

Notice of Meeting and Agenda



Planning Committee

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

Date: Tuesday, 28 November 2023

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Democratic Services
Clerk Telephone:
Clerk Email: democratic.services@midlothian.gov.uk

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

- 4.1** Minute of 31 October 2023 submitted for approval 5 - 14

5 Public Reports

- 5.1** MLDP2 Engagement - Position Update 15 - 48
- 5.2** Planning Performance Framework 2022/23 Feedback 49 - 54
- 5.3** Listed Building Enforcement Appeal Decision regarding installation of signage, vinyl graphics and change of colour at 118 High Street, Dalkeith (USA Nails) 55 - 68
- 5.4** Wilful destruction of trees within the Eskbank and Ironmills Conservation Area and the non-compliance with a Planning Contravention Notice issued in relation to land adjacent to Old Golf House, Eskbank, Dalkeith 69 - 76
- 5.5** 23/00657/PAC – Pre-application consultation regarding remediation works to proposed education campus: including site remediation, formation of hardstanding, site platforming and provision of site access, utilities/services and drainage at the site of the former Monktonhall Colliery, Newton Village, Dalkeith 77 - 82
- 5.6** 23/00662/PAC – Pre-application consultation regarding extension to existing quarry; retention of processing plant; installation of ancillary equipment and associated works at Temple Quarry, Gorebridge 83 - 88
- 5.7** 23/00532/S42 – Amendment to phasing regarding the redevelopment of the Midlothian Snowsports Centre to enable construction on site whilst the access is being constructed 89 - 108

6 Private Reports

No items for discussion

7 Date of Next Meeting

The next meeting will be held on Tuesday 23 January 2024 at 13.00pm.

Minute of Meeting

Planning Committee
Tuesday 28 November 2023
Item No 4.1



Planning Committee

Date	Time	Venue
Tuesday, 31 October 2023	13:00	Council Chambers, Midlothian House/Hybrid

Present:

Councillor Imrie (Chair)	Councillor McEwan
Councillor McCall (Attended virtually)	Councillor McManus
Councillor Parry (Attended virtually)	Councillor Winchester (Attended virtually)
Councillor Smail	Councillor Virgo
Councillor Alexander	Councillor McKenzie (Attended virtually)
Councillor Pottinger	Councillor Russell
Councillor Cassidy	Councillor Curran
Councillor Scott	Councillor Bowen

In Attendance:

Kevin Anderson	Executive Director Place
Derek Oliver	Chief Officer Place
Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Alan Turpie	Legal Services Manager
Morag Barrow	Director of Health & Social Care: Midlothian HSCP / Chief Officer to Midlothian IJB (Attended virtually)
Lucy Roddie	Democratic Services Officer
Janet Ritchie	Democratic Services Officer

1. Apologies

Apologies for absence were received on behalf of Councillor Drummond and Councillor Milligan.

2. Order of Business

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

3. Declarations of interest

Councillor McManus declared an interest in Item 5.6 and would leave the meeting during the discussion.

Councillor Parry made a declaration of transparency for Item 5.6 and noted that during the pre-planning process she had met with the applicant but had not expressed a view. Councillor Parry had also been contacted by objectors but no view had been expressed that would prejudice her involvement in discussions.

Councillor Winchester made a declaration of transparency for Item 5.6 and noted that she had been approached by both applicant and objectors.

4. Minutes of Previous Meetings

The minute of the meeting of 12 September 2023 was submitted and approved as a correct record.

5. Reports

Agenda No	Report Title	Submitted by:
5.1	MLDP Engagement/Elected Member Workshops and MLDP2 Timetable	Chief Officer, Place
Outline of Report and Summary of Discussion		
<p>Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager, introduced the report. The purpose of the report is to set out the dates for the upcoming elected member workshops on the Midlothian Local Development Plan 2 (MLDP2) and to provide an updated MLDP2 timetable.</p> <p>Since the Committee considered a report on NPF4 and a review of its local plan at its meeting in February 2023, Officers have undertaken widespread engagement with interested parties including formally inviting local communities to prepare local place plans, meeting key agencies and developers, holding drop-in sessions for local residents and holding workshops with elected members. The November set of workshops are being held at 2.00pm on 14 November 2023 for Midlothian West, Midlothian South and Penicuik Ward elected members and 2.00pm on 22 November 2023 for Dalkeith, Midlothian East and Bonnyrigg Ward elected members. Elected</p>		

members can also expect further workshops in 2024 and 2025 as MLDP2 progresses to the plan preparation stage.

It is recommended that the Committee note the details of the November elected member workshops and the updated indicative timescale for the production of MLDP2.

Councillor Imrie, the Chair, thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Smaill asked if Councillors were permitted to have open conversations with all parties about the progress of the development plan. Mr Arnsdorf confirmed that Elected Members were encouraged to have open discussions within their local communities about the development plan at this stage.

Councillor Smaill raised a concern that the Council was in discussions with developers about securing additional sites, yet construction of many of the houses predicted 5 years ago remains outstanding. Mr Arnsdorf responded that although conversations with potential stakeholders were ongoing, no commitments had been made and reassured the committee that decisions will be for Elected Members to take. The Chair referred to Items 6, 7 and 8 of the timetable within the report and noted that Elected Members would have full opportunity to make their views known.

Councillor Smaill noted that there may be a conflict with the Standards Commission's view that Councillors are permitted to discuss any planning issues at any time. The Chair agreed with this comment.

The Chair noted that Elected Members are now able to comment on applications coming to the Planning Committee in advance of the committee.

Decision

The Planning Committee agreed to note the details of the November elected member workshops and the updated indicative timescale for the production of MLDP2.

Action

All

Agenda No	Report Title	Submitted by:
5.2	2023 Housing Land Audit – 908 units built in 2022/23	Chief Officer, Place
Outline of Report and Summary of Discussion		
Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager, introduced the report. The purpose of the report is to present the 2023 Housing Land Audit (HLA) and to update the Committee on the state of the housing land supply in Midlothian.		

Mr Arnsdorf summarised the report. It is recommended that the Committee note the 2023 Housing Land Audit for Midlothian and agree to its publication.

The Chair thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Scott noted that figures for Mayfield and Newtongrange were combined and asked if they could be separated as they are two separate wards. Mr Arnsdorf agreed to review this for the next local plan.

Councillor Pottinger commented on the importance of working in partnership with service providers to accommodate development and subsequent population growth and asked if there were any consultation regulations in place. Mr Arnsdorf commented that the audit was intended to make relevant bodies aware of build programmes and promote forward planning. Key agency meetings are held regularly to facilitate engagement and consultation.

Councillor Curran commented on the importance of ensuring appropriate infrastructure and services are in place to support development and subsequent population growth. Mr Arnsdorf commented that the Council was focused on proactive engagement with relevant bodies. The Chair reported that the planning directorate within Scottish Government are developing infrastructure first guidance. Councillor Alexander queried whether houses being built at the moment will be fit for purpose in the future, and suggested that there should be measures in place to prevent the need to retrofit. In response, the Chair commented that new housing stock will be required to meet certain standards. Retrofitting older housing stock is the challenge.

Councillor Virgo sought clarity on the figures cited in the report which suggest the target number of houses is lower than demand. In response, Mr Arnsdorf acknowledged that a range of variables made predictions challenging.

Councillor McEwan asked if any legal clauses are included within contracts to safeguard against late delivery of developments. Mr Arnsdorf reported that since the introduction of MPF4, the Council is required to allocate sufficient land to deliver housing. The Council is not penalised if the target is not met as long as sufficient land has been allocated. Councillor McEwan asked if the Council is compensated for late delivery of developments. Alan Turpie, Legal Services Manager, confirmed that no contractual obligations exist between the Council as a planning authority and private sector developers.

Decision

The Planning Committee noted the 2023 Housing Land Audit for Midlothian and agree to its publication.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.3	Siting of unauthorised advertisement on land adjacent A68 and A720 City Bypass	Chief Officer, Place

Outline of Report and Summary of Discussion

Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager, introduced the report. The report relates to the display of an unauthorised hoarding advertisement on land adjoining the A68/A720 (on) slip road.

At its meeting of 12 September 2023 the Committee determined to instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the COPFS for consideration of prosecutorial action pursuant to Section 186 of the Town and Country Planning (Scotland) Act 1997 as amended. Following the Committee meeting the unauthorised advertisement was removed and as a consequence the breach of planning control has been resolved, yet the Committee instruction remains and as such it is appropriate to seek the Committee's authority to no longer take prosecutorial action unless the advertisement returns to the site.

It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager to no longer refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action as originally instructed by Committee at its meeting of 12 September 2023.

The Chair thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Virgo moved to instruct the Planning, Sustainable Growth and Investment Manager to no longer refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action as original instructed by Committee at its meeting of 12 September 2023. Seconded by Councillor Smail.

Decision

The Planning Committee agreed to instruct the Planning, Sustainable Growth and Investment Manager to no longer refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action as originally instructed by Committee at its meeting of 12 September 2023.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.4	23/00465/S42 – Amendment to conditions associated with the access arrangements at land at Calderstones, Biggar Road, Hillend	Chief Officer, Place

Outline of Report and Summary of Discussion

Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager, introduced the report. The report is a Section 42 application to amend planning conditions 9, 10 and 12 imposed on a grant of planning permission approved by the Committee at its meeting of 9 June 2020. The planning permission in principle is for the demolition of existing dwellinghouses, erection of hotel, erection of replacement house plot, formation of three house plots, formation of access roads, car parking and associated works at land at Calderstones, Biggar road, Hillend. Mr Arnsdorf reported that a Section 42 application is in itself a planning application which will supersede the original if implemented. Mr Arnsdorf noted that no representations had been received.

It is recommended that the Committee grant planning permission subject to the conditions as set out in the report.

The Chair thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Cassidy moved to grant planning permission subject to the conditions as set out in the report, seconded by Councillor Virgo.

Decision

The Planning Committee approved the planning permission subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.5	23/00521/S42 – Amendment to condition related to the temporary storage of soils at Site F, Shawfair	Chief Officer, Place

Outline of Report and Summary of Discussion

Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager, introduced the report. The report is a Section 42 application to amend condition 1 imposed on a grant of planning permission for the storage of soil at Shawfair site F, Monktonhall Colliery road, Dalkeith, approved by the Committee at its meeting of 9 October 2018. The current application seeks to amend condition 1, which restricts the use to a temporary period of 5 years, in order to allow the storage use to continue for a further 5 years. Mr Arnsdorf noted that no representations had been received.

It is recommended that the Committee grant planning permission subject to the conditions as set out in the report.

The Chair thanked Mr Arnsdorf for the report and opened it up to questions.

Councillor Scott asked if the Council has a mechanism for ensuring the soil is cared for and stored appropriately. In response, Mr Arnsdorf reported that developers are seeking to retain the soil on site in order to manage it appropriately and enable its re-use within the site.

Councillor Smail moved to grant planning permission subject to the conditions as set out in the report, seconded by Councillor Virgo.

Decision

The Planning Committee approved the planning permission subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager

Councillor McManus and Kevin Anderson left the Chamber at 13.43.

Agenda No	Report Title	Submitted by:
5.6	23/00289/DPP – Erection of care home and retail unit at land at Greenlaw Mains, Mauricewood Road, Penicuik	Chief Officer, Place

Outline of Report and Summary of Discussion

Given his declaration of interest, Councillor McManus left the Planning Committee meeting for this Item.

Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager, introduced the report as an application for planning permission (23/00289/DPP) for the erection of a care home with ancillary accommodation and erection of retail unit; formation of car parking, landscaping; and associated works at land at Greenlaw Mains, Mauricewood road, Penicuik. Mr Arnsdorf noted that 71 representations had been received.

It is recommended that the Committee grants planning permission subject to the conditions as set out in the report.

The Chair thanked Mr Arnsdorf for the report and opened it up to questions.

In relation to a representation within the report commenting that the submissions were inaccurate and misleading, Peter Arnsdorf confirmed no inaccuracies had been identified. Mr Arnsdorf explained that modifications were made throughout the planning process and so it was possible that misunderstandings may arise. The Chair noted that he had called-in this application for Committee decision due to the significant number of objections received. The Chair commented that it was his view that there were no grounds to object to this application, in planning terms. In response, Mr Arnsdorf confirmed that the application had been suitably assessed and deemed acceptable.

Mr Arnsdorf reported that the construction of a care home is compatible with the requirement for a local centre to provide local facilities, and the development is in accordance with development plan policies. The care home will have a café, hair salon, cinema and function room as well as an adjacent single retail unit, which will be available for the general public to use. It was noted that the care home would potentially provide accommodation for members of the community who no longer can live independently in their own home.

Mr Arnsdorf noted that the proposed building is three storeys high and therefore larger in scale than some of the surrounding buildings. This had prompted concern raised by representors but Mr Arnsdorf noted that the height variation would provide an urban design point of focus. Representors had raised concerns around the 24 hour nature of the operation, but it was noted that the development was relatively small scale and thus deemed to be low impact. The Committee acknowledged that the proposed development would place further demand on healthcare services.

The Chair raised a concern that developers do not always deliver the indicative plan and this can damage relationships with local residents.

Councillor Bowen asked if there was demand for places in care homes. Morag Barrow, Director of Health & Social Care: Midlothian HSCP / Chief Officer to Midlothian IJB, reported that there is a shortage of care home beds within Midlothian. Ms Barrow commented that she was supportive of the provision of additional care home beds, but the risk to health services being able to operate sustainably needs to be carefully considered. Ms Barrow further noted the significant pressure on health services within this particular area.

Councillor Bowen commented that it would be important to ensure that the care home allows local residents to use its facilities. Mr Arnsdorf reported that this was part of the applicant's business model. If deemed necessary by Elected Members, a condition could be included to safeguard access.

Councillors Bowen and Pottinger raised a concern around parking and queried whether the allocation was adequate. In response, Mr Arnsdorf reported that the allocation had been assessed and deemed appropriate, and noted that additional visitor parking was available if required. Mr Arnsdorf further noted that public transport options and active travel connections were available and as such the site is considered to be in a sustainable location. Councillor McKenzie noted that deliveries and waste uplift would be required and queried whether there was suitable ingress and egress for heavy goods vehicles. Mr Arnsdorf reported that access had been assessed and deemed suitable.

Councillor McKenzie asked if there had been any previous applications from retailers, as the representations suggest residents were expecting a collection of retail units. Mr Arnsdorf commented that the developer had struggled to secure a collection of interested retailers.

Councillor Cassidy moved to grant planning permission subject to the conditions as set out in the report and subject to the addition of a condition to safeguard local resident access to the amenities within the care home. Seconded by Councillor Virgo.

Decision

The Planning Committee approved the planning permission subject to the conditions as set out in the report and subject to the addition of a condition to safeguard access to care home amenities for local residents.

Action

The Planning, Sustainable Growth and Investment Manager

6. Private Reports

No items for discussion

7. Date of Next Meeting

The next meeting will be held on Tuesday 28 November at 1:00pm.

The meeting terminated at 14:16.



MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 - POSITION UPDATE ON ENGAGEMENT AND KEY ISSUES

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to present a summary of the evidence collated (to date) in response to the Midlothian Local Development Plan 2 (MLDP2) engagement programme, which has been ongoing since the launch of the local development plan review in February 2023. In addition, the Committee is requested to start considering an indicative Local Housing Land Requirement (LHLR).
- 1.2 The report documents those matters presented to elected members in the May 2023 and November 2023 workshops and continues the progression of the MLDP2 as previously reported to Committee at its meetings of 28 February 2023, 16 May 2023 and 31 October 2023.

2 MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 - EVIDENCE GATHERING

- 2.1 At its meeting of 31 October 2023 the Committee was advised of the pending November 2023 workshops for elected members - the purpose of the workshops was to inform elected members of the evidence gathered to date in the production of the MLDP2 Evidence Reports (the process of presenting the evidence – there will be a report for each topic area) and to start considering an indicative LHLR.
- 2.2 The Evidence Reports will be submitted to Scottish Ministers in 2024 for “Gate Check”, as part of the MLDP2 preparation process. The Gate Check, is to be undertaken by a Scottish Government Reporter(s) from the Scottish Government Department of Planning and Environmental Appeals (DPEA) and will determine if Scottish Ministers consider that the Council has collected sufficient information/evidence to commence work on producing a MLDP2 Proposed Plan.
- 2.3 This report provides a summary of key evidence collated for the Evidence Reports and details the topic headings that are being used to structure the individual Evidence Reports. The summary of key evidence collected to date is set out in Appendix A and a draft schedule of Evidence Reports being produced by officers for submission to Scottish Ministers in 2024 is set out in Appendix B. As set out in the 31

October 2023 Committee report, widespread engagement has and continues to take place to help inform the production of the Evidence Reports. Officers have, and will continue to, undertake targeted engagement on the Evidence Reports prior to their submission to Scottish Ministers.

- 2.4 Where there is a dispute in evidence between the Council and another party, the Council will seek to resolve it. Where the dispute cannot be resolved, the Council will highlight this in the relevant Evidence Report as an unresolved dispute for the attention of the Scottish Government Reporter(s) conducting the "Gate Check" process.
- 2.5 The report to Committee at its meeting of 31 October 2023 set the target of presenting the Evidence Report submission to Council at its scheduled meeting of 26 March 2024.

3 LOCAL HOUSING LAND REQUIREMENT (LHLR) FOR MLDP2

- 3.1 Midlothian Council in its Evidence Report(s) has to set an indicative LHLR for MLDP2. The LHLR is the indicative number of new homes for which land will be required to be allocated in MLDP2, for the 10 year period of the plan 2026-2036. This inclusion of an indicative LHLR in the Evidence Report(s) is an expectation set out in the May 2023 Scottish Government Local Development Planning Guidance. This report identifies the issues that need consideration in this regard.
- 3.2 The LHLR should be based upon the Minimum All-Tenure Housing Land Requirement (MATHLR). The MATHLR for Midlothian, as explained in the 28 February 2023 MLDP2 report to Planning Committee, is set out in National Planning Framework no. 4 (NPF4) at 8,850 homes. The expectation in NPF4 is that MLDP2 provides land for a minimum of 8,850 homes.
- 3.3 A summary of how the MATHLR figure is derived was provided in paragraph 2.10 of the 31 October 2023 Housing Land Audit 2023 report to Committee, and is repeated below for reference:

"The MATHLR (housing target) is based on 2018 Population and Housing Estimates from NRS (National Records of Scotland) which gives a 10 year household projection for Midlothian of 5,950 households. To this is added the outstanding need identified at 1,114 units (this brings the total to 7,064 units). To this figure a 25% generosity allowance is added (1,766 units), bringing the total to 8,830 units – the Scottish Government then rounds this figure to the nearest 50 resulting in a Midlothian MATHLR target of 8,850."

