface outfall will be to the existing surface water sewer that passes through the site. Foul water outfall will be to the existing foul water sewer that passes through the site.

Residential amenity

- 8.10 The site has a long history of educational use and the impact on the amenity of existing residential neighbours will be similar to the former situation. The location of both the new housing that will be built to the south and the proposed MUGA means that there is potential for some impact on residential amenity. It is common for modern schools in urban areas to have MUGA pitches and residential amenity can be safeguarded via use of acoustic barriers to mitigate noise and detailed design of lighting shields and directions. Such measures can be secured via condition.

Developer contributions

- 8.11 The site is outwith the contribution areas for Sheriffhall Roundabout improvements and the A7 Urbanisation project. The only contribution area that might potentially apply to the site is Borders Rail. The reason for the school is housing growth and as such the houses that are giving rise to the growth will already be contributing towards Borders Rail. It would therefore be inappropriate to seek contributions towards Borders Rail as the trip generation within the rail corridor is already being addressed via housebuilding contributions.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The site is located within the settlement boundary of Easthouses and on a site with an established educational and community use and as such there is presumption in favour of an appropriate educational use development. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies. The presumption for development is not outweighed by any other material considerations.

Subject to the following conditions:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. The development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i. the nature, extent and types of contamination on the site;
 - ii. measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii. measures to deal with contamination encountered during construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.
3. On completion of any required decontamination/ remediation works, referred to in Condition 2, and prior to any part of the building being occupied for its approved use, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the building shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 2 and 3: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

4. Development shall not begin until:
 - i. A scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity; and
 - ii. any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

5. Prior to the occupation of the development or it being brought into use, whichever is the sooner, a validation report prepared by a suitably competent person shall be submitted to and approved in writing by the planning authority. The report shall confirm that the site is, or has been made, safe and stable for the approved development; and shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial

works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason for conditions 4 and 5: *To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to further development commencing.*

6. Development shall not begin until a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels and floor levels for all buildings, roads, parking areas and paths in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii details of tree protection measures, complying with BS5837:2012, for all trees that are to be retained;
 - iv proposed new planting including trees, shrubs, hedging and grassed areas;
 - v location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - vi schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vii programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the development being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); unless a suitably qualified ecologist has carried out a walkover survey of the felling/removal area in the 48 hours prior to the commencement of felling/removal, and confirmed in writing that no breeding birds will be affected;
 - viii proposed car park configuration and surfacing;
 - ix details of the location, design, height and specification of proposed street lighting within the development;
 - x proposed footpaths and cycle paths within the site; and
 - xi proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vii). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policy DEV7 of the Midlothian Local Development Plan 2017 and national planning policy, guidance and advice.

7. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning policy, guidance and advice.

8. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i existing and finished ground levels for all roads, footways and cycle ways in relation to a fixed datum;
- ii proposed vehicular, cycle and pedestrian access;
- iii proposed roads (including turning facilities), footpaths and cycle ways within the site;
- iv proposed off site cycle ways and footpaths to provide safe routes to school;
- v proposed visibility splays, traffic calming measures, lighting and signage;
- vi proposed construction traffic access and haulage routes;
- vii a green transport plan designed to minimise the use of private transport and to promote walking, cycling and the use of public transport;
- viii proposed car parking arrangements, including details of the provision, specification and use of electric vehicle charging stations;
- ix an Auto Track demonstrating how service vehicles will safely enter and exit the site;
- x a scheme of traffic calming measures for Easthouses Road;
- xi a pedestrian/zebra crossing over Easthouses Road; and
- xii a programme for completion for the construction of access, roads, footpaths and cycle paths.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

9. Development shall not begin until details of a sustainability/biodiversity scheme for the site including the provision of bricks and boxes for bats and swifts throughout the development and the use of hedgehog friendly fencing has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Proposed Midlothian Local Development Plan 2017.*

