



APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE 21/00958/PPP, FOR A MIXED-USE DEVELOPMENT COMPRISING CLASS 2 (PROFESSIONAL SERVICES), CLASS 8 (RESIDENTIAL INSTITUTIONS), CLASS 9 (RESIDENTIAL), CLASS 10 (NON-RESIDENTIAL INSTITUTIONS), SUI GENERIS (MIXED USE OF RETIREMENT FLATS AND ASSISTED LIVING/EXTRA CARE FLATS), AFFORDABLE HOUSING AND ASSOCIATED WORKS AT LAND AT THE JUNCTION OF THE A701 AND PENTLAND ROAD, OLD PENTLAND, LOANHEAD.

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission in principle for a mixed use development comprising Class 2 (professional services), Class 8 (residential institutions), Class 9 (residential), Class 10 (non-residential institutions) and sui generis (mixed use of retirement flats and assisted living/extra care flats) uses; affordable housing; and associated enabling works. The application site is an area of open space at the junction of the A701 and Pentland Road, Loanhead.**
- 1.2 There have been seven representations objecting to the application, two representations supporting the application and one neutral representation. Consultation responses have been received from the Coal Authority, Scottish Water, Transport Scotland, the Council's Archaeology Advisor, the Council's Biodiversity Advisor, the Council's Education Resource Manager, the Council's Policy and Road Safety Manager, the Council's Senior Manager Protective Services, the Damhead and District Community Council and the Loanhead and District Community Council.**
- 1.3 The relevant development plan policies are policies 5, 6, 7 and 13 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT2, STRAT5, DEV2, DEV3, DEV4, DEV5, DEV6, DEV7, DEV9, TRAN2, TRAN5, IT1, RD1, ENV4, ENV9, ENV10, ENV11, ENV15, ENV25, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.4 The recommendation is to refuse planning permission.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is situated immediately to the west of Loanhead. It measures 3.25 hectares and comprises an area of grass, trees and hedgerow that functions as an amenity space for a neighbouring residential caravan park, and an area of scrub vegetation. The amenity space measures 1.25 hectares and the scrub vegetation area measures 2 hectares. The amenity space consists of a grassed and fenced area identified as a children's play area, a dog walking area and landscaping fronting onto the A701.
- 2.2 The site is bounded to the north by Pentland Road. On the opposite side of Pentland Road is an area of scrub vegetation which forms part of an allocated mixed-use development site (Ec3 West Straiton). To the west the site is bounded by agricultural land and by Pentland Park residential caravan site. The site is bounded to the south by Pentland Park beyond which is a boarding kennels and a further residential caravan site (Nivensknowe Park). To the east the site is bounded by the A701, residential properties and an area of scrub vegetation which has been the subject of an application for the erection of a supermarket.

3 PROPOSAL

- 3.1 The application is for planning permission in principle for a mixed use development comprising Class 2 (professional services), Class 8 (residential institutions), Class 9 (residential), Class 10 (non-residential institutions) and sui generis (mixed use of retirement flats and assisted living/extra care flats) uses; affordable housing; and associated enabling works. The indicative scale of the proposed uses is as follows:
- 1,000sqm of Class 2 uses, with an indicative use as a veterinary surgery - probably single storey;
 - An 80 room care home (Class 8 use) - a mix of 2 and 3 storeys;
 - A residential development of 10 houses (Class 9) split into six 2 bed properties and four 3 or 4 bed properties. This is proposed as affordable housing and is likely to be 2 storeys;
 - 300sqm of Class 10 uses, with an indicative use as a children's nursery - probably single storey; and
 - 4,020sqm (approximately 42 units) of flats. These are intended to be used as retirement flats with 20-30% of the flats as assisted living/extra care properties - a mix of 2 and 3 storeys.
- 3.2 The indicative site plan shows site split into four areas. The northern area would be situated to the west of the approved (by Committee at its June meeting) Aldi supermarket and would include the Class 2 and Class 10 uses. Vehicular access for these uses would be from Pentland Road via an access shared with the supermarket. The southern section would share its vehicular access with Pentland Park

and would accommodate the Class 8 use, Class 9 use and the flats. Separating the northern and southern areas would be a central landscaped space that would provide amenity space for the residents of the new development and of Pentland Park. An attenuation basin/pond for the surface water run-off from the site is shown in the north western corner of the site.