- 3.4 As set out in Committee reports of 28 February 2023 and 31 October 2023, a significant amount of land to meet that requirement is already allocated in Midlothian through the current MLDP (adopted by the Council in 2017). Section 2 of the 31 October 2023 report to Planning Committee on the Midlothian Housing Land Audit 2023 set out that as at 31 March 2023 the established housing land supply was 11,799 units, of

which 11,052 were effective. It also set out that by April 2026 the Housing Land Audit 2023 projects an effective housing land supply of 8,524, with an additional 600 units from safeguarded sites that could raise that figure to 9,124 units. This level of supply is based upon programmed delivery rates set out in Housing Land Audit 2023. The level of supply available at April 2026 will depend upon the rate at which homes in the audit are built - whether they are built more quickly or slower than programmed.

Selecting a Local Housing Land Requirement (LHLR)

- 3.5 The expectation of NPF4 is that the MATHLR figure of 8,850 homes will be exceeded and that the LHLR figure for MLDP2 should be higher than 8,850 homes for the 2026-2036 MLDP2 10 year period. Scottish Government expects planning authorities to provide a generous housing land supply through their local development plans. It is for the Council to decide by how much more than the 8,850 MATHLR figure it provides in its indicative LHLR for MLDP2.
- 3.6 NPF4 sets no specific methodology or formula to follow to identify a LHLR. It is for the local authority to decide. The May 2023 Scottish Government Local Development Planning Guidance sets out sources of information that planning authorities may wish to consider in identifying a LHLR. These include a range of factors including, the MATHLR, relevant Housing Needs and Demand Assessment (HNDA), the Council's Local Housing Strategy (LHS) and Strategic Housing Investment Plan (SHIP). Ensuring infrastructure availability (and delivery), environmental implications, economic considerations and place-making objectives are, from a general planning perspective, factors that should also be taken into account in identifying a LHLR.
- 3.7 As stated, it is for the Council to determine by how much it exceeds the MATHLR in identifying a LHLR. It could choose to minimally exceed the MATHLR figure by selecting a LHLR figure of perhaps between 8,850 and 9,000 - on the basis of the MATHLR already significantly exceeds, by approximately 25%, the 2018 NRS (National Records of Scotland) Population and Housing Estimate of a 10 year household projection growth for Midlothian of 5,950 and that Midlothian's actual housing need, identified in the third Housing Needs and Demand Assessment for Edinburgh and South East Scotland (HNDA3) is 1,114 households. The issues particularly associated with the provision of health care and education infrastructure highlighted in Appendix A of this report highlight the impact of the very significant housing growth in Midlothian and implications for future growth. Members might consider this supported a lower exceedance of the 8,850 MATHLR figure.
- 3.8 Alternatively, the Council could choose a higher figure of housing land supply in excess of 8,850 homes, to help provide further housing land supply generosity to: protect against sites not being delivered; the supply being built out in advance of the 10 year plan period and as a consequence unplanned sites being promoted with the risk of planning

by appeal for new sites; and to meet the Council's place-making objectives such as:

- An increased provision of affordable housing including the Council's own housing programme and aspirations;
- Support for starter homes/first time buyer homes;
- Support for homes for the elderly (bungalows and 4 in a block properties);
- Support for specialist housing (homes for the disabled and independent homes with some care provision);
- Housing to support rural populations and economies;
- Identified redevelopment of redundant buildings/sites;
- Promoting economic growth through development;
- Place-making opportunities which benefit local communities; and

3.9 When elected members are asked to set a LHLR (March 2024) they will need to take into account the factors identified in this report and the summary of evidence referred to in Appendix A. If Members wish to choose a LHLR that significantly exceeds the MATHLR for Midlothian then more housing allocations would be needed. While this report sets out the significant quantity of housing land supply available, further new housing land allocations and/or increased housing densities of existing sites without a planning permission are still likely to be needed to comfortably exceed the MATHLR, more so if existing allocations are built more quickly than programmed. At this stage of evidence gathering it is not known if sufficient infrastructure could be made readily available for supporting a LHLR that was significantly more than the 8,850 home MATHLR figure set out in NPF4.

Risks of a Low Local Housing Land Requirement (LHLR)

- 3.10 Members should be aware of possible risks for going for a LHLR (for the 2026-2036 MLDP2) that is minimally above the 8,850 home MATHLR figure of NPF4. Policy 16f of NPF4 sets out circumstances where land not allocated for housing can be brought forward for housing if delivery of housing sites is happening substantially earlier and quicker than expected in the Housing Land Audit. To help maintain a plan-led system and help avoid the development of unallocated sites for housing, elected members may choose to have a LHLR sufficiently higher than the MATHLR – this would result in additional land allocations in MLDP2. In addition and/or alternatively where appropriate, housing densities of already allocated sites that do not have planning consent could potentially be increased as a means of providing more housing supply.
- 3.11 Related to this matter is the completion and using up (or “build out”) of the current effective housing supply. Section 2.4 of the Midlothian Housing Land Audit 2023 (see 31 October 2023 Committee report on Housing Land Audit 2023) provides details of current and previous housing completions in Midlothian. It sets out that in the year 2022/2023 there were 908 housing completions and there were 818 house completions in the year 2021/2022. Both were record years for

the number of housing completions. For comparison the five year rolling average from 2017/2018 to 2021/2022 was 656 completions a year. Future completion levels cannot be known with certainty and are susceptible to economic and market circumstances. The Council works with Homes for Scotland (the umbrella organisation for the house building industry in Scotland) to, as best it can, set out through the housing land audit process credible programmed housing completion information in Midlothian. It is unknown if the higher than average completions of the past two years (2021/2022 and 2022/2023) will continue, or whether they may have been inflated due to a built-up of demand during the coronavirus pandemic, which has now been capped by current market conditions.

- 3.12 The implication of this for the LHLR and MLDP2 is that if the quicker than historic levels of completions of the past two years continues the available effective housing land supply from allocations identified in the current MLDP (2017) will reduce quicker between now and the adoption of MLDP2 in late 2026. Regardless of this position the MLDP2 will still need to have allocated housing land for a minimum of 8,850 homes.
- 3.13 If sufficient allocated housing land were not available in MLDP2 and quicker rates of completions continued, then a consequence will be that unallocated housing sites may be brought forward or be granted planning permission on appeal. Choosing a LHLR marginally above the MATHLR will guard against unplanned development and planning by appeal.

Local Housing Land Requirement – Possible Scenarios for MLDP2:

- 3.14 Below are three possible LHLR scenarios for consideration (elected members can consider alternative scenarios which may arise from the continuing engagement programme):

	Option	Opportunities	Risks
1	8,850 – 9,000 In line with the NPF4 MATHLR target	<ul style="list-style-type: none"> Continued growth within known infrastructure constraints; Position most reflective of local communities and service providers based on the early engagement (with the exception of the house building industry). 	<ul style="list-style-type: none"> Dependant on all sites already allocated for housing being delivered; Risk of planning by appeal if the existing supply is built out ahead of schedule; and Limited opportunities for the Council to progress new place-making objectives.
2	9,001 – 11,000 Additional Generosity	<ul style="list-style-type: none"> Provides a buffer against sites not being delivered and/or the supply of housing being built out ahead of schedule resulting in 	<ul style="list-style-type: none"> Impact on infrastructure – education, health provision services and transportation infrastructure.

		unallocated housing sites coming forward; <ul style="list-style-type: none"> • Additional employment and investment opportunities; and • Enhanced place-making opportunities. 	
3	11,001 + Significant Growth	<ul style="list-style-type: none"> • Provides a buffer against sites not being delivered and/or the supply of housing being built out ahead of schedule resulting in unallocated housing sites coming forward; • Additional employment and investment opportunities; and • Enhanced place-making opportunities. 	<ul style="list-style-type: none"> • Significant impact on infrastructure – education, health provision services and transportation infrastructure.

4 RECOMMENDATIONS

- 4.1 It is recommended that the Committee notes:
- a. the evidence collated to date in response to the Midlothian Local Development Plan 2 engagement programme; and
 - b. the issues set out with regard the indicative Local Housing Land Requirement (LHLR).

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023
Contact Person: Grant Ballantine, Lead Officer Conservation and Environment
 grant.ballantine@midlothian.gov.uk
Background Papers: 28 February 2023, 16 May 2023 and 31 October 2023 Committee reports with regard NPF4 and MLDP2.
Appendices: **Appendix A** – Summary of Evidence Collected to Date for MLDP2 Evidence Reports (November 2023)
Appendix B – Draft Schedule of Evidence Reports being produced for Midlothian Local Development Plan 2 “Gate Check” – format and structure may be subject to change

APPENDICES A and B - 28 November 2023 Planning Committee Report: Midlothian Local Development Plan 2 – Position Update on Engagement and Key Issues

Appendix A – Summary of Evidence Collected to Date for MLDP2 Evidence Reports and Key Issues (November 2023)

Public Engagement Key Issues

The most frequent matters raised during the 2023 public engagement to help inform the production of the draft Evidence Report were very strong concern on the impact of population and development growth in Midlothian, including:

Topic	Public Engagement Comments
Natural Environment	<ul style="list-style-type: none"> • loss of green spaces, trees and the natural environment • loss settlement identity and settlement coalescence
Infrastructure	<ul style="list-style-type: none"> • insufficient education and health care services and capacity not having sufficient capacity to meet needs of existing and new residents moving into new homes • the need to ensure sufficient infrastructure in general is in place to support population and residential growth in Midlothian • condition of play park facilities • lack of facilities for younger people
Housing	<ul style="list-style-type: none"> • affordability of housing and the high prices of new homes being built • predominance of larger low density detached/semi-detached family housing being built, rather than a variety of homes and smaller homes (in terms of numbers of bedrooms) being built for people of lower incomes to get on the housing ladder
Transport	<ul style="list-style-type: none"> • public transport service (including frequency) and availability of routes to connect different parts of Midlothian, and the directness of some routes into Edinburgh • poor condition of roads and impact of new housing • shortage of safe active travel routes for cycling
Town Centres/Retail	<ul style="list-style-type: none"> • poor condition of town centres • people not using local and town centres • poor car parking provision in town centres • areas of anti-social behaviour (not limited to local/town centres)

Appendix A: Summary of Headline Issues for MLDP2 Evidence Reports:

Part 1 (Appendix A pages 3-17)

- Climate Change and Biodiversity
- Health
- Education
- Housing and Affordable Housing
- Transport
- Economy
- Developer Contributions
- Town, Local and Commercial Centres and Retail

Part 2: (Appendix A pages 18-25)

- Natural Places and Landscape
- Built Environment
- Renewable Energy Generation
- Infrastructure (Excluding Health, Education and Roads)
- Blue and Green Infrastructure
- Flood Risk and Water Management

Appendix A - Part 1: Summary of Headline Issues for MLDP2 Evidence Reports

Evidence Report Topic/Chapter	Summary of Evidence Collected for MLDP2 Evidence Reports
<p>Climate Change and Biodiversity</p>	<p>Information is being collected on the Climate Emergency for use in preparation of the Proposed Plan of MLDP2, and on how to incorporate adaptation to Climate Change in MLDP2. MLDP2 needs to have the Climate Emergency at its centre.</p> <p>The Evidence Report on Climate Mitigation and Adaptation will highlight:</p> <ul style="list-style-type: none"> • National policy context on Climate Mitigation and Adaptation; • Greenhouse Gas Emissions in Midlothian; • Climate Change Impacts on Midlothian; • Implications for the spatial strategy of MLDP2; • How can carbon sequestration be achieved; and • What does climate adaptation mean for Midlothian and MLDP2. <p>With regard to biodiversity, the relevant Evidence Report focusses on the following points and highlights that they need to inform production of MLDP2:</p> <ul style="list-style-type: none"> • Habitats and Species; • Local Priorities (for Biodiversity); • Nature Networks; • Securing Positive Effects for Biodiversity; and • Soils.
<p>Health</p>	<p>Health care partners, NHS Lothian Public Health Team and Midlothian’s Health and Social Care Partnership’s (MHSCP) and NHS Lothian Primary Care have provided information for the Health Evidence Report. This Appendix A contains only a short summary of the information provided for the Health Evidence Report.</p>

	<p>Implications for Health and Social Care Services and Infrastructure Significant concern has been expressed by healthcare partners, and the wider public, at the impact on a range of health care services from new housing growth. Health care partners have acknowledged that the increase in demand for services is likely to have different impacts on and with Midlothian communities. Planning officers still engaged with health providers to help determine future investment needs.</p> <p>Information indicates service planning challenges due to the uncertainty of the future demographic composition of new housing (i.e. the ages and number of household occupants) until they presents/ come forward with service needs.</p> <p>Healthcare Staff Retention and Recruitment Information on factors effecting staff retention and recruitment is provided. This includes, but not exclusively, cost of housing, access to transport and public transport, other employment opportunities being available and the actual availability of people necessary to fill posts.</p> <p>Air Quality Evidence on air quality in Midlothian is that it is within national quality safety limits. Details have been provided on where air quality in Midlothian takes place.</p> <p>Health and Safety Development High Risk Area information has been supplied by the Coal Authority and this has been mapped. The location of high pressure gas pipe lines in Midlothian have also been mapped.</p> <p>NPF4 Policy 23(f) requires that development proposals be designed to take into account suicide risk. Engagement is on going on these matters with NHS Public Health and Emergency Services. This will inform production of the MLDP2 Proposed Plan.</p> <p>Emergency Services Contact with the Emergency Services (Police, Fire and Ambulance) is on going. The ambulance services has expressed concern at the population growth in Midlothian and on the response times this may have on services.</p>

Education	<p>Education Capacity Detailed information on school pupil capacities and potential for school expansions in the Council area is awaited. Planning officers are engaged with Education services on the matter. Initial indications from Council Education Services are that the information is expected to highlight significant capacity constraints in many areas.</p>												
<p>Housing and Affordable Housing</p>	<p>Housing Requirement and Housing Need Midlothian Local Development Plan no. 2 (MLDP2) will need to allocate land for a minimum of 8,850. That figure is the MATHLR (Minimum All Tenure Housing Requirement Land Requirement for Midlothian, as set out in Scottish Government’s NPF4 (National Planning Framework no. 4).</p> <p>A breakdown of how the MATHLR figure is arrived at is set out below:</p> <table border="1" data-bbox="506 676 1704 1166"> <thead> <tr> <th data-bbox="506 676 1106 715">Factors Producing the NPF4 MATHLR</th> <th data-bbox="1106 676 1704 715">Number of Households</th> </tr> </thead> <tbody> <tr> <td data-bbox="506 715 1106 863">2018 Population and Housing Estimates from NRS (National Records of Scotland) 10 year household projection for Midlothian</td> <td data-bbox="1106 715 1704 863">5,950 households</td> </tr> <tr> <td data-bbox="506 863 1106 1011">Existing housing need in Midlothian identified by the third Housing Needs and Demand Assessment for Edinburgh and South East Scotland (HNDA3)</td> <td data-bbox="1106 863 1704 1011">1,114</td> </tr> <tr> <td data-bbox="506 1011 1106 1050">Total</td> <td data-bbox="1106 1011 1704 1050">7,064</td> </tr> <tr> <td data-bbox="506 1050 1106 1088">25% generosity allowance added</td> <td data-bbox="1106 1050 1704 1088">1,766</td> </tr> <tr> <td data-bbox="506 1088 1106 1166">Combined figures, rounded to nearest 50, giving the NPF4 MATHLR</td> <td data-bbox="1106 1088 1704 1166">8,850 (7,064 + 1,766 rounded to nearest 50)</td> </tr> </tbody> </table> <p>This table demonstrates the levels of actual housing need originating from Midlothian, 1,114 households, and projected population growth. The housing need is made up from 762 households in homelessness/</p>	Factors Producing the NPF4 MATHLR	Number of Households	2018 Population and Housing Estimates from NRS (National Records of Scotland) 10 year household projection for Midlothian	5,950 households	Existing housing need in Midlothian identified by the third Housing Needs and Demand Assessment for Edinburgh and South East Scotland (HNDA3)	1,114	Total	7,064	25% generosity allowance added	1,766	Combined figures, rounded to nearest 50, giving the NPF4 MATHLR	8,850 (7,064 + 1,766 rounded to nearest 50)
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temporary accommodation, 64 households both overcrowded and concealed, and 288 with support needs/special forms of housing – totalling 1,114 households.

The third Housing Needs and Demand Assessment for Edinburgh and South East Scotland (HNDA3) was given “robust and credible” status from the Scottish Government’s Centre for Housing Market Analysis (CHMA) on 28 July 2022. This means it was considered to robustly and credibly demonstrate the housing need and demand in Midlothian and should be used for plan making purposes.

In the years that MLDP2 will operate (2026-2036), the HNDA3 identifies demand for 2725 units social rent, 1310 below market rent, 430 private rent, 1835 owner occupied. The HNDA figures for established need (1,114 households/homes) were also used to inform the MATHLR.

Early information received from the private sector house building industry indicates, in their view, that these housing figures are an under estimate of need and demand in Midlothian.

Affordable Housing

The high cost of housing has been raised very frequently in public engagement as part for evidence gathering for production of draft Evidence Reports.

The Council has a housing waiting list of over 4,000 people. It was at just under 5,000 in 2016 but the introduction of allocating houses to most in need may have reduced the number from that level. The demand is predominantly (approximately 85%) for one and two bedroom properties.

The Council has over 6,500 properties and they have a low turnover, i.e. properties don’t become frequently available. There are approximately 3,500 Registered Social landlord (RSL) properties in Midlothian.

Council officers have met with representatives of the private and social rented (Registered Social Landlords - RSLs) through the evidence gathering process. Both groups expressed concern at the implications of raising affordable housing requirements of 25% from market housing site allocations. This concern was based upon a higher affordable housing requirement potentially making sites less viable and therefore

potentially less likely to come forward. The RSL concern was based them not getting land for sites if sites did not come forward through the planning system.