10. Development shall not begin until details of the floodlighting system and any security lights to be installed within the site have been submitted to and approved in writing by the planning authority. The floodlights and security lights shall be designed and installed such that there is no direct illumination of any neighbouring sensitive property and the lamp design shall be such that the actual lamps and inner surface of the reflectors are not visible from neighbouring houses which have a garden boundary with the application site. In addition, the lighting shall be designed to minimise the spillage of light up into the sky. The floodlighting system shall be fitted with an automatic cut out to ensure that the system cannot operate after 9pm. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning, authority.
11. Development shall not begin until details of the location, height, specification and finish of an acoustic barrier to mitigate against noise from the MUGA have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning, authority.
12. The design and installation of all plant, machinery and equipment shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) or NR 25 if the noise is tonal and NR 25 night-time (23:00 to 07:00 hrs) or NR 20 if the noise is tonal as measured from within any living apartment in any neighbouring noise-sensitive premises. For the purposes of this condition the assessment position shall be as identified by BS 7445 in relation to internal noise measurements.

Reason for conditions 10 to 12: To safeguard residential amenity.

13. Development shall not begin until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
- i. Details of construction access routes;
 - ii. signage for construction traffic, pedestrians and other users of the site;
 - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
 - iv. details of piling methods (if employed);
 - v. details of any earthworks;
 - vi. control of emissions strategy;
 - vii. a dust management plan strategy;
 - viii. waste management and disposal of material strategy;
 - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
 - x. prevention of mud/debris being deposited on the public highway;
 - xi. material and hazardous material storage and removal; and
 - xii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.

14. Development shall be carried out in accordance with the approved drawings and supporting information hereby listed:

No.	Drawing Description	Drawing number & Scale	Date
1	Bin Store Enclosure	EHPS-JMA-Z0-ZZ-DR-A-PL-5001-S3-P01 1:50, 1:5	30/09/2022
2	Boundaries Plan	EHPS-RFL-ZZZZ-DR-L-00-0004-P07 1:500	27/01/2023
3	Existing Site Plan	EHPS-JMA-ZZ-ZZ-DR-A-PL-0002-S3-P01 1:500	30/09/2022
4	External Lighting Column Layout Sheet 1	EHPS-RYB-XX-00-DR-E-95001-P03 nts	27/01/2023

	of 2		
5	External Lighting Column Layout Sheet 2 of 2	EHPS-RYB-XX-00-DR-E- 95002-P03 nts	27/01/2023
6	External Lighting Lux Plot Layout Sheet 1 of 2	EHPS-RYB-XX-00-DR-E- 95011-P03 nts	27/01/2023
7	External Lighting Lux Plot Layout Sheet 1 of 2	EHPS-RYB-XX-00-DR-E- 95012-P03 nts	27/01/2023
8	External Lighting Lux Spill Plot Layout	EHPS-RYB-XX-00-DR-E- 95021-P03 nts	27/01/2023
9	Hard Landscape	EHPS-RFL-ZZZZ-DR-L- 00-0002-P08 1:500	27/01/2023
10	Landscape Layout Plan	EHPS-RFL-ZZ-ZZ-DR-L- 00-0001-P13.1 1:500	27/01/2023
11	Location Plan	EHPS-JMA-ZZ-ZZ-DR-A- PL-0001-S3-P01 1:1250	30/09/2022
12	Mason Evans – Post- Development Conceptual Site Model	P19/024/RS/R/F/06 nts	30/09/2022
13	Mason Evans – Pre- Development Conceptual Site Model	P19/024/RS/R/F/05 nts	30/09/2022
14	Mason Evans – Proposed Development Layout	P19/024/RS/R/F/03 1:1250	30/09/2022
15	Mason Evans – Proposed Development Relative to Contamination Exceedances	P19/024/RS/R/F/04 1:1250	30/09/2022
16	Mason Evans – Site Location Plan	P19/024/RS/R/F/01 1:50,000	30/09/2022
17	Mason Evans – Topographic Survey	P19/024/RS/R/F/02 1:1250	30/09/2022
18	Pitch Layout	EHPS-RFL-ZZZZ-DR-L- 00-0005-P06 1:150, 1:200	30/09/2022
19	Proposed Bay Study Elevations	EHPS-JMA-Z1-ZZ-DR-A- PL-2002-S4-P02 1:50	27/01/2023
20	Proposed Elevations	EHPS-JMA-Z1-ZZ-DR-A- PL-2001-S4-P02 1:200	07/02/2023
21	Proposed Elevations – Revisions mark-up	EHPS-JMA-Z1-ZZ-DR-A- PL-2001-S4-P02 1:200	27/01/2023
22	Proposed First Floor Plan	EHPS-JMA-Z1-01-DR-A- PL-0202-S4-P02 1:200	27/01/2023
23	Proposed Ground Floor Plan	EHPS-JMA-Z1-00-DR-A- PL-0201-S4-P02 1:200	27/01/2023
24	Proposed Roof Plan	EHPS-JMA-Z1-02-DR-A- PL-0203-S4-P02 1:200	27/01/2023
25	Proposed Sections	EHPS-JMA-Z1-ZZ-DR-A- PL-1001-S4-P02 1:200	27/01/2023
26	Proposed Site Plan	EHPS-JMA-ZZ-ZZ-DR-A- PL-0101-S3-P04 1:500	07/02/2023
27	Proposed Site Plan – Revisions mark-up	EHPS-JMA-ZZ-ZZ-DR-A- PL-0101-S3-P04 1:500	27/01/2023