3.3 The application is accompanied by:

- Air Quality Impact Assessment
- Design and Access Statement
- Drainage Strategy
- Economic Impact Assessment
- Flood Risk Assessment
- Noise Impact Assessment
- PAC Report
- Planning Statement
- Preliminary Ecological Assessment
- Preliminary Environmental Assessment
- Transport Statement
- Tree and Hedgerow Survey

4 BACKGROUND

Application Site

- 4.1 Pentland Park has been used as a residential caravan site since the early 1960's, prior to that it was used as a hut encampment. The children's play area and dog walking area that form part of the application site were formerly agricultural land that was incorporated into Pentland Park in 1979, on a temporary basis, with the change being made permanent in 1986.
- 4.2 A Notice of Intention to Develop (reference 0641/98/NID) for the re-alignment (the original route which has since changed as set out in the Midlothian Local Development Plan 2017) of the A701 was issued in 2000. The route of the re-aligned road passed through the application site.
- 4.3 Application 99/00348/FUL for a change of use of public open space to use to site six mobile homes was refused in June 2000. The application sought consent to re-locate six caravan plots, which would be lost due to the road re-alignment, from the north of the site to the western side of the amenity space. Following a subsequent appeal to the Scottish Executive planning permission was granted in November 2000 – this permission was not implemented.
- 4.4 Pre application consultation (21/00055/PAC) for mixed use development including Class 2 (professional and other services), Class

3 (food and drink), Class 4 (business), Class 7 (hotel), Class 8 (residential institutions) Class 9 (residential), sui generis (flats), Class 10 (non-residential institution) and associated works at land at junction of the A701 and Pentland Road, Old Pentland, Edinburgh was submitted in January 2021. The notice was reported to Committee at its meeting of May 2021.

- 4.5 An Environmental Impact Assessment (EIA) screening opinion (21/00237/SCR) for mixed use development including Class 2 (professional and other services), Class 3 (food and drink), Class 4 (business), Class 7 (hotel), Class 8 (residential institutions) Class 9 (residential), sui generis (flats), Class 10 (non-residential institution) and associated works at land at Junction of the A701 and Pentland Road, Old Pentland, Edinburgh was submitted in March 2021. The planning authority's adopted screening opinion is that an EIA is not required for the development.

Land to east

- 4.6 Application 21/00338/DPP for the erection of foodstore (Class 1); formation of access roads and car parking and associated works on land to the east of the application site at the junction of Pentland Road and the A701 was considered by the Committee at its meeting of June 2022. The Committee were minded to grant planning permission subject to the registration of a legal agreement to secure developer contributions.

Land to north

- 4.7 The land to the north of the application site, from Pentland Road to Straiton junction, was allocated for mixed use development in the Midlothian Local Development Plan 2017. The allocated site (referred to as Ec3 – West Straiton) measures 60 hectares and the potential uses include retail, hotel office, commercial leisure and housing. Development of the site is linked to the construction of the A701 Relief Road to the west and north of the allocated land.

Land to west

- 4.8 Pre application consultation (14/00729/PAC) for mixed-use development comprising: film and TV studio and backlot, hotel, non-food retail, commercial uses ,with the potential for a gas combined heat and power plant at Old Pentland, Loanhead was submitted in October 2014. The notice was reported to Committee at its meeting of January 2015.
- 4.9 An Environmental Impact Assessment (EIA) screening opinion (14/00704/SCR) for mixed-use development comprising; film and tv studio and backlot, hotel, non-food retail, commercial and residential uses, with the potential for a gas combined heat and power plant at Old

Pentland, Loanhead was submitted in September 2014. The planning authority's adopted screening opinion is that an EIA is required for the development.