Homelessness

Council planning officers engaged with Council homelessness officers and Shelter Scotland. Key points of this engagement are:

- There was a sharp increase in number of homeless applications in 2022/2023. Most of this increase has been applications from males who are single parents with access to children. Due to changes in the Unsuitable Accommodation Order (UAO) that group can no longer be provided with any form of shared accommodation for more than 7 days.
- Reduction in open homeless cases continues – a 45% reduction since March 2018. The proportion of people seeking temporary accommodation remains relatively high. Therefore the reduction in temporary accommodation usage has not been to the same extent – a 20% reduction in number of households in temporary accommodation since March 2018)
- 55% reduction in the number of homeless cases open for 2+ years since March 2020 (data was not collected before this time); and
- Recent legislation on limitations on evictions currently in place may have stopped the impact of the full impact of cost of living increase becoming evident.

Second Homes and Vacant Housing Stock

Data for 2022 indicates there are approximately 43,231 homes in Midlothian. Of these less than 1% are long term empty dwellings, approximately 360 homes. There are also nearly 390 homes that are unoccupied and unfurnished for less than six months a year. Around 57, or 0.13%, of the total 43,231 homes are second homes (furnished, lived in for at least 25 days a year but are not someone's main residence). The data on these matters has been relatively static over the past five years.

The number of short-term lets (less than 6 months) is less clear, with 136 available on listings of a major operator.

	<p>Houses in Multiple (HMOs)</p> <p>The latest data, from 2021, indicates there are 46 HMO properties in Midlothian and there has been little change in the past decade. While the number is comparatively small, they do require management to help avoid localised issues.</p> <p>Housing Need for Students and those in High Education</p> <p>As required by the Planning (Scotland) Act 2019 engagement has occurred with higher and further education institutions in Midlothian. Information from the institutions themselves indicated there was little demand from younger students for student accommodation in Midlothian. Anecdotally, information was collected from student representative bodies that indicated the cost of private rented accommodation in Midlothian was a barrier to living in Midlothian as a student.</p> <p>Older and Disabled People</p> <p>As required by the Planning (Scotland) Act 2019 engagement has occurred with these groups and needs to be reflected in the Proposed Plan. Engagement with disabled groups has indicated a shortage of truly accessible homes, homes that are accessible throughout the house and garden. Anecdotal evidence indicates demand to stay in homes or purchase private homes, but there are not sufficient numbers of accessible homes available for purchase, and owners have to undertake accessibility improvements. Work is being undertaken to see what data may be available on demand for retirement housing and bungalow accommodation.</p> <p>Gypsy/Travellers and Travelling Showpeople</p> <p>Site at the former Smeaton Colliery closed in recent years and no provision is made in Midlothian for Gypsy/Travellers and Travelling Showpeople. There is a shortage of information available on these communities and is hard to obtain, partly due to the transient nature of these communities. Engagement work is continuing with people in this area to identify information.</p>

<p>Transport</p>	<p>Information has been collected on national policy requirements for transport and summarised for a Midlothian context to be set out in the Transport Evidence Report(s). Planning officers have engaged with Transport Scotland, SEStran, Sustrans, and bus operators to, respectively, identify national policy issues and issues for MLDP2.</p> <p>Active Travel Engagement feedback has been for more foot path networks and active routes in existing and new development.</p> <p>Public Transport Recurring comments and opportunities were received during public engagement:</p> <ul style="list-style-type: none"> • bus services need to be more frequent, direct, and reliable. • prioritise public transport and active travel in new developments and include in the early stages of development; • develop public transport hub areas; • link Midlothian towns and villages via a circular bus route service. Develop east-west routes; • link and connect rural villages and provide community buses and short distance services; • provide more bus services to Edinburgh, including express services; • provide bus services to Edinburgh Royal Infirmary, retail parks and Country Park locations; • provide bus links and shuttle services to Borders Rail stations; • improve pedestrian access to bus stops, improve lighting and the condition of bus stops; and • consider tram and rail links to west Midlothian. <p>Electric Vehicles (EV) National policy information has been collected on electric vehicles and will be used to inform MLDP2.</p> <p>The current EV charging infrastructure in Midlothian includes a series of charge points in and around the towns with 10,000 or more residents. Gaps in the current EV charging infrastructure are evident in the settlements below 10,000 residents, including the more rural towns and villages. Approximately one quarter (17no.) of the total publicly available charging devices (72no.) in Midlothian are rapid charging.</p>
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Forecasts suggest that by 2026, there may be 4,500 electric vehicles in Midlothian, which will require up to 700 publicly accessible charging points. By 2030, there could be as many of 15,000 electric vehicles in Midlothian, potentially needing over 2,200 publicly accessible charging points.

Parking

Public engagement outlined a significant volume of negative responses regarding the topic of traffic and parking. Recurring comments and opportunities received were:

- issues with parked cars blocking roads;
- need for park and ride facilities;
- lack of appropriate parking (including in town centres);
- inappropriate parking at junctions, side streets, pavements, verges, etc., leading to traffic congestion; and
- larger parking bays required for car parking.

Roads

National policy information has been collected on road matters and the strategic transport network and will be used to inform MLDP2.

Public engagement outlined a significant volume of negative responses regarding roads and traffic. Recurring comments and opportunities received were:

Opportunities / Investment

- concerns in relation to the timescale and the delivery of the proposed Sheriffhall grade separation development;
- need to divert HGV traffic away from towns and between trunk roads; and
- need to develop roads infrastructure before new build housing.

Constraints / Capacity

- traffic increased due to new build housing sites;
- too many cars for the present infrastructure;

	<ul style="list-style-type: none"> • current infrastructure not built for current amount of housing; • traffic capacity issues, especially in areas closer to Edinburgh; • capacity issues at the Eskbank Toll and Sheriffhall roundabouts and Straiton, Hillend and City Bypass junctions. <p>Condition</p> <ul style="list-style-type: none"> • road infrastructure needs to be upgraded; and • roads, car parks, pavements, potholes need repaired. <p>Safety / Speed</p> <ul style="list-style-type: none"> • need for speed restrictions in residential areas, including physical solutions, traffic calming and 20mph limits; and • speed limits (20mph) not being enforced.
Economy	<p>Planning officers have sought to engage with partners, including Midlothian and East Lothian Chambers of Commerce, Midlothian Science Zone and Midlothian Council Economic Development colleagues to gather information for Evidence Reports to inform MLDP2 production.</p> <p>General Economic Trends in Midlothian</p> <ul style="list-style-type: none"> • According to Office of National Statistics data Midlothian has one of Scotland’s fastest growing economies. • Higher proportions of Midlothian’s population are economically active and in employment than the Scottish average. Unemployment is lower than Scotland overall. • Average earnings are lower in Midlothian than the Scottish average. • Planning officers are continuing engagement to understand future economic trends and demands in Midlothian. <p>Economic Land Supply and Demand for Economic Land</p> <ul style="list-style-type: none"> • Midlothian has generally seen quite slow take-up at its economic sites, and at the take up rate of the last 10 years there is an excess of 30 years land supply at the immediately available sites. Part of

this is the shortage of serviced sites, i.e. with economic sites with infrastructure and built business units available. One reason for slow take up may be the higher land values associated with housing uses compared to economic, creating a disincentive for landowners to release land for economic uses. The cost of servicing sites, and making sites suitable (which can be high in the Midlothian context of former mineworkings) may also be a contributory factor.

- Evidence from the Council's Economic development and Estates colleagues indicates strong demand for industrial units in Midlothian and that Midlothian is seen as a good location, due to its location to Edinburgh and the strategic road network.

Gross Value Added (GVA) Data

- Gross Value Added (GVA) per Capita in Midlothian was £18,536 in 2020, ranked 25th out of 32 Scottish local authorities. This represented a climb in the ranking from 30th out of 32 in 1998. Data indicates Midlothian is becoming more integrated with the regional economy with more workers travelling into Midlothian than previously. In 2001 there were nearly 3 workers (2.7) leaving the district for work, for every one that came in. By 2011 this ratio had fallen to less than 2 (1.9). However, Gross Value Added (GVA) data is workplace based and perhaps highlighted out migration for work lowers GVA levels for Midlothian, as those workers travelling out of Midlothian are contributing to GVA in another location than Midlothian.

Midlothian Science Zone (MSZ)

- Planning and economic development officers have met with representatives of the Midlothian Science Zone (MSZ) forum members as part of MLDP2 engagement.
- MSZ forum highlighted the importance of the site to the local, regional and national economy and the world class nature of what occurs in this location – and the range of potential growth opportunities for Midlothian.
- MSZ Forum members wished to stress that the site was the largest concentration of animal science research in Scotland and supported over 3,000 high quality jobs.
- The MSZ forum said investment is available, and sufficient land is allocated, but infrastructure constraints are limiting further investment.

Community Wealth Building

	<ul style="list-style-type: none"> • This is a concept tMLDP2 will need to examine to help maintain and increase spend and decision making on investment in Midlothian. • Midlothian Council expects to produce a draft Community Wealth Building (CWB) Action Plan in March/April 2024, aimed at this retaining and increasing of spend, investment and decision making in Midlothian and the Midlothian economy. • The Council plans to set up sub-groups for interested stakeholders in October/November 2023, under the 5 pillars of CWB.
Tourism	<p>Engagement with the Midlothian Tourist Forum and operators has provided views and information on issues and opportunities for tourism in Midlothian. A summary of issues raised are:</p> <ul style="list-style-type: none"> • there is a data shortage in sector which limits knowledge on what the issues are; • need better facilities for disabled access at many sites; • need for better public transport and active links to encourage visitors; • need better car parking for sites dependent upon private cars for access; • more hotel provision is required and quality, not just quantity; • the planning system can be barrier to diversification of businesses, particularly in rural areas. • many town centres are unattractive; • huge opportunities exist to join up small scale tourist attractions; • need for electric car charging points in car parking facilities; • future development should not impinge upon the quality of life and environment of existing residents; and • balance required between tourism and existing uses (e.g. aims of protecting the Pentland Regional Park so that farming and other land uses can co-exist).
Culture and Creativity	<p>In line with NPF4 requirements, evidence has been collected on the heritage and assets across the Council area. It is a subjective area, but evidence gathered included:</p> <ul style="list-style-type: none"> • the Dalkeith Arts Centre is valued; • there is a good variety of clubs and social events; • craft spaces for self-employed with stalls are needed; • not every community has a village hall and this is needed;

	<ul style="list-style-type: none"> • in smaller rural communities, it was felt that there was a lack of social spaces outwith those provided by church halls; • a lack of recording and performing spaces, such as recording studios and theatres was highlighted; • it was suggested that council buildings could be used in the evenings and at weekends for theatre schools and live music; • empty buildings could host Edinburgh Fringe and Film Festival events; • a cinema is needed; and • public transport provision can be a barrier to people accessing venues. <p>Information on local and statutory designations was also collated as part of gathering information on culture. This relates to information in other Evidence Reports, including in the Historic Assets and Place Evidence Report chapter and the Inventory of Buildings at Risk in the Brownfield, Vacant and Derelict Land and Empty Buildings Evidence Report chapter.</p>
<p>Developer Contributions</p>	<p>Work is ongoing to identify mechanisms for an approach for MLDP2 to secure developer contributions where it is able to do so in line with planning legislation. This will feed into MLDP2 production.</p>
<p>Town, Local and Commercial Centres and Retail</p>	<p>Information has been collected from national retail policy, and its implications for MLDP2, to support town centres, local centres and retailing. MLDP2 will also need to consider how it supports future uses of town centres if/when their nature and purpose changes.</p> <p>Information on matters such as the proportion of retail spend online and the impact of that on spend in shops will also need to be considered. Midlothian’s last survey data of Midlothian residents dates from 2012. It indicated that internet shopping had reached 8.2% of sales in the comparison sector (in that year internet sales were 9.3% of total at UK level). By 2020 the UK internet spend was 16.5%. Covid affected internet shopping. By the 4 fourth quarter of 2020, 36% of retail spend was on the internet. That fell back to 27.5% by quarter 4 of 2022. The future trends are unknown, particularly with the UK having the highest proportionate online retail spend levels and no forerunner examples to compare against.</p>

Town Centres

Information on the location and composition of Midlothian town centres has been gathered. A summary is provided in the below table:

Centre	Number of shops	Other premises identified as falling within 2023 UCO class 1A definition*	Cafes/restaurants	Hot food takeaways and Betting Shops	Vacancy rate**
Bonnyrigg town centre	40	5	3	8	0%
Dalkeith town centre	86	19	7	8	9%
Gorebridge town centre	5	4	0	3	n/a
Mayfield town centre	13	4	1	2	n/a
Loanhead town centre	19	3	2	5	8%
Newtongrange town centre	18	7	2	3	n/a
Penicuik town centre	31	13	7	8	23%

Source: Assessors, 2021 data.

*note there are many offices which provide a service to visiting members of public which are just recorded as offices in Assessor's records, this list includes those where it was clear from the valuation roll description.

** vacancy rate calculated from separate CoStar dataset,

The condition of town centres has been a subject of concern at engagement events and on the 'citizen space' feedback system. A lack of variety and quality of retail facilities has been raised, with some respondents stating that they rarely use their nearest Midlothian town centre. This qualitative data reflects the previous findings of the 2012 Midlothian retail study which found that convenience expenditure was mostly at large supermarkets, only some of which are located in town centres. Further that comparison expenditure was mostly directed to commercial centres or centres outwith Midlothian (in order of spending: Newcraighall/Fort Kinnaird, Straiton, Edinburgh City Centre, then Dalkeith town centre). From public engagement there does appear to be interest in using the town centre to host a wider variety of uses beyond retailing, and uses that will pull people into the town centres.

Local Centres

These form an important part of the network of centres and contribute to the local living / 20 minute neighbourhood concept being promoted by Scottish Government. The adopted plan identified local centres and these are identified in the draft Evidence Report.

As a rapidly growing area, Midlothian is forming new neighbourhoods and settlements. In some of these growth areas, the development plan identifies new neighbourhood hubs and in the case of Shawfair, a new town centre. There have been challenges in delivering these. Provision of new retail facilities in new developments has been raised at engagement events to help support local living.

Other Uses

Other issues for MLDP2 to consider are the location of betting shops, hot food take aways, drive through restaurants and pay day loan or "high-cost short-term credit" premises. Details on the location and numbers of such uses are in the draft Evidence Report.

Commercial Centre

NPF4 requires local development plans to support proposals for improving the sustainability of existing commercial centres where appropriate. MLDP2 will need to consider the future of Straiton and the wider area (including site Ec3), its land uses and its connectivity by means other than the private car. This point

	on accessibility of Straiton arose in public engagement for MLDP2. The environment for pedestrian access and public transport connections, particularly and east west across Midlothian, will need to be considered.
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Appendix A - Part 2: Summary of Headline Issues for MLDP2 Evidence Reports

Evidence Report Topic/Chapter	Summary of Evidence Collected
Natural Places and Landscape	
Natural Places and Landscape (inc. natural heritage and landscape designations)	<p>Information has been collected MLDP2 production on the number and location of natural heritage designations in Midlothian: (Special Areas of Conservation (SAC), Special Protection Areas (SPA), Sites of Special Scientific Interest (SSSI), Local Nature Reserves, Local Biodiversity Sites, Local Geodiversity Sites and Special Landscape Area (SLAs). These cover a significant land coverage of Midlothian and are very important to its character, nature and landscape.</p> <p>These designations will be considered to identify how they will inform production of MLDP2, in terms of development strategy and the policies in NPF4 on natural heritage. These designations, in themselves, have not generated significant, issues during engagement. It is care for the natural environment that the designations seek to help protect that has generated input and issues, i.e. concern for the environment and desire to protect the environment.</p>
Built Environment	
Historic assets and places	<p>Information has been collected on the number and location of listed buildings, conservation areas, scheduled monuments, gardens and designed landscapes, buildings at risk. Information collected on in-built carbon in the historic environment and implications of climate change on the historic environment have been collected. These will be considered to identify how they will inform production of MLDP2, in terms of development strategy and the policies in NPF4 on built heritage.</p> <p>The stage for consideration of changes to the boundaries of designations, such as conservation areas, is at the MLDP2 Proposed Plan production stage of 2024/2025.</p>
Brownfield, vacant and derelict land	Public engagement, along with national planning policy, supports use of brownfield land first before greenfield development.

and empty buildings	Information collected through MLDP2 Evidence Report production indicates there are not significant quantities of brownfield or vacant and derelict land in Midlothian on which to base the Local Housing Land Requirement for MLDP2. Such sites though will be reviewed as part of the production of the Proposed Plan for MLDP2. MLDP2 will need to consider uses and the future for such sites. An internally produced urban capacity study is being prepared to help inform the Evidence Reports and MLDP2.
Coalescence and Green Belt	<p><u>Settlement Coalescence</u></p> <p>Settlement Coalescence was raised as a strong concern in public engagement in 2023 as part of evidence gathering for Evidence Report production.</p> <p>A significant number of locations in Midlothian, much of the built-up area, are or are perceived to be experiencing or being under threat from coalescence. The following areas can be identified as such:</p> <ul style="list-style-type: none"> • Dalkeith and Easthouses • Mayfield and Newtongrange • Gorebridge and Newtongrange • Eskbank and Bonnyrigg • Roslin, Bilston and Loanhead • Loanhead and Lasswade/Kevock • The A701 Corridor • Shawfair and Cauldcoats <p>The Newbattle Strategic Greenspace Safeguard has been considered by Council officers and some others outside of the Council to have been a success in carrying out its purpose. This tool could be examined further in MLDP2.</p> <p><u>Green Belt</u></p> <p>A formal Green Belt Review has not been undertaken at Evidence Report stage. It is likely any formal review of the Green Belt would have to be undertaken as part of a wider cross-boundary review with neighbouring planning authorities.</p>