28	Proposed Site Sections	EHPS-JMA-Z1-ZZ-DR-A-PL-1010-S4-P02 1:500	27/01/2023
29	Softworks Plan	EHPS-RFL-ZZZZ-DR-L-00-0003-P08 1:500	27/01/2023
30	Sports Mesh Fencing and MUGA Area	EHPS-RFL-ZZZZ-DR-L-00-0015-P01 1:50	30/09/2022
31	Sprinkler Tank Enclosure	EHPS-JMA-Z0-ZZ-DR-A-PL-5002-S2-P02 1:50, 1:5	23/12/2022
32	Topographic Survey – Sheet 1	58280/1 1:200	30/09/2022
33	Topographic Survey – Sheet 2	58280/2 1:200	30/09/2022
34	Topographic Survey – Sheet 3	58280/3 1:200	30/09/2022
35	Tree Protection Plan (Plan 2)	0117(267)-01 – Prot 1:500	07/02/2023
36	Tree Survey and Constraints Plan (Plan 1)	0117(267)-01 – Tree 1:500	17/11/2022
37	Tree Works	EHPS-RFL-ZZ-ZZ-DR-L-00-0008-P03 1:500	27/01/2023
38	Design and Access Statement		30/09/2022
39	Drainage Strategy Report		30/09/2022
40	Easthouses Site Investigation Logs Part 1		30/09/2022
41	Easthouses Site Investigation Logs Part 2		30/09/2022
42	Easthouses Site Investigation Logs Part 3		30/09/2022
43	Flood Risk Assessment		30/09/2022
44	Landscape Statement		30/09/2022
45	P19-024 Remediation V2 Method Statement		30/09/2022
46	P19-024 Report on Site Investigations LR Part 1		30/09/2022
47	P19-024 Report on Site Investigations LR Part 2		30/09/2022
48	P19-024 Report on Site Investigations LR Part 3		30/09/2022
49	P19-024 Report on Site Investigations LR Part 4		30/09/2022
50	P19-024 Report on Site Investigations LR Part 5		30/09/2022
51	P19-024 Report on Site Investigations LR Part 6		30/09/2022
52	P19-024 Report on Site Investigations LR Part 7		30/09/2022
53	P19-024 Report on Site Investigations LR Part 8		30/09/2022
54	PAC Report		30/09/2022
55	Preliminary Ecological Appraisal Addendum	Additional comments re. bats	30/11/2022

56	Preliminary Ecological Assessment		27/01/2023
57	Transport Statement		30/09/2022
58	Tree Retention Comments	rankinfraser	10/01/2023
59	Tree Survey and Arboricultural Impact Assessment Report		07/02/2023
60	Tree Survey Schedule		07/02/2023