- 4.10 An Environmental Impact Assessment (EIA) scoping opinion 15/00230/SCO for mixed-use development comprising; film and tv studio and backlot, hotel, non-food retail, commercial and residential uses, with the potential for a gas combined heat and power plant at Old Pentland, Loanhead was withdrawn.
- 4.11 Application (15/00364/PPP) for planning permission in principle for a mixed use development comprising; film and tv studio including backlot complex; mixed employment uses (retail/office/commercial); hotel; gas and heat power plant/energy centre; film school and student accommodation; studio tour building; earth station antenna and associated infrastructure including car parking; SUDS features and landscaping (this application is accompanied by an environmental statement submitted under the terms of the Town and Country Planning environmental impact assessment (Scotland) Regulations 2011). Prior to the determination of this application, the application was Appealed (15/00005/NONDET and PPA-290-2032) in December 2015. The Appeal was further recalled by Scottish Ministers and on 3 May 2017 Ministers issued their Intention to Determine the Appeal and grant planning permission in principle subject to the conclusion of a planning obligation to secure developer contributions – the planning obligation was not concluded as the applicants interest in the site was withdrawn.
- 4.12 The Town and Country Planning (Use Classes) (Scotland) Order 1997 categorises different land uses into different classes to enable planning practitioners and decision makers to determine if a change of use of land or buildings is proposed or has occurred – Classes 2, 8, 9 and 10 have been referenced in this report as well as flats which are a sui generis (of its own kind/class) use. In defining if a material change of use between one class and another has occurred it enables planning authorities to assess the impact of different uses and enables decisions to be made with regard the right development in the right location. Different uses within the same class are seen to have similar impacts and characteristic and are therefore inter changeable in land use planning terms.
- 4.13 The application site area exceeds 2 hectares and the indicative floorspace exceeds 5,000sqm. The application therefore constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application.

- 5.2 The application falls below the consultation thresholds set out in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended) and NatureScot's Guidance – How and when to consult NatureScot and therefore **NatureScot** was not consulted.
- 5.3 The application falls below the consultation thresholds set out in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended) and SEPA's triage framework guidance and therefore **Scottish Environment Protection Agency (SEPA)** was not consulted.
- 5.4 **Scottish Water** does not object to the application. The water supply will be fed from Rosebery Water Treatment Works. The foul water drainage will be dealt with by the Edinburgh PFI Waste Water Treatment Works. Both have sufficient capacity at present, however it is not possible to reserve capacity for future developments – this will be subject to a separate regulatory process managed by Scottish Water.
- 5.5 For reasons of sustainability and to protect Scottish Water customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into the combined sewer system. There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical and technical challenges.
- 5.6 In order to avoid costs and delays where a surface water discharge to the combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. The evidence will be assessed in a robust manner and any decision will reflect the best option from environmental and customer perspectives.
- 5.7 **Transport Scotland** does not object to the application subject to any grant of planning permission including the following condition:
- No part of the development shall be occupied until 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, after consultation with Transport Scotland, as the Trunk Roads Authority. In particular this travel plan shall identify measures to be implemented, the system of management, monitoring, review, reporting and the duration of the plan.*
- 5.8 The **Council's Archaeology Advisor** does not object to the application subject to any grant of planning permission including a

condition to secure a programme of archaeological (evaluation) work in accordance with a written scheme of investigation to be agreed.