	<p>It is anticipated that this might take place during the next Local Development Plan cycle (MLDP3) and therefore has no implications upon MLDP2. However, any decisions on boundary changes or land releases from the existing Green Belt will be made on a site-by-site basis at MLDP2 Proposed Plan stage.</p> <p>A whole Green Belt review was undertaken by Lothian local authorities over 10 years ago and this informed production of the currently adopted MLDP (2017).</p>
Renewable Energy Generation	
Wind, Solar, Geothermal and other types of renewable energy generation	<p>National policy has been collected on different sources renewable energy generation. Engagement still on going.</p> <p>Consideration will need to be given in MLDP2 preparation on the role of the 2012 wind energy landscape capacity study commissioned by Midlothian Council in MLDP2, especially in the context of NPF4 and the Council's 2019 Climate Emergency declaration. MLDP2 will need to continue support for renewable, low-carbon and zero emissions technologies and seek to realise Midlothian's full potential for electricity and heat.</p>
Infrastructure (Excluding Health, Education and Roads)	
Energy Infrastructure	<p>Engagement is on going with service providers about supply issues in Midlothian.</p> <p>Significant cost for electricity grid connection, for power from key substations for new development, has been raised with the Council by power providers and those promoting development.</p>

	<p>Engagement has been had with gas suppliers which indicates: demand for gas remains steady, the high pressure gas network mains will remain with some reinforcement in the future, and potential in the future for developing heat networks and hydrogen supply.</p> <p>The Scottish Government's Vision for Scotland's Electricity and Gas Networks sets out aspirations for electricity supplies to meet power requirements for low carbon transport and heating, and a gas distribution network that considers a blend of increasing quantities of low carbon gases with natural gas, including hydrogen, biomethane, and bio-synthetic natural gas.</p>
Zero Waste	<p>Data has been collected on waste and recycling in Midlothian. Consideration of this will be needed on how it is reflected in the strategy and policy framework of MLDP2.</p> <p>Household waste data outlines a reduction in landfilled waste in Midlothian from 44.1% to 12.4% between 2017 and 2021. Evidence outlines that landfill sites are currently operational at Drummond Moor and Middleton Quarry. The anticipated dates for ceasing landfill at these sites are 2025 and 2030 respectively.</p> <p>Household waste data outlines a steady level of waste recycling in Midlothian between 2017 (51.6%) and 2021 (47.4%), which are below the national target of 70% by 2025.</p> <p>Household waste data outlines an increase in waste diverted from landfill (e.g. treated by incineration, biological and heat treatment) between 2017 and 2021 from 1,819 to 17,651 tonnes. The reduction in landfilled waste reflects the incineration of waste now occurring at the Millerhill Recycling and Energy Recovery Centre (RERC). It is hoped that the RERC and the Millerhill Anaerobic Digester facilities will help Midlothian Council contribute to the national recycling targets of 70% by 2025, and only 5% of waste going to landfill by 2025.</p>
Digital	<p>Data has been collected on mobile phone and broadband issues and coverage for consideration in the MLDP2 development strategy. Engagement is still on going for business and domestic users.</p>

	<p>Mobile signal coverage (4G quality) data per mobile network operator outlines a range of coverage across the Midlothian towns from average to very good. Roslin, Loanhead, Dalkeith and Lasswade rated highest, and Penicuik rated lowest in terms of overall mobile signal coverage across the four main operators. This is reflected in mast location data, which confirms a fewer number of masts within 7km of Penicuik, Gorebridge and Pathhead.</p> <p>The Employment Land Audit outlines mobile phone coverage (4G and non-4G) and broadband coverage at the employment land sites throughout Midlothian. Mobile phone coverage is excellent throughout many sites, but is lower in parts of Dalkeith, Rosewell, Roslin and Midlothian Science Zone.</p> <p>The Employment Land Audit outlines broadband coverage across the Midlothian employment land sites. Standard availability is good across all sites, however standard speed (maximum 11Mbps) is variable across all sites and is highest at Midlothian Science Zone (MSZ). Superfast availability ranges from average to good across the sites, but there are some sites in Dalkeith, Shawfair and MSZ with no availability. Superfast speed (maximum 50Mbps) is variable across all sites and lowest in parts of Roslin, Shawfair and Midlothian Science Zone.</p>
Heating and Cooling	<p>Information from and on national policy is being collected to inform MLDP2 production.</p> <p>MLDP2 will be required develop policy and proposals, which:</p> <ul style="list-style-type: none"> • encourage and support the requirement for heat networks within developments; • require developments in specific areas or within an identifiable heat network zone to connect to an existing heat network where available; • provide within the site an independent network and plant capable of connecting to the wider network in the future; • provide heating/ cooling system within any building capable of connecting in a future date; and • heat and cool the building through a renewable form of energy produced on site. <p>The Local Heat and Energy Efficiency Statement (LHEES) Strategy and Delivery Plan will inform the MLDP2 spatial strategy and policy, including the identification of potential Heat Network Zones.</p>

	<p>The Midlothian Energy Ltd evidence outlines a series of planned heat network infrastructure (the Shawfair and Little France Spines and transmission pipework), which will inform the MLDP2 spatial strategy. The evidence also notes that it is unlikely that the Shawfair network will connect to Dalkeith in the short to medium term.</p>
Water and Drainage	<p>Engagement has been on going with Scottish Water since the adoption of the current MLDP in 2017 to keep them informed of development progress on sites. This engagement has continued during production of Evidence Reports for MLDP2.</p> <p>Scottish Water need to be informed of development locations and development programming/phasing to help guide their capital investment decisions and help support efficient use of resources.</p> <p>Enhanced SUDS will be required in MLDP2 for removing surface water from the mains drainage system, to help reduce loss/take up of drainage capacity.</p> <p>Work is underway to identify existing blue green infrastructure assets and potential gaps in this network. Other workstreams to be delivered over the life of MLDP2 such as the Surface Water Management Plans for Midlothian will contribute to this.</p> <p>Consideration as part of preparation of MLDP2 for protection of strategic aqueducts, and also strategic water supply assets along the A701 corridor, should be had.</p>
Blue and Green Infrastructure	
Blue and Green Infrastructure (inc. Blue Green Network, Open Space, Play and Sport and Allotments and	<p>Information is being collected on this to identify in the MLDP2 blue and green networks and opportunities for increased connectivity.</p> <p>Open space, play facilities, and blue green networks are being mapped to inform the development strategy and policy framework of MLDP2. The location of core paths and active travel routes will also inform MLDP2 production. Provision of allotments and growing spaces will need to be considered in production of MLDP2.</p>

<p>Food Growing, Burial and Cremation)</p>	<p><u>Burial and Cremation</u> Information collected indicates that Midlothian has a surplus of land for burials, more than sufficient for MLDP2 to meet statutory requirements. In some locations consideration may be required for MLDP3. Proportionately cremations are increasing and levels of burial are decreasing. Evidence indicates that a crematory in Midlothian would not be sustainable, particularly with the crematory proposed for Old Craighall in East Lothian.</p>
<p>Flood Risk and Water Management</p>	
<p>Flood Risk and Surface Water Management</p>	<p><u>Flood Risk</u> Flood risk in Midlothian is primarily from surface water flooding. The Rivers North Esk, South Esk and Tyne are deeply incised as they pass through Midlothian, and traditionally flooding has been less of a concern in the county. However, climate change is projected to increase rainfall and frequency of major down pours.</p> <p>Some of the smaller streams flowing off the Pentland Hills, particularly around Bilston and Penicuik give concern. There are two flood prevention schemes in Midlothian (Polton Road Bridge Relief and Rullion Road Flood Prevention Scheme).</p> <p>The Esk and Tyne rivers flow to East Lothian where the settlements are on flatter adjoining land. Flooding is a cross boundary issue, and there is potential for works in Midlothian to contribute to alleviating downstream flood risk in East Lothian and City of Edinburgh. Cross border working will be required through MLDP2.</p> <p>It will be important to ensure that Midlothian's high growth rate does not result in properties being put at risk of flood hazard. Avoidance of flood risk will need to be an important consideration in selection of sites for development in MLDP2.</p>

Design, maintenance and adoption of SUDS will be an important consideration for MLDP2 to help manage surface water run-off and improve water quality.

Water Quality

While water quality is not found by SEPA to be bad or poor at any Midlothian surface water body, only moderate status has been found on significant sections of the North and South Esk.

Midlothian's water environment is for the most part classified as poor quality by the SEPA Water Environment Hub. The primary reason for this is lack of fish access. This may require development to remove or ameliorate weirs (which in some cases are part of listed buildings).

Waste Water

Scottish Water has been expanding the capacity of the waste water system in Midlothian to handle new development.

Appendix B - 28 November 2023 Planning Committee Report

Draft Schedule of Evidence Reports being produced for Midlothian Local Development Plan 2 “Gate Check” – format and structure may be subject to change

NPF4 Theme:		Sustainable Places
	No.	Evidence Report
Evidence Report Topic Number and Title:	1	Climate Change Mitigation and Adaptation
Evidence Report Chapter Number and Title:	1.1	Climate Change Mitigation and Adaptation
Evidence Report Topic Number and Title:	2	Biodiversity
Evidence Report Chapter Number and Title:	2.1	Biodiversity (inc. Nature Networks, Securing Positive Effects for Biodiversity, Soils in Midlothian)
	2.2	Forestry, Woodland and Trees
Evidence Report Topic Number and Title:	3	Natural Places and Landscape
Evidence Report Chapter Number and Title:	3.1	Natural Places and Landscape (inc. natural heritage and landscape designations)
Evidence Report Topic Number and Title:	4	Built Environment
Evidence Report Chapter Number and Title:	4.1	Historic assets and places
	4.2	Brownfield, vacant and derelict land and empty buildings
	4.3	Coalescence and Green Belt
Evidence Report Topic Number and Title:	5	Transport
Evidence Report Chapter Number and Title:	5.1	Active Travel
	5.2	Public Transport
	5.3	Electric Vehicle Charging
	5.4	Parking Standards
	5.5	Roads

Evidence Report Topic Number and Title:	6	Renewable Energy Generation
Evidence Report Chapter Number and Title:	6.1	Wind
	6.2	Solar
	6.3	Geothermal
	6.4	Other Types of Renewable Energy
NPF4 Theme:		Liveable Places
Evidence Report Topic Number and Title:	7	Infrastructure First
Evidence Report Chapter Number and Title:	7.1	Energy Infrastructure
	7.2	Zero Waste
	7.3	Digital
	7.4	Heating and Cooling
	7.5	Education
	7.6	Health (inc. Healthier Places, Health and Social Care Services, Emergency Services, Health and Safety)
	7.7	Developer Contributions
	7.8	Water and Drainage
		Roads are listed in chapter 5.5
Evidence Report Topic Number and Title:	8	Blue and Green Infrastructure
Evidence Report Chapter Number and Title:	8.1	Blue and Green Infrastructure (inc. Blue Green Network, Open Space, Play and Sport and Allotments and Food Growing, Burial and Cremation)
Evidence Report Topic Number and Title:	9	Flood Risk and Water Management
Evidence Report Chapter Number and Title:	9.1	Flood Risk and Surface Water Management
Evidence Report Topic Number and Title:	10	Housing
Evidence Report Chapter Number and Title:	10.1	Housing (inc. Housing Need and Demand, Local Housing Land Requirement, Affordable Housing, Specific Needs/Adapted Housing,

		Gypsy/Travellers and Travelling Showpeople. Rural Homes is in Rural Development Evidence Report)
Evidence Report Topic Number and Title:	11	Quality of Place
Evidence Report Chapter Number and Title:	11.1	Local Living and 20 Minute Neighbourhoods
	11.2	Design, quality and place
	11.3	Local Place Plans
NPF4 Theme:		Productive Places
Evidence Report Topic Number and Title:	12	Economy
Evidence Report Chapter Number and Title:	12.1	Business, Industry and Community Wealth Building
	12.2	Rural Development (inc. Rural Housing)
	12.3	Tourism
	12.4	Culture and Creativity
	12.5	Minerals
Evidence Report Topic Number and Title:	13	Town, Local and Commercial Centres and Retail
Evidence Report Chapter Number and Title:	13.1	Town, Local and Commercial Centres and Retail



PLANNING PERFORMANCE FRAMEWORK ANNUAL REPORT 2022/23

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 2022/23.

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 2022/23 was submitted to Scottish Government in July 2023. 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.

3 FEEDBACK ON THE 2022/23 SUBMISSION

- 3.1 Formal written feedback was received 20 October 2023 by way of a letter from the Minister for Local Government Empowerment and Planning, 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, 13 were rated as 'green' giving no cause for concern, none were rated as 'amber' where areas for improvement are identified and two were rated as 'red', this being used to indicate where some specific attention is required. The ratings demonstrate a high level of performance and reflects the team's commitment to delivering a good service. The feedback on ratings will help to inform the content of the 2023/24 return, which will be due in July 2024.
- 3.3 The red markers relate to performance criteria 4) legal agreements and 7) local development plan. With regard to legal agreements the average time to determine a planning application with a legal agreement for 2022/23 was 45.1 weeks, slower than the Scottish average of 41.1 weeks – this reflects the complexity of the legal agreements in Midlothian, the teams commitment to secure as high a contribution as possible from applicants (which results in extended negotiations) and the legal processes involved. With regard the age of the local development plan (the Midlothian Local Development Plan was adopted in December 2017), it is now more than five years old, this is in part because of the delays in the Scottish Government adopting the National Planning Framework No.4 (NPF4) for Scotland and for the delay in the Scottish Government publishing the local development plan regulations (both published in 2023) which delayed the commencement of Midlothian's review of its local development plan. The pre NPF4 target was to review a local development plan within five years of adoption – the target for post NPF4 local development plans is 10 years.
- 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 2022/23 was 13.5 weeks, quicker than the Scottish average of 14.4 weeks. The average time to determine householder developments for 2022/23 was 7.2 weeks, quicker than the Scottish average of 8.9 weeks. The average time to determine major developments for 2022/23 was 43.7 weeks and was slower than the Scottish average of 39.5 weeks. The reasons why some planning applications take an extended time period to conclude are as follows:
- High workloads and competing priorities in the Planning Service;
 - Negotiations to improve a development proposal or to resolve outstanding matters;
 - Delays in receiving consultation responses from internal and external services and organisations;
 - The conclusion of a planning obligation to secure developer contributions – both the negotiations and legal processes; and

- Awaiting for the applicant to submit the required information to conclude the assessment of a planning application.

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 2022/23.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023
Contact Person: Peter Arnsdorf
Email: peter.arnsdorf@midlothian.gov.uk
Background Paper: 1) Midlothian's PPF (2022/23) submission available in the Members library and on the Council's website; and 2) Ministers feedback on Midlothian's PPF (2022/23) submission attached as Appendix A.

PERFORMANCE MARKERS REPORT 2022-23

Name of planning authority: **Midlothian Council**

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 is 43.7 weeks which is faster than the previous year but slower than the Scottish average of 39.5 weeks. RAG = Green</p> <p>Local (Non-Householder) Applications Your average timescale is 13.5 weeks which is slower than the previous year but faster than the Scottish average of 14.4 weeks. RAG = Amber</p> <p>Householder Applications Your average timescale is 7.2 weeks which is faster than the previous year and faster than the Scottish average of 8.9 weeks and within the statutory timescale. RAG = Green</p> <p>Overall RAG = Green</p>
2	<p>Processing agreements:</p> <ul style="list-style-type: none"> offer to all prospective applicants for major development planning applications; and availability publicised on website 	Green	<p>You have set out how processing agreements are offered for all major developments. RAG = Green</p> <p>You have set out information on processing agreements on your website which includes a link to the form, instructions for additional information and sets out expectations on what the agreement will involve. RAG = Green</p> <p>Overall RAG = Green</p>
3	<p>Early collaboration with applicants and consultees</p> <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 offer pre-application discussions for all types of applications and also meet regularly with applicants, developers and landowners to inform them of the Councils approach to future developments. RAG = Green</p> <p>You have a pre-application guide on your website which includes further guidance on additional supporting information that will be required. RAG = Green</p> <p>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)	Red	<p>Your average timescale for legal agreement applications is 45.1 weeks which is slower than the previous year and slower than the Scottish average of 41.1 weeks.</p> <p>You set out in your committee reports the requirement to conclude agreements within 6 months and list the projects and infrastructure associated. You have noted that this process has helped conclude agreements faster, issue</p>

			permissions sooner and reduce the likelihood of legacy cases.
5	Enforcement charter updated / re-published within last 2 years	Green	You have updated your enforcement charter on October 2022 which is within the last 2 years.
6	Continuous improvement: <ul style="list-style-type: none"> progress ambitious and relevant service improvement commitments identified through PPF report 	Green	You have completed 9 out of 11 improvement commitments which were identified last year, with one other partially achieved and another carried over to this year. You have identified a further 9 for the coming year.
7	Local development plan less than 5 years since adoption	Red	Your LDP was 5 years and 4 months at the end of the reporting period which is more than 5 years since adoption.
8	Development plan scheme – next LDP: <ul style="list-style-type: none"> project planned and expected to be delivered to planned timescale 	Green	You updated your Development Plan Scheme in March 2023 which sets out that your next LDP will adopted within 5 years, by end of 2026. Your latest Development Plan Scheme includes timescales for each key stage and has outlined activities and engagement which will need to be carried out.
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 commenced early preparations on the next LDP and have undertaken a wide range of engagement for elected members, industry and key agencies. Some of the engagement includes preparing a series of workshops regarding NPF4 as well as meeting with industry to discuss housing targets and input into the new LDP policies.
11	Policy Advice: Production of relevant and up to date policy advice	Green	You have continued to produce relevant policy advice during the reporting period including commencing work on the Fala Conservation Area Character Appraisal and Management Plan as well adopting supplementary guidance on Low Density Rural Housing.
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 a range of examples of corporate working across services. This includes housing, education, financial and community services working together on Developer Contributions.
13	Sharing good practice, skills and knowledge between authorities	Green	You have provided a range of examples of sharing good practice during the reporting period. This include discussions with Fife and Glasgow City Council on best practice to implement Strategic Environmental Assessment based on the new LDP process as well as collaborating with Fife, East Lothian Council and West Lothian Council on work involving the City Region Deal and Regional Spatial Strategy.
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 2 cases during the reporting period, the same as last year. The number of cases remaining has decreased from 9 to 7.
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	You have stated that clear expectations relating to developer contributions are set out in the the Development Plan. RAG = Green You have provided numerous examples where developer contributions were set out and were part of the pre-application discussions. For example, discussions were held during the pre-application stage regarding possible developer contributions to help deliver solutions to traffic issues associated with a proposed school and community facility. RAG = Green Overall RAG = Green

MIDLOTHIAN COUNCIL
Performance against Key Markers

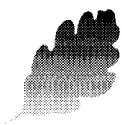
Marker		13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	22-23
1	Decision making timescales										
2	Processing agreements										
3	Early collaboration										
4	Legal agreements										
5	Enforcement charter										
6	Continuous improvement										
7	Local development plan										
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
2022-23	2	0	12

Decision Making Timescales (weeks)

	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	22-23	2022-23 Scottish Average
Major Development	60.5	77.4	47.8	84.7	91.5	45.8	65.6	76.2	44.6	43.7	39.5
Local (Non-Householder) Development	19.7	11.0	10.7	11	12.1	11.1	15.0	13.3	10.5	13.5	14.4
Householder Development	6.9	6.7	6.9	6.8	6.9	6.4	6.6	6.9	8.2	7.2	8.9



LISTED BUILDING ENFORCEMENT NOTICE APPEAL DECISION WITH REGARD THE INSTALLATION OF SIGNAGE, VINYL GRAPHICS AND CHANGE OF COLOUR OF SHOP FRONTAGE AT 118 HIGH STREET, DALKEITH.