Reason: *To ensure that the development is carried out in terms of the drawings and supporting information which were assessed in terms of this application.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 February 2022

Application No: 22/00721/DPP

Applicant: Midlothian Council

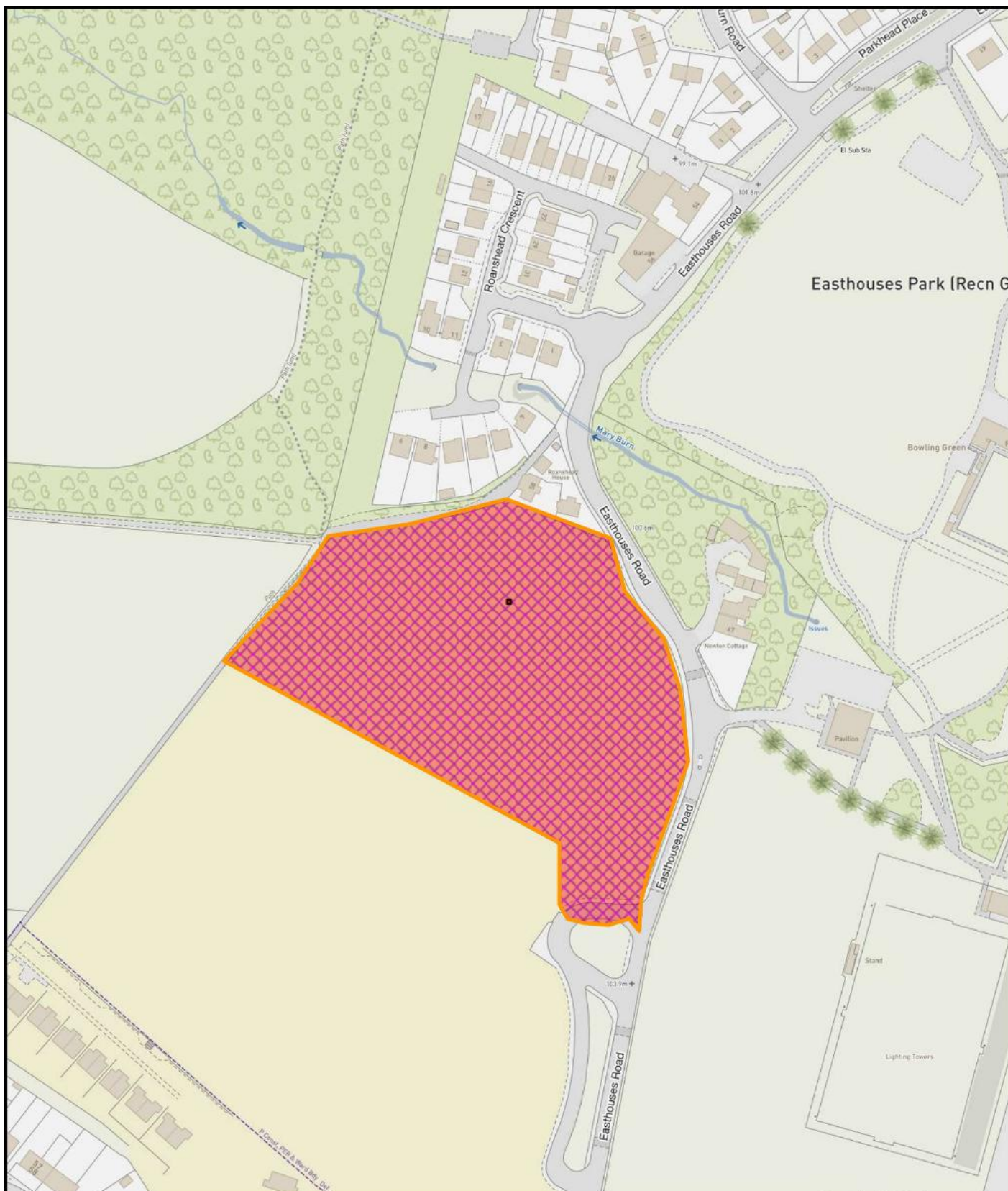
Agent: jmarchitects

Validation Date: 30 September 2022

Contact Person: Graeme King

Email: graeme.king@midlothian.gov.uk

Background Papers: 19/00445/PAC, 19/00763/DPP, 21/00632/PAC, 21/00877/DPP, 21/00876/PPP, 22/00797/DPP