- 5.9 The **Council's Biodiversity Advisor** (The Wildlife Information Centre - TWIC) does not object to the application, but the submitted ecology report needs updating - updated surveys could be secured by condition if planning permission is granted.
- 5.10 The **Council's Education Resource Manager** has confirmed that developer contributions would be required towards the affordable housing element of the proposal and towards any flats with more than one bedroom. Contributions would not be required if the flats were restricted to retirement flats.
- 5.11 The **Council's Policy and Road Safety Manager** does not object to the application subject to conditions to achieve the following:
- The transport assessment (TA) models the traffic generation of a range of different uses within the site and indicates that the likely impact on the local road network would be relatively low. If the final development mix within the site changes significantly then the TA should be revisited to assess the potential impact of the new development;
 - Publicly available EV charging points would be required at the various units within the development and details of the number and location of the charging points would be required;
 - The site is close to the main public transport corridor (A701) in the area and new bus stops and shelters would be required to accommodate the additional demand generated by the development;
 - The drainage strategy plan indicates that the surface water outfall from the site would be directed to existing Scottish Water (SW) sewers however SW have indicated in the past that they will not accept any new surface water into their sewer network. As this issue may have an impact on the internal layout of the site it should be resolved at the earliest opportunity; and
 - As noted by Transport Scotland a green travel plan would be required for the new developments within this site.
- 5.12 The **Council's Senior Manager Protective Services** does not object to the application. Comments were provided in relation to the proposal's impact on the site licence of the caravan park:
- The site licence holder will need to apply to amend the boundary of the site licence;
 - Steps should be taken to establish the stability of the development ground;
 - The drainage from the caravan site crosses the application site and as such any drainage plan should accommodate this drainage route;

- Improvements to the emergency access to the caravan site are welcomed. Care must be taken to ensure that the development does not place any additional burden on the limited parking and road network within the caravan site; and
- The site licence does not specify the size of recreational or amenity space that should be available to residents of the caravan site.

5.13 The **Damhead and District Community Council** objects to the proposal on the following grounds:

The land area is not within the current Local development plan designated for the proposed uses. It is part of the green belt. Our neighbourhood plan is against more development in the Damhead area especially on the Old Pentland Road which is unsuitable for more traffic.

5.14 The **Loanhead and District Community Council** submitted an objection on behalf of the Loanhead and District, Damhead and District, and Roslin and Bilston Community Councils. The grounds for objection are as follows:

- The Pre-Application Consultation process was vague and unclear on the exact end uses;
- The proposal will result in the loss of prime agricultural land;
- The proposal will have a detrimental impact on local biodiversity;
- The proposal will increase congestion on the already congested A701, Burnside Road and Pentland Road;
- The loss of the green space will have a detrimental impact on the amenity of the residents of Pentland Park caravan site;
- It has not been demonstrated that there is a shortage of land that could accommodate the proposed residential development;
- The site has an awkward shape and this will lead to a cramped development;
- Most of the site is green belt;
- The proposal conflicts with the local development plan; and
- The intense development that has taken place in the locality makes it even more important to retain the site as an open area.

6 REPRESENTATIONS

6.1 The application has received seven objections, two representations supporting the application and one neutral representation.

6.2 The grounds for objection are as follows:

- The development will increase congestion on the surrounding road network;
- The development will result in the loss of habitats that support bats, hedgehogs, badgers, deer, moths and butterflies;

- The development is out of scale and character with the surrounding area;
- The density is too high;
- The proposal will have a detrimental impact on the health and amenity of residents of Pentland Park;
- Green spaces should be protected. The site could be used as an orchard, allotments, a free range hen farm, agricultural land or outdoor recreation space;
- This proposal and the Aldi store do not meet the requirements of the local development plan;
- The proposal is contrary to policy RD1 of the Midlothian Local Development Plan;
- The proposed access from Pentland Road will add to congestion at the junction with the A701;
- Two and three storey buildings will result in overlooking of Pentland Park; and
- Development of this site is contrary to the Council's aspirations to move towards a zero carbon economy.

6.3 The representations in support of the application make the following points:

- The entrance to the site should be from Pentland Road and should be shared with the Aldi store. Sharing an access with Pentland Park would be a safety hazard in the event of a fire;
- The green space should be located as green buffer between the caravan site and the new development; and
- Existing access to the rear of neighbouring properties should be retained.

6.4 The neutral representation raises the following points:

- Three storey buildings along the south western boundary of the site would be overbearing to properties at Pentland Park and would result in a loss of privacy;
- Mature trees along the boundary of Pentland Park should be retained; and
- Existing access routes from Pentland Park should be maintained.