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a listed building enforcement notice appeal decision with regard the installation of signage, vinyl graphics and change of colour of shop frontage at 118 High Street, Dalkeith (USA Nails).

2 BACKGROUND

- 2.1 118 High Street, Dalkeith is a Category C listed building. It is part of a C Group of listed buildings with Nos 116 and 118a High Street. It is also within the Dalkeith House and Park Conservation Area.
- 2.2 A listed building enforcement notice was issued on the occupiers and owner of the property on 16 August 2023, with a take effect date of 16 September 2023 and a compliance date of 16 December 2023. 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 fascia signage panel from the shopfront and make good any holes created for fixings.
 - 2) Repaint the shopfront in any of the following colours
 - RAL1014 or
 - RAL7000-7006 or
 - RAL7009-7012 or
 - RAL5008
 - 3) Removal of vinyl graphics from the shop windows.
- 2.3 The occupier appealed the listed building enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the listed building 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 10 February 2024.

3 THE DECISION

3.1 In considering the appeal the Reporter concluded:

“... I consider that neither the fascia signage nor the vinyl graphic signage are in keeping with the character of the listed building or the conservation area. The proposed fascia signage also extends slightly below the original window opening, cutting across the window detailing. I find that the signage (fascia and vinyl graphics) does not preserve the listed building, nor does it preserve or enhance the character or appearance of the conservation area, contrary to the HES guidance and LDP policy ENV 22. While I acknowledge the financial implications for the appellant, I am not convinced that the cost of and time involved in removing or replacing the signage is reasonable grounds to allow inappropriate signage in this sensitive and prominent location.”

3.2 The Reporter therefore dismissed the appeal, refusing to grant listed building consent for the matters covered in the listed building enforcement notice, and directed the notice be upheld subject to variation of the compliance period.

4 RECOMMENDATION

4.1 It is recommended that the Committee notes the enforcement notice appeal decision with regard the installation of signage, vinyl graphics and change of colour of shop frontage at 118 High Street, Dalkeith (USA Nails).

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023
Contact Person: Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager
peter.arnsdorf@midlothian.gov.uk



Appeal Decision Notice

Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Listed building enforcement appeal reference: LBE-290-2001
- Site address: 118 High Street, Dalkeith, EH22 1HZ
- Appeal by USA Nails Dalkeith against the listed building enforcement notice dated 16 August 2023 served by Midlothian Council
- Alleged breach of listed building control: installation of signage, vinyl graphics and change of colour
- Ground(s) of appeal under s.35(1) of the Act: (e)
- Date of site visit by Reporter: 2 November 2023

Date of appeal decision: 10 November 2023

Decision

I dismiss the appeal and refuse to grant listed building consent for the matters covered in the listed building enforcement notice. I direct that the notice be upheld, subject to an amendment to section 6 of the notice, to delete 'by 16 December 2023' and replace with 'within three months of this notice taking effect'. Subject to any application to the Court of Session, this notice takes effect on the date of the decision, which constitutes the determination of the appeal for the purpose of Section 35(3) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 (the Listed Buildings Act).

Reasoning

1. The appeal was made on the following grounds as provided for by section 35(1) of the Listed Buildings Act:

(e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted.

2. I am required by Section 14(2) of the Listed Buildings Act to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Under section 64(1) of the Listed Buildings Act, I must also pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

3. The building is category C listed, in a group with 116 and 118a High Street. It lies within the Dalkeith House and Park Conservation Area. The site is one of a number of retail and commercial uses along both sides of the High Street. The appeal site is a prominent location, clearly visible on the main approach into the town centre from the north.

4. Section 5 of the enforcement notice requires three steps: remove the fascia signage panel from the shopfront and make good any holes created for fixings; repaint the shopfront (in one of a range of specified colours); and remove vinyl graphics from the shop windows.

5. Historic Environment Scotland's advice on shopfronts and signs (the HES guidance) highlights the contribution that historic shopfronts can make to the character of a place. It notes that alterations including signage can affect a building's visual amenity and character. New lettering must be carefully designed to respect the character of a building and be located appropriately. Fixings that cut across architectural detail should be avoided.

6. The council points me to policy ENV22 of the Midlothian Local Development Plan (LDP) which seeks to protect the character and appearance of the listed building and I have had regard to this in my assessment.

7. The council highlights that a previous successful townscape heritage scheme has resulted in a number of updated shopfronts in the town centre. This was evident from my site visit, with a number of well designed, attractive shopfronts and signs. The council considers that the signage installed (fascia and vinyl graphics) does not respect the historic character and appearance of the shopfront and detracts from the character, appearance and historic interest of the property. In relation to this part of the conservation area, the council's Conservation Area Character Appraisal highlights opportunities for much better design of shop fronts which frequently detract from the better facades above.

8. At the time of lodging the appeal the appellant indicated that the vinyl graphic signage had been removed and the shopfront repainted. On the date of my site visit, the vinyl signage had not been removed and was apparent on both windows. On my site visit I was also able to confirm that the shopfront has been repainted from pink to grey, as shown on the appellant's photographs. The appellant has confirmed that the paint used is one of the colours specified by the council. While I note that the majority of the shopfront has been repainted, the new paint appears to stop near to the edge of the fascia signage and I assume that it does not continue behind the fascia panel.

9. The appellant wishes to retain the fascia signage, suggesting that it is expensive and time-consuming to change. The fascia signage is modern in terms of style and material, with the lettering in a modern font, in bright, primary colours. I consider that this style and colour contrasts negatively with the traditionally designed shopfront, now in a muted colour.

10. Along the High Street, there are a range of different styles of shopfront and signage, using different colours and fonts. While the property immediately to the south west has fairly modern signage, it does use muted colours and no evidence is submitted on whether that signage required, or has received, listed building consent. Many of the other shopfronts along the High Street use traditional signage, fonts and muted colours. It is evident to me that attempts are being made to improve signage and shopfront design in this part of the town centre.

11. As a result, I consider that neither the fascia signage nor the vinyl graphic signage are in keeping with the character of the listed building or the conservation area. The proposed fascia signage also extends slightly below the original window opening, cutting across the window detailing. I find that the signage (fascia and vinyl graphics) does not preserve the listed building, nor does it preserve or enhance the character or appearance of the conservation area, contrary to the HES guidance and LDP policy ENV 22. While I acknowledge the financial implications for the appellant, I am not convinced that the cost

of and time involved in removing or replacing the signage is reasonable grounds to allow inappropriate signage in this sensitive and prominent location.

12. Taking all of the above into account, I dismiss the appeal in relation to the removal of the fascia signage and vinyl graphics. I recognise that the shopfront has been partially repainted. However, in the absence of any approved signage, the requirement to repaint the shopfront is retained to ensure that the terms of the enforcement notice are fully met following removal of the fascia signage, to preserve the character of the listed building and the conservation area.

13. I note that the time period for compliance in the council's enforcement notice is stated as 16 December 2023. As this would have provided three months for compliance from the date the notice came into effect, I amend the notice to provide similar provision. Accordingly, the appeal is dismissed in its entirety, subject to an amendment on the time period for compliance.

Rosie Leven

Reporter

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR LAND OR
PROPERTY**

***Planning (Listed Buildings and Conservation Areas) (Scotland) Act
1997, as amended (“the Act”)***

LISTED BUILDING ENFORCEMENT NOTICE

Issued by Midlothian Council

16 August 2023

This Notice is served on:

USA Nail and Spa

118 High Street

Dalkeith

EH22 1HZ

The Property Owner

118 High Street

Dalkeith

EH22 1HZ

The Occupier

118 High Street

Dalkeith

EH22 1HZ

Ashiq Commercial Properties Limited

32 Redburn Road

Prestonpans

EH32 9NG

IMPORTANT – CONTINUES ON NEXT PAGE

Hestiview Limited
One Chamberlain Square Cs
Birmingham
B3 3AX

1. THIS IS A FORMAL NOTICE which is issued by Midlothian Council under Section 34 of the Act because the Council considers that there has been a breach of planning control within Sections 6 and 8(1) of the Act at the listed building described below. The Council considers that it is expedient to issue this notice, having regard to the effect of the character of the building as one of special architectural or historic interest and provisions of the development plan.

2. THE LISTED BUILDING AFFECTED

118 High Street, Dalkeith, EH22 1HZ

It forms part of a Category C Listed Building (Listed Building Reference 24412, date of listing 30 June 1983).

It is located within the Dalkeith House and Park Conservation Area.

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

Without listed building consent:

- Repainting of the shopfront
- Installation of fascia signage
- Installation of vinyl graphic signage

4. REASONS FOR ISSUING THIS NOTICE

Section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states “no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The test for whether Listed Building Consent is required is whether the works “would affect its character as a building of special architectural or historic interest”.

IMPORTANT – CONTINUES ON NEXT PAGE

118 High Street is a Category C listed building.

The signage that has been installed without consent does not reflect the traditional features of a modern shop frontage. The use of traditional materials, colours and designs for the shopfront and signage are encouraged to preserve the historic interest of the listed building and prevent detrimental impact to the character and appearance of the conservation area. The signage installed (fascia and vinyl graphics) does not respect the historic character and appearance of the shopfront and detract from the character, appearance and historic interest of the property.

The building has also been repainted. The bright pink colour does not reflect the traditional characters of the conservation area and has a significant adverse impact on the character, appearance, setting and historic context of this C listed building.

In view of the harmful impact of the alterations, enforcement action is required.

5. WHAT YOU ARE REQUIRED TO DO

- 1) Remove the fascia signage panel from the shopfront and make good any holes created for fixings.
- 2) Repaint the shopfront in any of the following colours
 - RAL1014 or
 - RAL7000-7006 or
 - RAL7009-7012 or
 - RAL5008
- 3) Removal of vinyl graphics from the shop windows.

6. TIME FOR COMPLIANCE

Requirement 5(1), 5(2) and 5(3) to be complied with by 16 December 2023.

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 16 September 2023 unless an appeal is made against it beforehand.

IMPORTANT – CONTINUES ON NEXT PAGE

Signed:

A handwritten signature in black ink, appearing to read 'M.A.', is positioned below the 'Signed:' label.

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

Date: 16 August 2023

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 16th September 2023. 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 NO APPEAL

If you do not appeal against this enforcement notice, it will take effect on 16th September 2023 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

Sections 6, 8 and 34-39 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, as amended.

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 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 35 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, as amended. 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, after the end of the period for compliance with this notice, any steps required to be taken have not been complied with, unless a valid appeal has been made to the directorate, the person who is, for the time being the owner of the building shall be in breach of this notice and guilty of an offence. Any person guilty of such an offence shall be liable on summary conviction to a fine of £50,000 or on conviction on indictment to an unlimited fine.

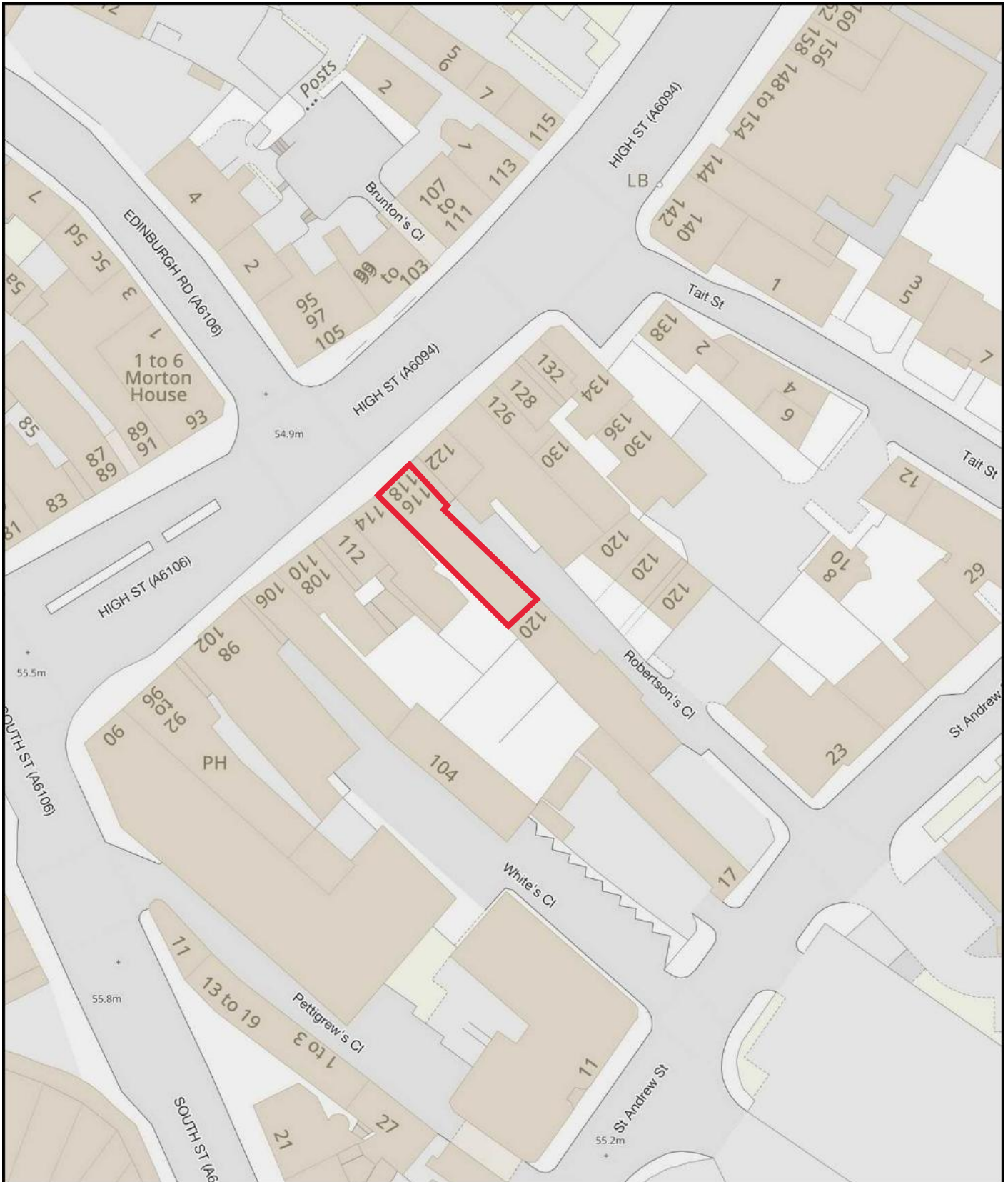
IMPORTANT – CONTINUES ON NEXT PAGE



DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by a Listed Building Enforcement Notice are not taken within the specified period(s) the Council may enter on the land, take those steps and recover as a civil debt from the person who is then the owner, or the lessee of the land, any expenses reasonably incurred.

FURTHER OFFENCES

Compliance with the terms of a listed building 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.



 <p>Education, Economy & Communities Midlothian Council Fairfield House 8 Lothian Road Dalkeith EH22 3AA</p>	<p>Listed Building Enforcement Notice</p> <p>118 High Street Dalkeith EH22 1HZ</p>
<p>Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings</p> <p>Midlothian Council Licence No. 100023416 (2018)</p>	<p>File No. E/23/34</p> <p>Scale: 1:750</p> 



WILFUL DESTRUCTION OF TREES WITHIN THE ESKBANK AND IRONMILLS CONSERVATION AREA AND NON-COMPLIANCE WITH A PLANNING CONTRAVENTION NOTICE REGARDING LAND ADJACENT TO OLD GOLF HOUSE, ESKBANK, DALKEITH

Report by Chief Officer Place

1 REPORT SUMMARY AND RECOMMENDATION

- 1.1 This report relates to the wilful destruction of trees within the Eskbank and Ironmills Conservation Area and the non-compliance with a planning contravention notice issued in relation to land adjacent to Old Golf House, Eskbank, Dalkeith.**
- 1.2 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 against those parties who have carried out the wilful destruction of trees within the Eskbank and Ironmills Conservation Area pursuant to Section 172 of the Town and Country Planning (Scotland) Act 1997 as amended, and have not complied with a planning contravention notice, pursuant to Section 126 of the Town and Country Planning (Scotland) Act 1997 as amended, hereafter referred to as the Act. The maximum penalty on successful prosecution is a fine of up to £20,000 with regard the destruction of trees in a conservation area and £5,000 per offence with regard non-compliance with a planning contravention notice.**

2 BACKGROUND

- 2.1 The site the subject of this report is an area of woodland on land adjacent to Old Golf House, Eskbank, Dalkeith – the land fronts onto Newbattle Road. The land is separated from housing at Newbattle Abby Crescent by a narrow un-adopted lane which provides access to a small number of houses. The land is adjoined by the Old Golf House, The Mill, Barondale House and Barondale Cottages. However, the land is not in the same ownership of any of these properties. Opposite the site on the other side on Newbattle Road are further residential properties. The land is located within the Eskbank and Ironmills Conservation Area.**

- 2.2 On the 25 September 2023 the Council received reports of a potential breach of planning control taking place on the said land – following a site inspection on the same day it was identified that engineering works (excavations and other earthworks) were taking place using mechanical equipment. Those parties undertaking the said works were advised that there was a breach of planning control and works should cease - the works constitute an engineering operation and any works to the trees constituted an offence as they are in a conservation area. The parties undertaking the works declined to cease work.
- 2.3 On 27 September 2023 (11:00) the Council served a Temporary Stop Notice (TSN) pursuant to S144A of the Act as amended. The notice was posted at the site (in two locations) by Sheriff Officers acting on behalf of the Council and also served on the persons identified to be the landowners as a result of detailed title search. Officers were also in attendance at the site and observed the notice being displayed. At that time it appeared that there had been limited further engineering work beyond that which had been observed on the 25 September 2023 and no specific works to trees had taken place. The TSN required the cessation of the engineering works.
- 2.4 On returning to the site later on the 27 September 2023 (14:00) following complaints from local residents, officers identified large piles of branches lying in the adjoining road after works to trees had taken place - Officers of Police Scotland were also on site in response to concerns raised from local residents. In the company of the Police Officers two persons were interviewed under caution by Planning Officers on suspicion of an offence being committed pursuant to S172 of the Act (unauthorised works to trees in a conservation area). It was also identified that the two copies of the TSN posted at different places on the site at 11:00 that day had been removed by persons unknown (although it should be noted that the act of serving the notice in the first place brought its provisions into effect and the removals did not obviate that).
- 2.5 On 28 September 2023 Sheriff Officers served the TSN on the home addresses of the two persons interviewed under caution the previous day. The TSN was also reposted at the site. In addition, given the engineering operations that were judged to have taken place, Planning Contravention Notices (a formal request for information) were also served on the two persons interviewed under caution.
- 2.6 The works to the trees were subsequently assessed by the Council's Landscape officers who confirmed two healthy trees had been felled.
- 2.7 A TSN has effect for 28 days from the date it is served – in this case the TSN was complied with and no further engineering works were undertaken once the TSN was issued.