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Erection of primary school and nursery Land at Former Newbattle Community High School

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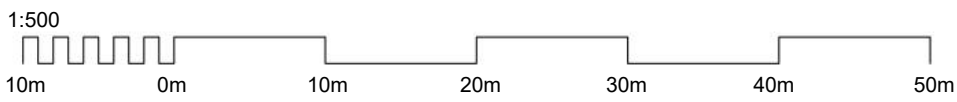
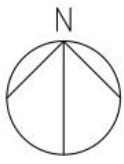
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KEY:

- VEHICULAR ACCESS POINT
- PUBLIC ACCESS POINT
- PUPIL ACCESS POINT

PARKING PROVISION:

STANDARD SPACES (EXCL. EV SPACES)	45
EV SPACES	8
ACCESSIBLE SPACES	3
TOTAL	56
CYCLE PARKING	96

P04	LANDSCAPE ARCH. LAYOUT REVISED WITH UPDATED FOOTPATHS AND TREE RETENTION. UPDATED SITE PLAN AS RECEIVED FROM NEIGHBOURING HOUSING DEVELOPMENT INCORPORATED.	20/01/2023	JS	PZ
P03	AMENDED IN LINE WITH REVISED CAR PARKING LAYOUT AND SPRINKLER TANK LOCATION. ISSUED FOR 'PLANNING'	21/12/2022	PZ	-
P02	ISSUED FOR COORDINATION	12/10/2022	JS	-
P01	ISSUED FOR 'PLANNING'	29/09/2022	PZ	JM
Rev.	Description	Date	Dim By	Ord By

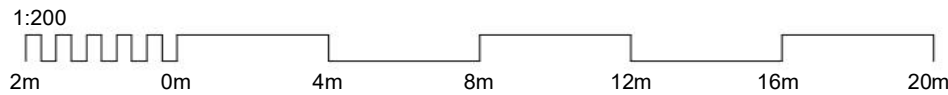
Project	EASTHOUSES PRIMARY SCHOOL
Title	PROPOSED SITE PLAN
Client	HUB SOUTH EAST
Purpose	INFORMATION
Drawing Number	EHPS-JMA- ZZZZ-DR-A-PL-0101
Scale	1:500
Status	S3
Revision	P04