7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan June 2013 (SESplan) and the Midlothian Local Development Plan 2017 (MLDP).

7.2 SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within

a National Planning Framework 4 (NPF4) to be prepared by Scottish Ministers. Once approved, NPF4 (which was subject to consultation until 31 March 2022 and is expected to be adopted in autumn 2022) will form part of the development plan alongside local development plans. Until NPF4 is approved, SESplan remains part of the development plan albeit increasing out of date.

7.3 The following policies are relevant to the proposal:

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)

7.4 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.

7.5 **Policy 6 (HOUSING LAND FLEXIBILITY)** - each planning authority in the SESplan area shall maintain a five years' effective housing land supply at all times. The scale of this supply shall derive from the housing requirements for each local development plan area identified through the supplementary guidance provided for by SESplan policy 5. For this purpose planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the local development plan.

7.6 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified strategic development areas may be allocated in local development plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) the development will be in keeping with the character of the settlement and local area; (b) the development will not undermine green belt objectives; and (c) any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

7.7 **Policy 13 (OTHER COUNTRYSIDE DESIGNATIONS)** requires Local Development Plans to review and justify additions or deletions to other countryside designations fulfilling a similar function to those of the Green Belt as appropriate. Opportunities for contributing to the Green Network proposals should also be identified.

Midlothian Local Development Plan 2017 (MLDP)

7.8 Policy **STRAT2: Windfall Housing Sites** supports housing on non-allocated sites within the built-up area provided: it does not lead to loss or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the

area in terms of scale, form, design and materials and accords with relevant policies and proposals.

- 7.9 Policy **STRAT5: Strategic Employment Land Allocations** supports development for employment uses on sites identified as strategic employment land allocations.
- 7.10 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.11 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.12 Policy **DEV4: Residential Park Homes** states that development will not be permitted where it would prejudice the continued use of Nivensknowe Park and Pentland Park for the siting of residential park homes.
- 7.13 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.14 Policy **DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.15 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.16 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility). Supplementary Guidance on open space standards is to be brought forward during the lifetime of the plan.

- 7.17 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment/ A720 Sheriffhall Junction Grade Separation.
- 7.18 Policy **TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.
- 7.19 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals.
- 7.20 Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with policies RD2, MIN1, NRG1 or NRG2; or it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.
- 7.21 With regard to business in the countryside policy **RD1** states that development opportunities that will enhance rural economic development opportunities will be permitted if:
- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
 - They are capable of being serviced with an adequate and appropriate access; and
 - They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, unacceptable discharge to watercourses; and
 - They are accessible by public transport and services (where appropriate); and
 - They are not primarily of a retail nature; and
 - They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.
- 7.22 Policy **ENV4: Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.23 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development,

so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.24 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.25 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.26 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.27 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.28 Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.29 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.30 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

National Policy

- 7.31 The **SPP (Scottish Planning Policy)** sets out Government policy in relation to creating a successful sustainable place, supporting economic growth, regeneration and the creating of well-designed places. SPP promotes town centres identifying the 'town centre first principle'. Development plans should adopt a sequential town centre first approach for uses such as retail with the order of preference being town centres, edge of town centres, other commercial centres identified in the development plan, and out of centre locations that are or can be made easily accessible by a choice of transport modes.

SPP introduces a presumption in favour of development that contributes to sustainable development, but states:

The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

- 7.32 The Scottish Government policy statement **Creating Places** emphasises the importance of quality design in delivering quality places. These are communities which are safe, socially stable and resilient.
- 7.33 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.34 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

8 PLANNING ISSUES

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

Principle of development

- 8.2 The majority of the site, approximately 67%, is identified in the MLDP as being outwith the built-up area of Loanhead. The land is primarily covered by policy RD1 (Development in the Countryside). This countryside area includes the sites indicatively identified for the veterinary surgery (Class 2), children's nursery (Class 10), affordable

housing, amenity space and attenuation basin/pond. The development in the countryside is not for the furtherance of an existing rural use and its scale and character will remove the rural landscape at this area and appear as a visual extension of the built-up area of Loanhead. There is no support in the MLDP for the development of the countryside within the application site.