- 2.8 The unauthorised engineering works were subsequently modified as not to cause harm and as such it is not expedient to instigate any further action.

3 THE LEGISLATIVE POSITION

Trees in Conservation Areas

- 3.1 Trees in conservation areas which are under the protection of a Tree Preservation Order (TPO) are also subject to controls under the TPO regulations – the trees subject to the works set out in this report are not covered by a TPO but are in a conservation area.
- 3.2 The Act makes special provision for trees in conservation areas which are not the subject of a TPO (as in this case). Under Section 172 of the Act anyone proposing to cut down or carry out work to a tree in a conservation area is required to give the planning authority six weeks prior notice. The purpose of this requirement is to give the planning authority an opportunity to consider whether a TPO should be made in respect of the tree/s. Any notified works must be carried out within two years from the date of the notice. It is an offence not to comply with these requirements.
- 3.3 Some of the works were in relation to shrubs and bushes which do not fall within the scope of the Act. However, 1 Witch Elm tree and 1 Ash tree, both with diameter in excess of 75 mm were felled. No notification to undertake such work as required by the Act was given to the Council and none of the exemptions (health and safety justifications) that exist in relation to conservation area trees are applicable in this case. Therefore an offence was committed.
- 3.4 A person/s found guilty of an offence in this regard are liable to a fine up to £20,000.

Planning Contravention Notice

- 3.5 Planning authorities may serve a Planning Contravention Notice (PCN) on anyone who is the owner or occupier of land subject to a planning investigation into an alleged breach of planning control, or is a person with any other interest in the land, or a person who is using or carrying out operations on the land. Planning authorities may therefore serve several notices on different persons in respect of the same suspected breach of planning control.
- 3.6 There is no requirement for the planning authority to obtain clear evidence of a breach of control before issuing a PCN. It is sufficient for the planning authority to suspect that a breach may have occurred, for example, because they have received a complaint from a neighbour of the site regarding an alleged unlawful activity.

- 3.7 Serving a PCN does not constitute 'taking enforcement action' for the purposes of section 123 of the Act. It is an offence not to comply with any requirement in the notice – which is a request for information (not to cease or carry out works). It is an entirely discretionary procedure; there is no requirement to serve a notice before taking formal enforcement action, nor does the serving, or not (as the case may be), of a notice affect any other power exercisable in respect of any breach of planning control.
- 3.8 Failure to comply with a notice within 21 days of it being served is an offence which may be charged by reference to any day or longer period of time. Those found guilty of such an offence will be liable on summary conviction to a fine not exceeding level 3 (£5,000) on the standard scale. An offender may also be convicted of subsequent offences by reference to any period of time (e.g. each additional day) following a preceding conviction for such an offence (section 126 of the Act).
- 3.9 Section 125 of the Act provides that the notice may require the person on whom it is served, so far as s/he is able—
- (a) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
 - (b) to state when any use, operations or activities began;
 - (c) to give the name and postal address of any person known to him to use or have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
 - (d) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operation; and
 - (e) to state the nature of his interest (if any) in the land and the name and postal address of any other person known to him to have an interest in the land.
- 3.10 As noted above, notwithstanding the specific offence in relation to the wilful felling and damage to trees, Planning Officers identified that a breach of planning control appeared to have occurred with regard unauthorised engineering operations taking place on 25 September 2023 and furthermore the same persons involved in the authorised tree works were the persons involved in those engineering operations. Therefore, as noted above, planning contravention notices were served on 28 September 2023 on the persons apprehended at the site on 27 September 2023.
- 3.11 No response has been received to the notices within the prescribed 21 day period and therefore offences have been committed.
- 3.12 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the

majority of instances cases are referred to COPFS by Police Scotland. In addition other bodies known as Specialist Reporting Agencies (SRA's) 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.

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:

“Effective enforcement plays a significant part in protecting the rural and urban environment. In responding to complaints against unauthorised development, enforcement action maintains the integrity of the development control system. The range of enforcement powers allows the enforcement response to be more appropriate, speedier and more successful.”

5. CONCLUSION

- 5.1 It is for COPFS to make the final decision with regard prosecutorial action against the wilful felling and damage to trees protected by reason of being located within a conservation area and in relation to non-compliance with a planning contravention notice. Two persons were caught in the act of wilfully felling trees in a conservation area - this was an offence. Furthermore, those persons having been served with a planning contravention notice, on the basis of unauthorised engineering operations taking place have not responded to the said notices, which is also an offence.
- 5.2 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 Sections 126 and 172 of the Town and Country Planning (Scotland) Act 1997 as amended.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023

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




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

Land Adjacent to Old Golf House, Newbattle Road, Eskbank, Dalkeith, Midlothian, EH22 3LX

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PRE - APPLICATION REPORT REGARDING REMEDIATION WORKS TO PROPOSED EDUCATION CAMPUS: INCLUDING SITE REMEDIATION, FORMATION OF HARDSTANDING, SITE PLATFORMING AND PROVISION OF SITE ACCESS, UTILITIES/SERVICES AND DRAINAGE AT SITE OF THE FORMER MONKTONHALL COLLIERY, NEWTON VILLAGE, DALKEITH (23/00657/PAC)

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre application consultation for remediation works to the proposed education campus: including site remediation, formation of hardstanding, site platforming and provision of site access, utilities/services and drainage. The land comprises part of the former Monktonhall Colliery, Newton Village, which is located within the Shawfair new settlement area.
- 1.2 The pre-application consultation is reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.

2 BACKGROUND

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 30 August 2022. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 A PAN detailing the pre-application consultation for remediation works to the proposed education campus: including site remediation, formation of hardstanding, site platforming, provision of site access, utilities/ services and drainage at the former Monktonhall Colliery, Newton Village, Shawfair was submitted on 4 October 2023.
- 2.3 As part of the pre-application consultation, two public events are taking place at Danderhall Community Hub. One event took place on

Wednesday 15 November 2023 between 4.30-7pm and a second event is scheduled to take place on Wednesday 29 November 2023, also between 4.30-7pm. These events are to be advertised for a four week period in the Midlothian Advertiser which commenced on Thursday 26 October 2023 as well as on the Shawfair website. It is also noted that the agent has placed promotional posters advertising the events in Danderhall Primary School, Danderhall Community Hub, Dalkeith Tesco, Dalkeith Country Park, Dobbies Garden Centre, Millerhill Park/ Playground notice board, Shawfair Train Station notice board, Queen Margret University and businesses located at Shawfair Park including David Lloyd, SQA, Tanshe Care Services, and Chapter One Childcare.

- 2.4 It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance reported to the Committee at its meeting in August 2022) not offer views, as the forum for doing so will be at meetings of the Planning Committee. On the conclusion of the second public event the applicant could submit a planning application for the proposal.
- 2.5 The applicant must wait 12 weeks from the submission of a PAN before submitting a planning application. The earliest date that the planning application for this proposal could be submitted is the 27 December 2023. The subsequent planning application must be accompanied by a Pre Application Consultation Report detailing the consultation undertaken, a summary of written responses and views expressed at the public events, and explanation of how members of the public were given feedback on the applicant's consideration of their views.
- 2.6 Copies of the pre application notices have been sent by the prospective applicant to the local elected members in Ward 3 - Dalkeith, along with Danderhall and District Community Council.

3 PLANNING CONSIDERATIONS

- 3.1 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise. The views of consultees and representors will be material considerations in the assessment of an application for the proposed development.
- 3.2 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017 (MLDP). Section 24(3) of the Town and Country Planning (Scotland) Act 1997 states that where there is an incompatibility between the provisions of the National Planning Framework and the provisions of a local development plan whichever of them is the later in date is to prevail. At present this means that where there is an incompatibility NPF4

takes precedence, this will change when a new local development plan is adopted.

3.3 The application site is located to the north east of Newton Village and forms part of the former Monktonhall Colliery. It is located within the Shawfair new settlement area, to the south of the Millerhill Recycling and Energy Recovery Centre, between the Millerhill Marshalling Yard (to the west) and the Borders Railway (to the east). The south western edge of the site is located within the Shawfair town centre zone. The site is currently not in use.

3.4 The relevant policies of the National Planning Framework 4 (NPF4) are:

- Policy 1 - Tackling the climate and nature crisis;
- Policy 2 - Climate mitigation and adaptation;
- Policy 3 - Biodiversity;
- Policy 9 - Brownfield, vacant and derelict land and empty buildings;
- Policy 13 - Sustainable transport;
- Policy 14 - Design, quality and place;
- Policy 15 - Local Living and 20 minute neighbourhoods;
- Policy 18 - Infrastructure first; Policy 19- Heat Network Zone;
- Policy 21 - Play, recreation and sports;
- Policy 22 - Flood risk and water management;
- Policy 23 - Health and safety;
- Policy 24 - Digital infrastructure; and,
- Policy 27 - City, town, local and commercial centres.

3.5 The relevant policies of the MLDP are:

- STRAT1 - Committed Development;
- STRAT5 - Strategic Employment Land Allocations;
- DEV2 - Protecting Amenity within the Built-Up Area;
- DEV5 - Sustainability in New Development;
- DEV6 - Layout and Design of New Development;
- DEV7 - Landscaping in New Development;
- TRAN1 - Sustainable Travel;
- TRAN5 - Electric Vehicle Charging;
- IT1 - Digital Infrastructure;
- TCR1 - Town Centres;
- ENV10 - Water Environment;
- ENV15 - Species and Habitat Protection and Enhancement;
- ENV16 - Vacant, Derelict and Contaminated Land;
- Policy ENV24 - Other Important Archaeological or Historic Sites;
- ENV25 - Site Assessment, Evaluation and Recording;
- NRG6 - Community Heating;
- IMP1 - New Development;
- IMP2 - Essential Infrastructure to Enable New Development to Take Place; and,

- IMP3 - Water and Drainage.
- 3.6 The MLDP Danderhall/Shawfair settlement strategy clarifies that development should proceed in line with the planning permission for the Shawfair community and the Shawfair Masterplan and Design Guide (and associated addendums) which set out the development framework for the Shawfair development. Within the Shawfair Masterplan and MLDP (Appendix 2) the former Monktonhall Colliery is identified as being suitable for a variety of uses that will be compatible and beneficial to the wider Shawfair development.
 - 3.7 It is noted that the site was included within the application area for the outline planning permission for Shawfair which was granted in 2014 (02/00660/OUT), however condition 35 of the permission established that the land at the former Monktonhall Colliery formed part of an exclusion area where no planning permission has been granted. This was because it was not included within the Section 75 legal agreement and development in this area would need to be subject to further assessment. This condition was carried over into the subsequent variation of the original planning permission which was approved in 2019 (condition 26 of 17/00650/S42).
 - 3.8 At its meetings of December 2015 and February 2017, the Council approved an education strategy for the Shawfair new settlement area which involved using the 'town centre' site for education and community purposes. Although this decision does not mean that planning permission should automatically be granted for the proposed development, the Council decision is a material consideration in supporting the proposed development which would help facilitate the provision of an education campus on this site.
 - 3.9 The site was also granted planning permission in principle (19/00112/PPP) in September 2019 for the erection of a community facility incorporating a secondary and primary school, early learning provision and family learning, leisure, healthcare and Class 4 business facilities. This consent lapsed in 2022 but nonetheless supports the principle of the site being remediated to enable a future use as an education campus.
 - 3.10 The provision of an education campus is an integral part of the Shawfair development. As such, if an application is submitted, there will be a presumption in favour of proposed development for the remediation works to facilitate the delivery of a proposed education campus at the site subject to it complying with the planning permission for the Shawfair area and the Shawfair Masterplan and Design Guide.

4 PROCEDURES

- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.

4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.

4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

5 RECOMMENDATION

- 5.1 It is recommended that the Committee notes:
- a) the provisional planning position set out in this report;
 - b) that any comments made by Members will form part of the minute of the Committee meeting; and
 - c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023

Application No: 23/00657/PAC

Applicant: Shawfair LLP

Agent: Lucy Moroney- Colliers

Validation Date: 4 October 2023

Contact Person: Eilidh Paul

Email: Eilidh.Paul@midlothian.gov.uk

Background Papers: 02/00660/OUT, 17/00650/S42 and 19/00112/PPP

Attached Plan: Location plan



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

Proposal of application notice for remediation works to proposed education campus: including site remediation, formation of hardstanding, site platforming, provision of site access, utilities/ services and drainage at Site of Former Monktonhall Colliery, Newton Village, Dalkeith,

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File No: 23/00657/PAC



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Scale: 1:6,000
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PRE - APPLICATION REPORT REGARDING EXTENSION TO EXISTING QUARRY; RETENTION OF PROCESSING PLANT; INSTALLATION OF ANCILLARY EQUIPMENT AND ASSOCIATED WORKS AT TEMPLE QUARRY, GOREBRIDGE (23/00662/PAC)

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the submission of a Proposal of Application Notice (PAN) and corresponding pre-application consultation for an extension to an existing quarry; retention of processing plant; installation of ancillary equipment and associated works at Temple Quarry, Gorebridge.
- 1.2 The pre-application consultation is reported to Committee to enable Councillors to express a provisional view on the proposed major development. The report outlines the proposal, identifies the key development plan policies and material considerations and states a provisional without prejudice planning view regarding the principle of development.

2 BACKGROUND

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland, was reported to the Committee at its meeting of 30 August 2022. The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 A PAN detailing the pre application consultation for an extension to an existing quarry; retention of processing plant; installation of ancillary equipment and associated works at Temple Quarry, Gorebridge was submitted on 10 October 2023.
- 2.3 In addition to the PAN the applicant has also submitted a request for a scoping opinion (23/00661/SCO) in relation to an environmental impact assessment (EIA) – this request is currently subject to consultation and assessment.
- 2.4 As part of the pre-application consultation process, two public events are scheduled to be held. The first took place at Middleton Village Community Hall on 14 November 2023. The second is scheduled for

16 January at the same venue. On the conclusion of the second public event the applicant could submit a planning application for the proposal. It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance reported to the Committee at its meeting in August 2022) not offer views, as the forum for doing so will be at meetings of the Planning Committee.

- 2.5 An applicant must wait 12 weeks from the date of submission of a PAN before submitting a planning application. The earliest date that the planning application for this proposal could have been submitted is 3 January 2024, subject to the second public event being concluded. The subsequent planning application must be accompanied by a Pre-Application Consultation Report detailing the consultation undertaken, a summary of written responses and views expressed at the public events, and explanation of how the applicant took account of the views expressed and an explanation of how members of the public were given feedback on the applicant's consideration of their views.
- 2.6 Copies of the pre application notices have been sent by the prospective applicant to the local elected members in Ward 6 – Midlothian South and Moorfoot Community Council.

3 PLANNING CONSIDERATIONS

- 3.1 In assessing any subsequent planning application the main planning issue to be considered in determining the application is whether the currently proposed development complies with development plan policies unless material planning considerations indicate otherwise. The views of consultees and representors will be material considerations in the assessment of an application for the proposed development. The Council's Resource Extraction Supplementary Guidance will also be a material consideration in the assessment of an application for the proposed development.
- 3.2 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017 (MLDP). Section 24(3) of the Town and Country Planning (Scotland) Act 1997 states that where there is an incompatibility between the provisions of the National Planning Framework and the provisions of a local development plan whichever of them is the later in date is to prevail. At present this means that where there is an incompatibility NPF4 takes precedence, this will change when a new local development plan is adopted.
- 3.3 The current quarry measures 42.5 hectares in area and is situated at Outerston, which is 2.5 kilometres southeast of Temple and 2.5 kilometres southwest of North Middleton. The material is transported, via a conveyor belt, to a processing area at Guildie Howes, which measures 15 hectares and is 700 metres southwest of North Middleton. The current permissions for the onsite operations (12/00384/DPP, 12/00387/DPP and 12/00388/DPP) expire 31

December 2025. The proposed extension area is an area of agricultural fields to the north of the Guildie Howes site.