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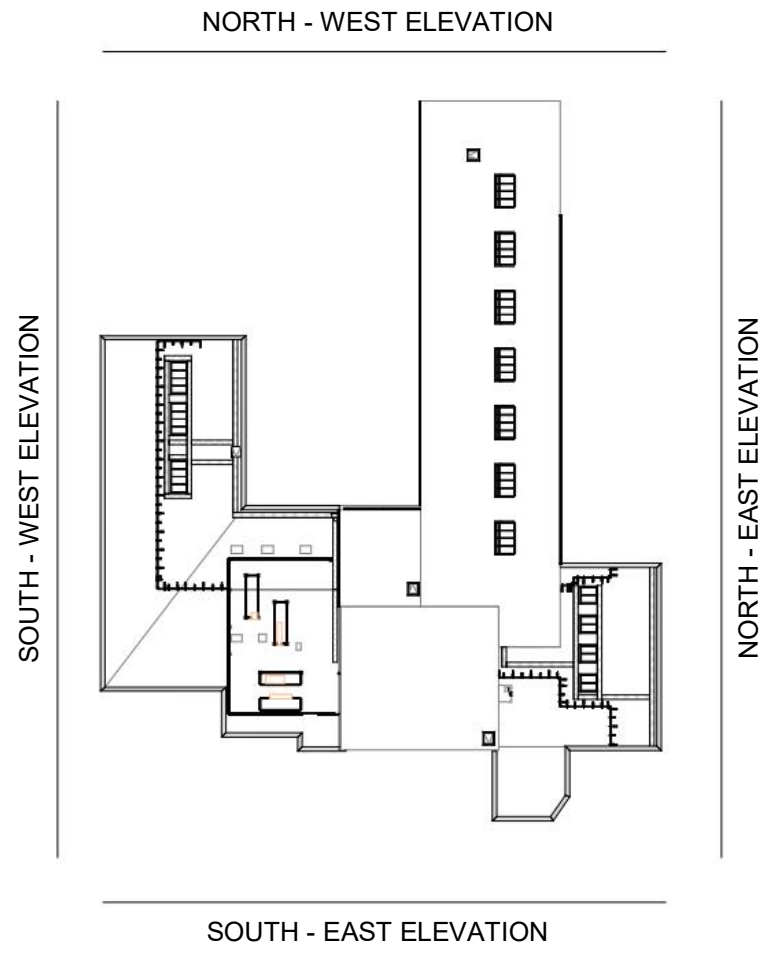
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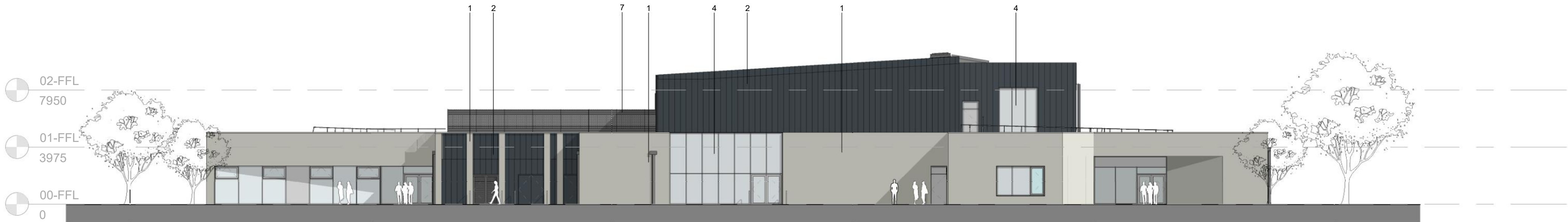
Structural information indicative only. To be confirmed by Structural Engineer.



North - West Elevation
1 : 200



North - East Elevation
1 : 200



South - East Elevation
1 : 200



South - West Elevation
1 : 200

MATERIAL KEY:

1. Clay Facing brick (tumbled finish), colour: mid-grey multi
2. Aluminium standing seam cladding, colour: anthracite
3. Aluminium standing seam pitched roof, colour: anthracite
4. PPC aluminium framed triple glazed thermally-broken curtain walling / windows / doors / spandrel panels
5. Glass balustrades to classroom terraces
6. PPC aluminium fascia to classroom terraces
7. Metal louvred screening to plant deck area
8. Timber post and beam colonnade structure

P02	Elevations updated to show inclusion of new Roof hatches, current Plant layout and new rooflights arrangement. Fl longitudinal aluminium roof enlarged to create new roof access door. Window at end of the classrooms corridor changed to door per fire engineer's requirements. North windows sill height amended. South CW area reduced after Steelwork coordination. New signage added at Nursery Entrance. Operable panels added to Central School official Large meeting room CW. Ground floor general classrooms openings extended per daylight requirements. Parents room window height moved to stay under the soffit. Operable panel added to ASN Office opening. Changes on material key to reflect current design. Project status updated to S4.	25/01/2023	JM	P2
P01	First Issue	29/09/2022	JS	P2
Rev	Description	Date	Dm By	Chk By

Project	EASTHOUSES PRIMARY SCHOOL	50 Bell Street Glasgow G1 1LQ
Title	PROPOSED ELEVATIONS	T : 0141 333 3920
Client	HUB SOUTH EAST	glasgow@jmarchitects.net www.jmarchitects.net
Purpose	PLANNING	Scale : 1:200 @ A1
Drawing Number	Project - Originator - Volume - Level - Type - Role - Class - Number	Status - Revision - JMA Project Number
EHPS-JMA-Z1-ZZ-DR-A-PL-2001	S4 P02	6917