- 8.3 The remainder of the site includes the nursing home (Class 8) and the flats. Whilst no indicative floorspace has been included for the nursing home the indicative floor plan suggests that it would be similar to that of the flats, i.e. approximately 4,000sqm. The proposed indicative layout shows approximately 10,500sqm of floorspace for the whole site of which approximately 8,000sqm (76% of the floorspace) would be housed on 33% of the area. MLDP policy DEV2 potentially provides support for some development on the portion of the site that is within the built-up area, however the scale of development proposed for the smaller southern portion of the site would have a significant detrimental impact on the character and amenity of the surrounding area and is therefore contrary to policy DEV2.
- 8.4 The planning authority acknowledges that the MLDP allocated a large area of land, to the north of the site, for development and safeguarded the land to the west of the site for a film studio development that the authority was minded to grant. Had all of these developments occurred as envisaged at the time of adoption of the MLDP the application site would have been an undeveloped island of open space surrounded by development; the applicant's planning statement argues that this island situation would remove the justification for protecting the land as countryside and therefore development of the site should be supported.
- 8.5 The MLDP makes clear than any support for the development of the land to the west is unique to the film studio proposal and that the principle of allowing any other development would not necessarily be supported. Consequently the green belt and countryside protections that apply to the land to the west were retained and would only be removed once the site was fully developed. Subsequent to the adoption of the MLDP the result of legal proceedings meant that the film studio applicant would no longer be able to secure title to the land to the west and consequently the application was withdrawn. There is no realistic prospect of the land to the west be developed as a film studio and therefore there is no prospect of the application site becoming an island of undeveloped land surrounded by development. Instead the site will be a valuable link, for residents in the surrounding area, to the wider countryside.
- 8.6 The fact that the land to the north remains undeveloped at present further undermines the argument that the scale of development in the surrounding area justifies development of the application site. The proposed uses could be successfully accommodated within the West Straiton site. Development of the unallocated application site would

remove potential developers and tenants from the allocated site and thereby undermine the effective delivery of the allocated site and the Council's spatial strategy set out in the MLDP.

- 8.7 It is possible that should development progress on the West Straiton allocation a case could be made for amendment of the countryside boundary at this location, however a planning application is not the appropriate method for considering this issue. If the applicant wishes to promote an amendment to the countryside boundary, and the allocation of the site, this should be carried out via the development plan process rather than on an ad hoc basis via a planning application. Piecemeal development of an unallocated countryside site at the edge of a settlement would undermine the effective operation of the MLDP and significantly diminish the planning authority's scope to resist development on other unallocated sites within Midlothian.

The Supply of Effective Housing Land

- 8.8 The Council is required to maintain a five year supply of effective housing land at all times (SPP paragraph 125). The number of homes required in a local authority area is identified through the Strategic Development Plan (SESplan) (to be replaced by NPF4) and is met by the development strategy and policies of the MLDP. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall. Sites accepted in this way are presumed in favour (in principle) subject to the applicant demonstrating that:
- they are effective;
 - they contribute towards sustainable development;
 - avoid any significant impacts on their locality in relation to amenity and environmental concerns; and
 - their impact on local infrastructure can be mitigated.
- 8.9 The supply of effective housing land in Midlothian is subject to annual review in the Housing Land Audit (HLA21 – the 2022 audit is in an advanced stage of preparation). The HLA is reviewed and endorsed by Homes for Scotland, the umbrella body which represents the housebuilding industry. The effectiveness of the housing land supply is also reviewed in the MLDP Action Programme. This will identify the trigger for introducing actions to make up any shortfall, if one is identified. These actions will be set out in the latest Action Programme approved by Council. Similarly, the MLDP also sets out policies to address a shortfall in the housing land supply where this arises during the lifetime of the plan. One such action would be the support for early delivery of safeguarded sites, provided that a proposal can demonstrate it can/will contribute to new homes to make up the shortfall – this approach is supported by the MLDP. Whilst the Committee has previously approved housing development on

safeguarded sites it is reiterated that the proposed development is not a safeguarded site.