- 3.4 The extension site measures 25.5 hectares and comprises six agricultural fields, a small pond and an area of wetland. The site is bounded by the A7 to the northeast, Guildie Howes Road and an agricultural field to the southeast, and an unclassified road and agricultural field to the southwest. Processing of sand and gravel would be carried out at the existing processing area, with the two sites being linked via a conveyor belt. Extraction at the existing site would cease and the land there would be restored for agricultural use.
- 3.5 The sites of both the expansion area and the processing area are designated as countryside in the MLDP. The sites are not identified in the MLDP as being Areas of Search for Surface Mineral Extraction.
- 3.6 The relevant policies of the National Planning Framework 4 (NPF4) are:
- Policy 1 Tackling the climate and nature crises
 - Policy 2 Climate mitigation and adaptation
 - Policy 3 Biodiversity
 - Policy 4 Natural Places
 - Policy 5 Soils
 - Policy 6 Forestry, woodland and trees
 - Policy 7 Historic assets and places
 - Policy 12 Zero Waste
 - Policy 13 Sustainable Transport
 - Policy 20 Blue and green infrastructure
 - Policy 22 Flood risk and water management
 - Policy 23 Health and Safety
 - Policy 26 Business and industry
 - Policy 29 Rural Development
 - Policy 33 Minerals
- 3.7 The relevant policies of the MLDP are:
- DEV1 – Community Identity and Coalescence
 - DEV5 – Sustainability in New Development
 - DEV6 – Layout and Design of New Development
 - DEV7 – Landscaping in New Development
 - ECON5 – Industries with Potentially Damaging Impacts
 - TRAN1 – Sustainable Travel
 - TRAN2 – Transport Network Interventions
 - TRAN4 – Freight
 - MIN1 – Areas of Search for Surface Mineral Extraction
 - MIN2 – Surface Mineral Extraction
 - RD1 – Development in the Countryside
 - ENV6 – Special Landscape Areas
 - ENV7 – Landscape Character
 - ENV9 – Flooding

- ENV10 – Water Environment
- ENV11 – Woodland, Trees and Hedges
- ENV15 – Species and Habitat Protection and Enhancement
- ENV17 – Air Quality
- ENV18 – Noise
- ENV19 – Conservation Areas
- ENV22 – Listed Buildings
- ENV25 – Site Assessment, Evaluation and Recording
- IMP1 – New Development
- IMP2 – Essential Infrastructure Required to Enable New Development to Take Place
- IMP3 – Water and Drainage

3.8 If an application is submitted there will be a presumption against mineral extraction at this location as the site is outwith the areas of search for surface mineral extraction identified in the MLDP. The planning history of the surrounding area and in particular the historic use of the Guildie Howes site and the former Middleton Limeworks to its south will be material considerations in the assessment of any application. Other considerations in the assessment of any application will include the development's impact on the landscape, the water environment, biodiversity, trees, noise, dust, residential amenity, ground contamination and road safety.

4 PROCEDURES

- 4.1 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures provides for Councillors to express a 'without prejudice' view and to identify material considerations with regard to a major application.
- 4.2 The Committee is invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.
- 4.3 The Scottish Government's Guidance on the Role of Councillors in Pre-Application Procedures advises that Councillors are expected to approach their decision-making with an open mind in that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

5 RECOMMENDATION

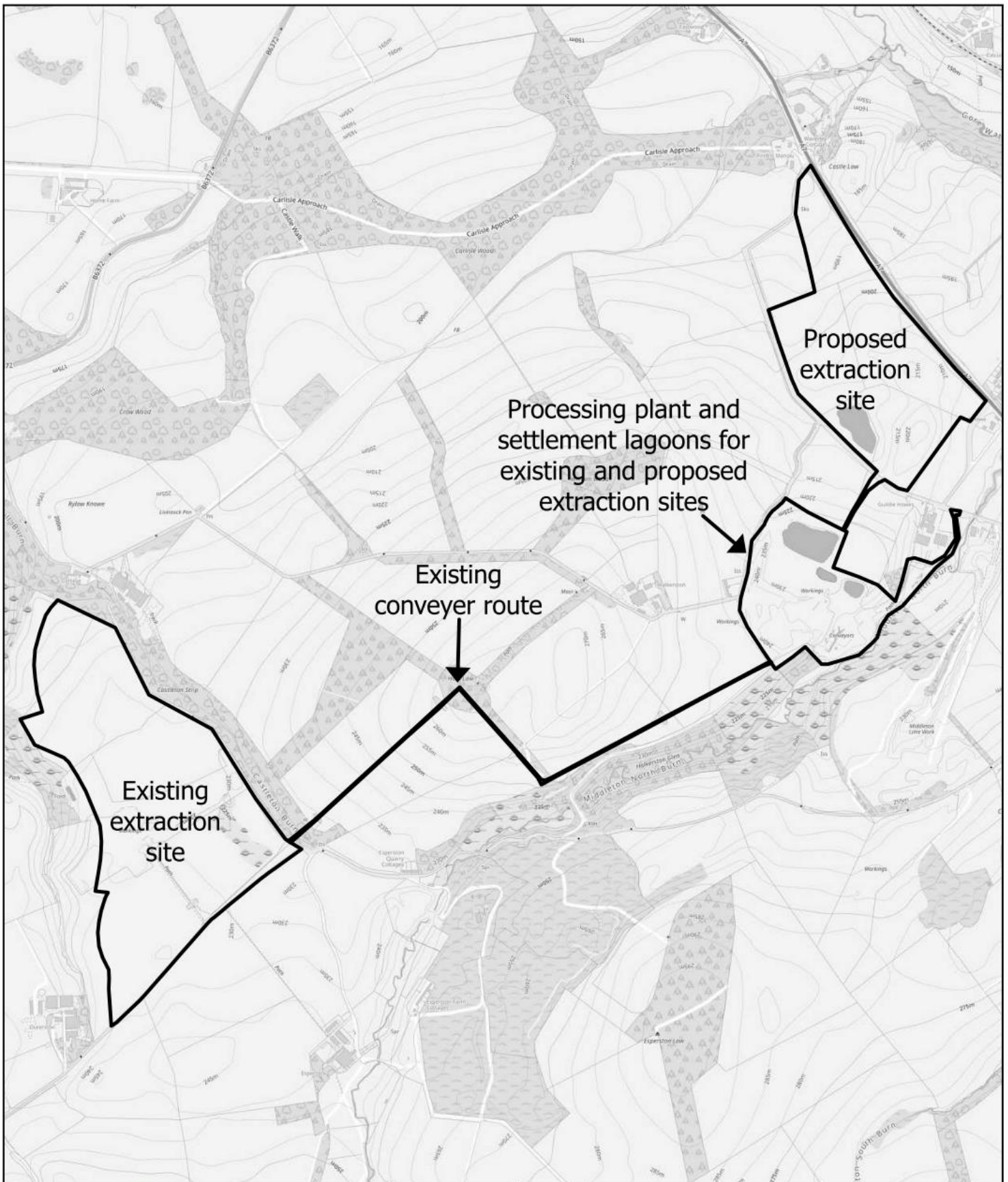
- 5.1 It is recommended that the Committee notes:
- a) the provisional planning position set out in this report;
 - b) that any comments made by Members will form part of the minute of the Committee meeting; and

- c) that the expression of a provisional view does not fetter the Committee in its consideration of any subsequent formal planning application.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023

Application No: 23/00662/PAC
Applicant: Breedon Trading Limited
Agent: N/A
Validation Date: 10 October 2023
Contact Person: Graeme King
Email: graeme.king@midlothian.gov.uk
Background Papers: 23/00662/SCO, 12/00384/DPP, 12/00387/DPP and 12/00388/DPP
Attached Plan: Location plan



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

Extension to existing quarry; retention of processing plant;
installation of ancillary equipment and associated works
Temple Quarry, Gorebridge

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SECTION 42 APPLICATION 23/00532/S42 TO AMEND CONDITION 11 (PHASING OF CONSTRUCTION WORKS RELATIVE TO SITE ACCESS ENABLING WORKS) IMPOSED ON A GRANT OF PLANNING PERMISSION 19/01018/PPP FOR THE REDEVELOPMENT OF EXISTING SNOWSPORTS CENTRE TO INCLUDE ADDITIONAL LEISURE FACILITIES, HOTEL, FUNCTION SUITE, ANCILLARY RETAIL AND RESTAURANT USES, FORMATION OF ACCESS ROAD AND CAR PARKING AT MIDLOTHIAN SNOWSPORTS CENTRE, BIGGAR ROAD, HILLEND.

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 In January 2021 planning permission in principle was granted for the redevelopment of the existing Midlothian Snowsports Centre to expand the snowsports facilities and associated leisure and commercial uses (19/01018/PPP). Subsequently, matters specified in conditions applications have been received setting out detailed matters secured by conditions of planning permission 19/01018/PPP. Work on the new access arrangements and car park have commenced, but are not completed. The current application seeks to amend Condition 11 to enable onsite work on the enhanced leisure and commercial facilities to commence in advance of the new access arrangements and car park being completed – condition 11 currently requires the new access arrangements to be in place prior to work commencing on the enhanced leisure and commercial uses.**
- 1.2 There have been no representations received and a consultation response from Transport Scotland.**
- 1.3 The relevant development plan policies are policy 18 of the National Planning Framework 4 (NPF4) and policy VIS3 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 comprises the existing Midlothian Snowsports Centre located near the north west boundary of Midlothian within the Pentland Hills Regional Park. The site fronts the A702 Trunk Road where access is taken onto a single-track approach road to the facilities and car park. Buildings, facilities and car parking associated with the centre are located to the western extent of the site on the sloping gradient between the A702 and the artificial ski slopes. There is a significant gradient to the east down towards the A702.
- 2.2 The facilities at the Snowsports Centre include the main reception building, two main slopes (one of which is the longest artificial ski slope in the UK), three nursery slopes, tubing runs, a chairlift allowing access to the Pentland Hills and a café. The site previously included a freestyle jump surface, but this is now closed. The centre is used by schools and members of the public.
- 2.3 There are several paths through the Pentland Hills including core path MID/39/1 running through the site towards the southern boundary connecting the A702 to the Pentland Hills.
- 2.4 There is significant tree cover on the eastern lower slopes of the site and towards the site entrance and along this section of the approach road from the A702. The tree cover has the impact of screening much of the existing development from views from the A702 and from within the recreational areas of the regional park. It also reduces the impact of existing car parking areas. The landform around the site includes significant changes in levels with some of the variation serving to help to screen the site from wider views. The elevated nature of the site means that some of the existing MSC is open to view, the ski slopes being regional features in the landscape.

3 PROPOSAL

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019) (hereafter referred to as the Act), is to amend the wording of condition 11 of planning permission 19/01018/PPP. The condition currently reads as follows:

No part of the development shall begin demolition or construction unless or until: i. The new access has been provided in accordance with the approved matters specified in conditions, or separate planning permission, as detailed in Condition 10 and is available for use by Calderstones and Midlothian Snowsports Centre; ii. All new footways have been provided in accordance with the matters approved in terms of Condition 10iii; iii. The bus turning area has been appropriately relocated revised as appropriate in terms of Condition 10iv; and, iv A

Construction Management Plan has been submitted to and approved by the Planning Authority in consultation with Transport Scotland which allows works to the private access road and car parking to commence at the same time as the new access approved in terms of Condition 10i is under construction.

3.2 It is proposed that the condition be amended to read as follows:

No part of the development shall become operational unless or until: i. The new access has been provided in accordance with the approved matters specified in conditions, or separate planning permission, as detailed in Condition 10 and is available for use by Calderstones and Midlothian Snowsports Centre; ii. All new footways have been provided in accordance with the matters approved in terms of Condition 10iii; iii. The bus turning area has been appropriately relocated revised as appropriate in terms of Condition 10iv; and, iv. A Construction Management Plan has been submitted to and approved by the Planning Authority in consultation with Transport Scotland which allows works to the private access road and car parking to commence at the same time as the new access approved in terms of Condition 10i is under construction.

3.3 The only change is in the first sentence: instead of ...*shall begin demolition or construction*, the applicant proposes to replace this with ...*shall become operational*. The effect of this change would be to allow construction works to proceed to other parts of the development other than the access road and car park whilst the works to the main site entrance at the A702 are underway. The junction improvement works must be completed before the upgraded snowsports centre becomes operational.

3.4 The implications of this change are purely transport related. The original condition is designed to control activities (and therefore an increase in traffic movements in and out of the Midlothian Snowsports Centre site) until after the works to the junction with the A702 have been complete. These works are described in planning permission 22/00169/DPP and provide signal-controlled movements through the junction and a dedicated right-hand turning lane into the site from the north (the city). By accepting the amendment, this would allow the applicant to undertake a wider extent of construction activities before the upgrades to the A702 have been completed, but the new facilities will not come into use until the new access is completed and operational.

3.5 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission.

- 3.6 Although a Section 42 application is a new planning application in law the Act states *“on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. The principle, layout and form of development are not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply.

4 BACKGROUND

- 4.1 Planning permission in principle 19/01018/PPP for redevelopment of existing snowsports centre to include additional leisure facilities, tourist accommodation, hotel, function suite, ancillary retail and restaurant, formation of access road and car parking (this application is accompanied by an environmental impact assessment report submitted under the terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 was granted planning permission in February 2021.
- 4.2 Matters specified in conditions application 21/00536/MS to discharge condition 3 (Phasing Plan) relating to the redevelopment of existing snowsports centre to include additional leisure facilities, tourist accommodation, hotel, function suite, ancillary retail and restaurant, formation of access road and car parking of 19/01018/PPP was granted in March 2022.
- 4.3 Matters specified in conditions 21/00912/MS to discharge conditions 4 (landscaping), 6 (means of internal access etc), 9 (scheme of lighting), 10 (access to the A702), 21 (archaeology), 28 (CEMP), 30 (electric vehicle charging points), 32 (scheme of biodiversity enhancement) and 33 (broadband) relating to the redevelopment of existing snowsports centre to include additional leisure facilities, tourist accommodation, hotel, function suite, ancillary retail and restaurant, formation of access road and car parking of 19/01018/PPP was granted in August 2022.
- 4.4 Planning application 22/00169/DPP for alterations to existing junction, bus turning area and car park; resurfacing and associated works was granted planning permission in August 2022.
- 4.5 Planning application 22/00792/DPP for the erection of 22 floodlighting columns (retrospective) was granted planning permission in August 2023.
- 4.6 Matters specified in conditions 23/00124/MS to discharge conditions 4 (landscaping), 5 (buildings), 19, 20 and 32 (biodiversity) relating to the redevelopment of existing snowsports centre to include additional leisure facilities, tourist accommodation, hotel, function suite, ancillary retail and restaurant, formation of access road and car parking of

19/01018/PPP was granted in October 2023. This application included amendments to some of the details submitted under 21/00912/MSC.

- 4.7 The application site exceeds two hectares and therefore the proposed development constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby is required to be determined by the planning committee.

5 CONSULTATIONS

- 5.1 **Transport Scotland** does not object to the application – Transport Scotland have reviewed the proposal and have been in active dialogue with the applicant as the works to the A702 junction have progressed. The works uncovered a previously unknown water main which had implications for the delivery of the access (planning application 22/00169/DPP). Whilst a solution is devised, the applicant wishes to allow construction of other elements of the development so as not to delay the project unnecessarily. Transport Scotland accept that the delay to works to the A702 should not delay the whole project, on the proviso that temporary works/arrangements are put in place to allow construction traffic to use the junction during the implementation of the approved access and that the permanent access solution is completed prior to the enhanced facilities come into use.

6 REPRESENTATIONS

- 6.1 No representations have been received.

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 **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.

Midlothian Local Development Plan 2017 (MLDP)

- 7.4 Policy **VIS3: Midlothian Snowsports Centre** supports development proposals for the upgrading and enhancement of the Midlothian Snowsports Centre and ancillary facilities in order to secure its future as a centre for artificial skiing and snowboarding. Proposals with significant adverse environmental impacts will not be supported unless satisfactory mitigation measures are included in the proposal.

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 consultation response received is a material considerations.
- 8.2 The applicant's justification for the amendment to condition 11 is based on the discovery of a water main near the site of the works to the A702 than anticipated – the siting and depth of the water main means that an alternative road design needs to be considered. In order to maintain momentum of the wider project, construction works need to be able to proceed before the completion of the A702 junction works. A revised Construction Traffic Management Plan is presented to show how the junction would operate safely with construction traffic access/egress.
- 8.3 Transport Scotland, who have responsibility for the A702, accept the proposed amendment to condition 11 because there appears to be a design solution to the water main complication which will enable the construction of the new access onto the A702, implementing planning application 22/00169/DPP, and the protection of the water main. Transport Scotland consider that temporary junction works are needed to maintain the safe operation of the junction. They recommend approval of the application but with an additional condition securing agreement and implementation of these temporary works. The layout and specification of these works has been agreed with the applicant.
- 8.4 Given the circumstances the project finds itself in, it is appropriate for the planning authority to consider variations and changes to the conditions of a planning permission to deal with unforeseen circumstances. In this case, it is important to ensure that the delivery of development promoted by policy VIS3 of the MLDP comes forward in the wider public interest. At the same time, the development must manage its impact on the infrastructure which supports it, namely the vehicular connection to the trunk road network. This is required by NPF4 Policy 18: Infrastructure First.
- 8.5 Transport Scotland remain concerned that the use of construction traffic on the current junction arrangement could have a significant detrimental impact on road safety. Therefore, temporary works are required to accommodate the additional flows to and from the Midlothian Snowsports Centre. These should be secured by condition – the proposed new condition is:

Notwithstanding the phasing plan secured by Condition 3 and approved under application 21/00536/MS, no part of the development shall begin demolition or construction unless or until the proposed temporary traffic management works (including associated lighting, drainage, road sign, and road markings works) have been constructed to a layout and type (and method) of construction generally in accordance with Drawing TM-O 70868

TM004, Drawing TM-O 70868 TM004A, and complying with Transport Scotland's Requirements of Temporary Traffic Management, all to the satisfaction of the Planning Authority, in consultation with Transport Scotland as the trunk road authority.

Reason: *To minimise interference with the safety and free flow of traffic on the trunk road.*

- 8.6 Subject to adherence to this condition, the proposed amendment to condition 11 can be accepted.
- 8.7 On this basis, the proposed amendment is accepted as helping to deliver of the development strategy of the MLDP whilst mitigating the impacts of development on local transport infrastructure as required by NPF4 Policy 18.
- 8.8 The approval of the Section 42 application to amend conditions of the original consent results in the release of a new planning permission in principle. This can cause procedural issues when it comes to discharging those conditions which have been discharged already for parts of the scheme, whilst others remain. - If a new planning permission in principle is granted, then the applicant would technically be operating in breach of planning control – however, rather than asking the applicant to resubmit all previous information to discharge the conditions that have been discharged, it is proposed that the conditions are applied to this consent. Then the planning authority shall write to the applicant discharging those same conditions of 23/00532/S42 that were discharged under the MSC applications submitted under 19/01018/PPP (namely 21/00536/MSC, 21/00912/MSC and 23/00124/MSC).
- 8.9 The inclusion of an additional condition, referenced above in paragraph 8.5, will necessitate the re-numbering of subsequent conditions. The additional condition would be condition 12.

9 RECOMMENDATION

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

The amendment to the conditions of the planning permission in principle will allow for the delivery of the redeveloped Midlothian Snowsports Centre, as supported by policy VIS3 of the Midlothian Local Development Plan 2017. At the same time, the permission secures mitigation of the impacts of development on local infrastructure, in accord with National Planning Framework 4 (NPF4) Policy 18(b). Therefore, the proposed amendment is in accordance with the development plan and there are no material considerations which outweigh this support for the proposed development.

Subject to the following conditions:

1. Notwithstanding that delineated on application drawings/stated in documents submitted with the application the glamping pods have now been removed from this application and no consent is hereby granted for the glamping pods proposed within the site.

Reason: *The glamping pods and the associated light from the pods and related facilities (such as pathways) are not yet designed in sufficient detail to enable appropriate assessment of the impact of the lighting.*

2. In addition to the conditions attached to this consent, all of the matters identified in Table 14.2 within Chapter 14 Schedule of Mitigation of the EIAR shall be complied with and addressed in the detailed design of the development. All application(s) for Matters Specified in Conditions required will refer to this table and show compliance with the contents, it shall show compliance with the parameters set out in the EIAR, as well as in relation to the conditions attached to the consent.

Reason: *To ensure that all of the mitigation measures identified in the EIAR are addressed in the detailed design of the proposed development and that the development is well designed and that it fits within the parameters identified in the EIAR.*

3. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of the hotel, leisure facilities, retail provision, the provision of landscaping, SUDS provision and transportation infrastructure (including roads, footpaths, cycle trails and car and coach and bus parking). 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 a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include where relevant to the particular phase of development:

- i. existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum. It should be noted that SEPA recommend building floor levels are set above surrounding ground levels in order that pooled water does not cause building problems;
- ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
- iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. programme for completion and subsequent maintenance of all soft and hard landscaping;
- vii. drainage details and sustainable urban drainage systems to manage water runoff;
- viii. proposed car park configuration and surfacing;
- ix. proposed footpaths and enhanced safety on the access road for cyclists as well as off road cycle trails; and,
- x. 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 (vi). 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 the NPF4 and the Midlothian Local Development Plan 2017.*

5. With the exception of the works to the access road and main trunk road junction, 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 buildings and other structures has been submitted to and approved in writing by the planning authority. 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. No building shall have an under-building that exceeds 0.5 metres in height above ground level. 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 NPF4 and the Midlothian Local Development Plan 2017.*

6. 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 site access, roads, footpaths, cycle ways and transportation movements has 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. the proposed vehicular, cycle and pedestrian accesses into the site;
 - iii. the proposed roads (including turning facilities), footpaths and cycle ways including suitable walking and cycling routes linking the development with the local public transportation network;
 - iv. proposed visibility splays, traffic calming measures, lighting and signage;
 - v. proposed construction traffic access and haulage routes;
 - vi. proposed car parking arrangements, including the provision of electric vehicle parking areas and details of the means of car charging; and
 - vii. 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.*

7. 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.
8. On completion of the decontamination/ remediation works referred to in Condition 7 above and prior to any part of the development 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 part of the development shall be occupied unless or until the planning authority have approved the required validation.

Reason for condition 7 and 8: 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.

9. Development shall not begin until an application for approval of matters specified in conditions for proposed lighting within the site including of the car parking areas, service areas, roads and footpaths have been submitted to and approved in writing by the planning authority in consultation with Transport Scotland, as trunk roads authority. The scheme shall be designed to minimise the spread of light in the night sky. Development shall therefore be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: To reduce light pollution to the night sky and to ensure that there will be no distraction or dazzle to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished. It is noted that an initial lighting assessment has been completed which has indicated that the proposed development will not cause significant adverse impacts. However it is proposed by the applicant that a detailed assessment will be completed at the next stage(s) of the process and this will be submitted to and approved by the planning authority.

10. Development shall not commence on the site until an application for matters specified in condition has been submitted to and approved by the planning authority in consultation with Transport Scotland (as trunk roads authority), for:
- i. The access onto the A702, as generally illustrated on SWECO drawing no 65200975/SK009 Rev A and

- incorporating the recommendations made in the Road Safety Audit, to a layout compliant with DMRB CD 123, or other means of access, to a layout standard compliant with DMRB, as may be approved under separate planning approval that can also be demonstrated to accommodate the level of development under consideration; ii. The proposed means of access shall include details of a footway to be provided across any part of the existing access that will not form part of the proposed access, as appropriate in terms of Condition 11i;
- iii. Any new footway provision shall be constructed to adoptable standard; and
 - iv. The means of relocating/revising the layout of the bus turning area, together with a method and operational statement to be approved by the bus operators. This is to ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road.

Reason: *To minimise interference with the safety and free flow of the traffic on the trunk road.*

- 11. No part of the development shall become operational unless or until:
 - i. The new access has been provided in accordance with the approved matters specified in conditions, or separate planning permission, as detailed in Condition 10 and is available for use by Calderstones and Midlothian Snowsports Centre;
 - ii. All new footways have been provided in accordance with the matters approved in terms of Condition 10iii;
 - iii. The bus turning area has been appropriately relocated/revised as appropriate in terms of Condition 10iv; and
 - iv. A Construction Management Plan has been submitted to and approved by the planning authority in consultation with Transport Scotland which allows works to the private access road and car parking to commence at the same time as the new access approved in terms of condition 10i is under construction.

Reason: *To minimise interference with the safety and free flow of the traffic on the trunk road.*

- 12. Notwithstanding the phasing plan secured by Condition 3 and approved under application 21/00536/MS, no part of the development shall begin demolition or construction unless or until the proposed temporary traffic management works (including associated lighting, drainage, road sign, and road markings

works) have been constructed to a layout and type (and method) of construction generally in accordance with Drawing TM-O 70868 TM004, Drawing TM-O 70868 TM004A, and complying with Transport Scotland's Requirements of Temporary Traffic Management, all to the satisfaction of the planning authority, in consultation with Transport Scotland as the trunk road authority.

Reason: *To minimise interference with the safety and free flow of traffic on the trunk road.*

13. Prior to the commencement of the first phase of development (and any subsequent phase of development if there has been a change in design which impacts on vehicle numbers), additional traffic modelling shall be undertaken. The updated modelling assessment will include the final design of the site access and the proposed signalised junction to serve the Lothianburn Hotel development to the north. This assessment shall be submitted to and agreed in writing with the planning authority after consultation with the roads authority, Transport Scotland. This modelling will allow a better understanding of the impact each junction has on the other.

Reason: *To minimise interference with the safety and free flow of the traffic on the trunk road.*

14. Prior to the commencement of any phase of development, a Public Transport Strategy shall be submitted to and agreed in writing with the planning authority in consultation with the roads authority, Transport Scotland, that considers the various public transport improvements cited in the transport assessment. Thereafter the approved Public Transport Strategy shall be implemented at the site.

Reason: *To ensure that the development is adequately served by public transport services; and to minimise any interference with the safety and free flow of traffic on the trunk road network.*

15. Prior to the occupation of any part of the development, a comprehensive travel plan that sets out proposals for reducing dependency on the private car has been submitted and approved in writing by the planning authority, in consultation with Transport Scotland, as the trunk roads authority. The travel plan shall identify the measures to be implemented, the system of management, monitoring, review, reporting and the duration of the plan. Once approved the travel plan shall be implemented at the site.

Reason: *To be consistent with the requirements of NPF4.*

16. Prior to the commencement of any development on the site, details of the parking strategy within the site shall be submitted for the approval of the planning authority, in consultation with Transport Scotland, as the trunk roads authority. Thereafter the approved parking strategy shall be implemented at the site.

Reason: *To be consistent with the requirements of NPF4*

17. There shall be no drainage connections to the trunk road drainage system.

Reason: *To ensure that the efficiency of the existing drainage network is not affected.*

18. The proposed development shall be limited to the scale assessed within the transport assessment.

Reason: *To restrict the scale of the development to that assessed in relation to the transport assessment.*

19. Prior to the commencement of any development on the site, a Construction Traffic Management Plan for each phase of the development and addressing the relevant construction of the consultation with the trunk road authority, Transport Scotland.

Reason: *To minimise interference with the safety and free flow of the traffic on the trunk road; to ensure the safety of pedestrians and cyclists using the trunk road and adjacent facilities; and to be consistent with current guidance and best practice.*

20. The design and layout shown on the Location Plan illustrating Proposed Development is not approved as the development shown is illustrative only and is yet to be finalised and will be the subject of further submission and assessment.

Reason: *The application is for planning permission in principle and the details delineated within the illustrative site layout plan prospective images are for illustrative purposes only.*

21. The proposed retail use on the site shall remain ancillary to the overall use of the site as a leisure destination and Snowsports Centre. The retail use shall be limited to a maximum of 1000m² GIFA.

Reason: *General retail use on this site would not comply with the Midlothian Local Development Plan, however retail uses which remains ancillary to the main use of the site as a leisure destination and Snowsports Centre and of appropriate floor space is considered acceptable.*

22. Development shall not begin until an application for approval of matters specified in conditions for a programme of archaeological works (Evaluation) focussing on those areas unaffected by woodland and existing buildings, has been submitted to and approved in writing in by the planning authority. The location of the areas to be investigated will be subject to agreement in advance with the planning authority and the archaeology officer. The approved programme of works shall be carried out by a professional archaeologist prior to any construction works, demolition or pre commencement ground works take place unless otherwise agreed in writing by the planning authority.

Reason: *To ensure this development does not result in the unnecessary loss of buried archaeological material in accordance with policies ENV24 and ENV 25 of the Midlothian Local Development Plan 2017.*

23. With regard to construction site operations the following noise levels shall be met - 75 dB LAeq(12hr) (façade), with the best practicable means (BPM) at all times in accordance with BS5228 guidance.

The hours of operation during the construction period shall be restricted to:

Mon – Fri 08:00 – 19:00 hrs

Saturday 08:00 – 13:00 hrs

24. All fixed plant / machinery noise shall comply with the following:-
Night time (22:00 – 07:00 hrs) NR25 (internal, open window)
Day time (07:00 - 22:00 hrs) - NR30 (internal, open window)
25. For commercial / industrial / leisure noise affecting residential use (existing or proposed) when rated in accordance with BS 4142:2014, shall be less than +5dB above an agreed representative LA90.
26. In relation to all environmental, commercial, leisure sources, the combined noise level shall comply with the Night Noise Guidelines for Europe 2009 - 42 dB L_{Amax} (fast) (internal) for the avoidance of sleep disturbance; 40 dB(A) L_{night} (external) as defined by the Environmental Noise Directive, to protect from the long term adverse effects of night noise. The Midlothian Council design standards in relation to anonymous noise sources for residential uses are as follows:
- 55 dB LAeq(1hr) for daytime external garden amenity
 - 35 dB LAeq(1hr) for daytime internal living apartment
 - 30 dB LAeq(15min) for night time internal living apartment (excluding fixed plant controlled by NR25 or NR20 if tonal).

Reasons for conditions 23 to 26: To ensure noise for the site during the construction and operational period do not significantly adversely impact on the nearby sensitive receptors.

27. In relation to dust generation, the Air Quality Assessment states that with no mitigation during the construction phase, the significance of dust soiling and PM10 is, at worst, medium adverse. To minimise impact on sensitive receptors it is recommended that a dust management plan is submitted to and approved in writing by the planning authority and thereafter the approved dust management plan is implemented in full during the construction period.

Reason for condition: *Further assessment in relation to Air Quality and dust generation during the construction period in order to satisfactorily mitigate the potential impact of the development.*

28. There shall be no external storage of materials, packaging or other items out with storage or other buildings, unless approved by the planning authority along with appropriate screening.

Reason: *Given the prominence of the site and the provision of storage buildings on the site the need for further storage on the site should be minimised and provided only where absolutely necessary and where appropriate screening is provided.*

29. 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. The CEMP shall include:
- i. signage for the construction traffic, pedestrians and other users of the site;
 - ii. controls on the arrival and departure times for the construction vehicles and for site workers;
 - iii. details of piling methods (if employed);
 - iv. details of earthworks;
 - v. control of emissions strategy;
 - vi. a dust management plan strategy;
 - vii. waste management and disposal of material strategy;
 - viii. 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;
 - ix. prevention of mud/debris being deposited on the public highway; and,
 - x. material and hazardous material storage and removal.

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. The applicant has submitted an outline CEMP in support of the application at Chapter 14 of the EIAR.*

30. Permitted development under Class 40, section (1) (e) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, replaced or superseded by any subsequent regulation is expressly excluded within the site and no electricity substation shall be erected within the site unless details of its position and appearance have been submitted to and approved in writing by the planning authority.

Reason: *To ensure that any substation is unobtrusive and not unduly close to any occupied building.*

31. 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 provision and use of electric vehicle charging stations 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 TRAN5 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 scheme of sustainability/biodiversity for the site, including the provision of bricks and boxes for bats and swifts, and biodiversity friendly landscaping throughout the development 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 Midlothian Local Development Plan 2017.*

33. 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 superfast broadband has been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast broadband prior to the occupation of each commercial building. The delivery of superfast broadband shall be implemented as per the approved details.

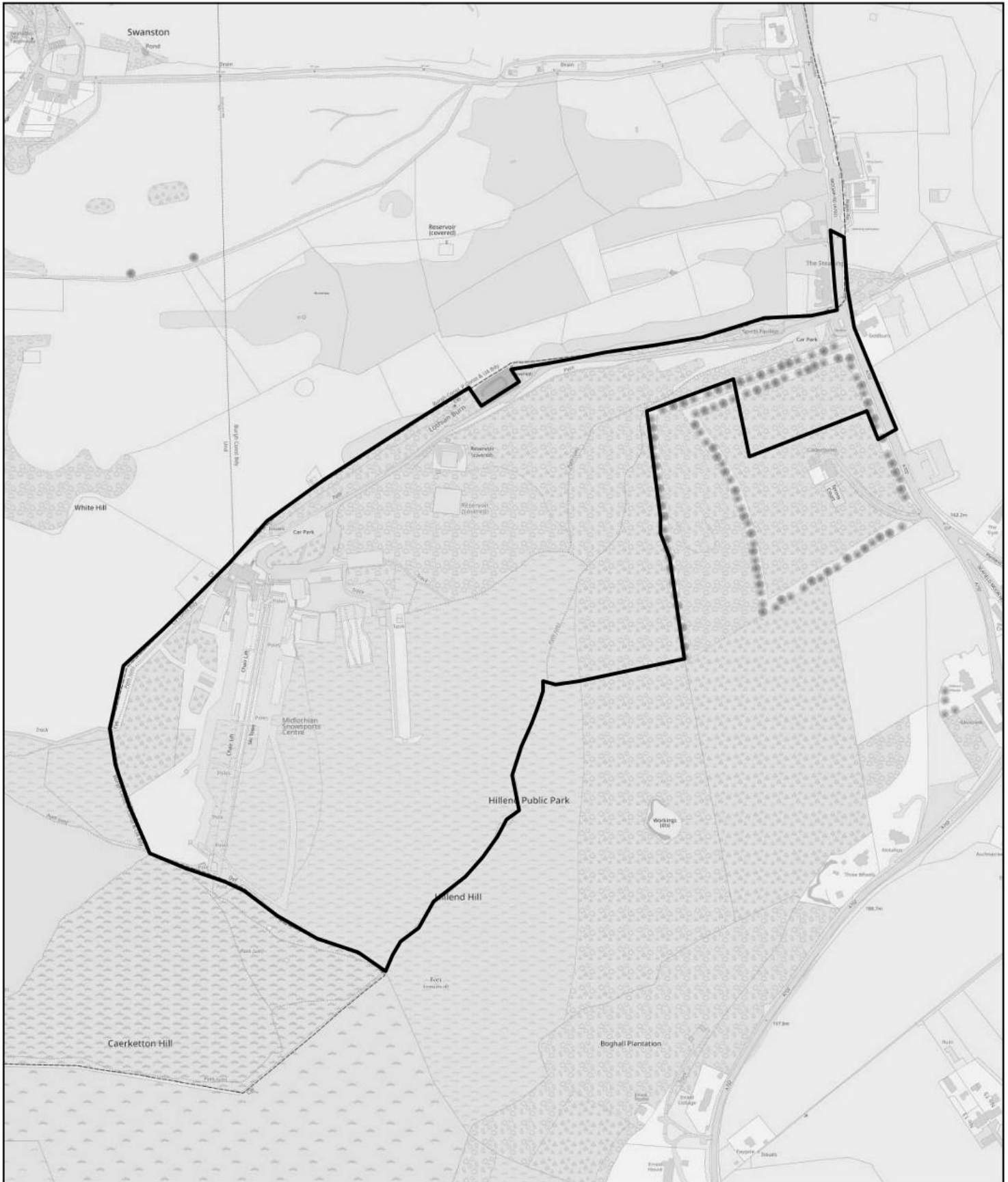
Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

34. Further survey work and associated mitigation measures in relation to waste water and the potential impact on Groundwater Dependent Terrestrial Ecosystems shall be submitted to and approved in writing by the planning authority in consultation with SEPA.

Reason: *To ensure groundwater dependent terrestrial ecosystems are not significantly adversely impacted by the development.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 17 November 2023
Application No: 23/00532/S42
Applicant: Midlothian Council
Agent: Gregor Southall, Montagu Evans
Validation Date: 17 August 2023
Contact Person: Martin J Patrick
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Background Papers: 19/01018/DPP



**Planning Service
Place Directorate**
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Section 42 application to amend condition 11 planning permission 19/01018/PPP at Midlothian Snow Sports Centre, Biggar Road, Edinburgh, EH10 7DU

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