- 8.10 The most recent Housing Land Audit (HLA21) covers the period up to 31 March 2021. It identifies land for housing which can deliver 11,938 new homes in Midlothian. The five year supply of effective housing land equates to 4,500 homes due to be delivered between 2021 and 2026. Calculated against housing supply targets, this is a 5.1 year supply of effective housing land, meaning there is a small surplus of effective housing land in Midlothian.
- 8.11 The latest MLDP Action Programme was presented to the Committee in June 2021. It reviews the performance of policies of the MLDP and provides an update on development progress within Midlothian. The Action Programme reiterates the position that there is an effective five-year land supply in Midlothian.
- 8.12 This position confirms the assessment of Midlothian's Housing Land Supply in the Department of Planning and Environmental Appeals (DPEA) Examination of the MLDP. Paragraph 40 of the Reporter's Examination Report confirms that the "*proposed plan would be sufficient to ensure the maintenance of a 5-year effective housing supply*". Therefore, there is a surplus of housing land in Midlothian and the policies relating to housing land within the MLDP remain as the primary determining policies in the assessment of this application. This means that there is no need to allocate more land for housing and that the protective MLDP policies RD1 and ENV4 cannot be easily set aside.
- 8.13 A complication has recently emerged which must be considered as part of this assessment. SESplan was approved in 2013, with Supplementary Guidance on Housing Land Supply approved a year later. These documents are both more than five years old and are, therefore considered out of date under the terms of SPP 2014. SESplan was due to be replaced by SESplan2. However, Scottish Ministers rejected SESplan2 as its spatial strategy did not fully consider transport implications. The result of this is that the strategic plan is out of date with no new targets approved against which to measure the current supply. However, despite this position SESplan still forms part of the development plan and is a material consideration. The other part of the development plan, the MLDP, allocates sufficient land to meet the Council's housing targets (set by SESplan) although they are increasingly becoming outdated and vulnerable to challenge at appeal and will be superseded by NPF4. The consultation draft of the NPF4 set out an annual housing supply target for Midlothian of approximately 800 units (8,050 units for the period 2026-2036 and 805 units per year between the adoption of NPF4 and the adoption of MLDP2). Although supporting this development would contribute towards any future housing land supply needs, it is not certain at this stage if additional sites are required, and if they were, if this site is appropriate.

- 8.14 For planning authorities in the SESplan area, and the Reporters for the DPEA, this situation has led to unique challenges. This is because the approach to determining an application for, or including, residential development that is not allocated in the development plan for housing differs significantly if there is a shortfall in housing land or not. The Reporters in these circumstances have taken slightly different approaches in each case, but, in general, they have adopted a presumption in favour of development, with the assessment focussing on the impacts of development. Where these impacts are demonstrably significant and adverse, then consent has been refused. But in the absence of these impacts, and where the proposal has been proven to be sustainable and effective, approval has generally been granted.
- 8.15 It is important to highlight two points at this stage. The first is that there have not been any appeal decisions in Midlothian where this type of issue has been central to the consideration of the case. The second is that the appeal decisions that have emerged are in local authority areas like Fife and the City of Edinburgh Council. In both of these planning authority areas, the adopted local development plans (LDPs) acknowledge a shortfall in the five year supply of effective housing land after this was identified during the Examination of these LDPs. By contrast, the MLDP was adopted following the Examination by the DPEA which concluded the plan provided a surplus of effective housing land. So there are limitations in how applicable the approach taken in other planning authorities is to Midlothian.
- 8.16 It should be noted that the report of inquiry into the MLDP (held in 2017) found that the 'housing requirement' in SDP1 was the housing land requirement, and there was no case made to retrospectively add a generosity allowance to it. The previous SPP did have a requirement to allocate a generous supply of housing and the SDP1 was prepared in that context.
- 8.17 Were a shortfall to be identified, actions to meet a shortfall (as set out in paragraph 2.3.9 of the LDP), should it arise could include (amongst other things) support for the early development of land identified in the plan for longer term growth (safeguarded sites). There are 5 of these longer term safeguards, including one at Bilston in close proximity to the site.
- 8.18 Care must be taken by the Council to determine if there is a need for additional housing land to meet the demands of their area. This is because development places a burden on the natural capital of an area, a burden on supporting services provided by the Council and others and a burden on communities. These burdens can be offset by the benefits of well-designed, well-situated development that supports investment and economic growth of the area. But the purpose of housing need and demand assessments, strategic planning and local

planning is intended to ensure that the benefits outweigh the burdens and that we only use the land that we need. It is intended to prevent unfettered growth at the expense of the environment and communities.

8.19 The below table provides some analysis which measures the current supply audited in HLA21 against a variety of housing supply targets derived from different sources. The table shows that, in the right hand column, the length of housing land supply depends on the method of calculation:

Source of Housing Supply Targets (HST)	Annual HST	5 x Annual HST	Supply of 4,500 (in years)
Strategic Development Plan (SDP1) 2019 – 2024	882	4,410	5.1
SDP1 2019 – 2024 + generosity allowance +20%	882 + 20%	5,292	4.3
SDP1 2019 – 2024 + shortfall from previous plan period	882 + [8080 – 5601 / 5 (496)] = 1378	6,890	3.3
As above + 20%	1058 + 496 + 20% of 496 = 1,653	8,265	2.7
SDP2 (rejected SESplan2)	534	2,670	8.4
HNDA2 (lowest growth scenario)	411	2,055	10.9
HNDA2 (highest growth)	467	2,335	9.6
SDP2 + 20%	641	3,205	7.0
HNDA2 (lowest growth scenario) + 20%	493	2,465	9.1
HNDA2 (highest growth) + 20%	560	2,800	8.0
Draft NPF4 (November 2021)	805	4,025	5.6

8.20 The second column shows a series of potential annual housing supply targets which are then multiplied by five to derive a 5-year housing supply target against which the current supply can be measured (column 4). The first four rows are variations of targets taken from SESplan1's Housing Need and Demand Assessment (HNDA). The remaining rows are taken from SESplan2's more up-to-date assessment. In some scenarios, an additional 20% is added which represents the generosity allowance promoted in SPP, but which was predated by SESplan1.

- 8.21 It is not the intention for this assessment to provide a definitive answer as to which method of calculation is correct. This question has been the subject of rigorous debate within the development industry, the Scottish Government and the courts. The Scottish Government had published a draft Planning Advice Note PAN 1/2020 which provided a definitive calculation methodology. However, the public consultation process involving this document and an amendment to SPP to remove the tilted balance in favour of sustainable development from national policy were deemed unlawful by the courts in the summer of 2021 and the guidance has been withdrawn. This leaves the question around methods to determine supply vs demand unresolved, albeit the courts appear to favour a compound/residual method as promoted by the applicant in this case. On the other hand, the updated assessments provided by SESplan2 and NPF4 supersede a compound method based on SESplan1 and by capturing unmet demand.
- 8.22 To guide the decision-making process through this uncertainty, it is instructive to note that in all but three scenarios, the Council's supply of housing land meets the five-year demand. The three scenarios where a shortfall emerges are based on: 1) the out-of-date SESplan HNDA with a 20% generosity allowance; 2) the out-of-date SESplan HNDA with the additional inflation of unmet shortfall from previous years; and, 3) the out-of-date SESplan HNDA with both the 20% generosity allowance plus the unmet shortfall added. These scenarios are considered to be unrealistic measures of demand in Midlothian in 2021. This unmet demand from previous years is captured by the more up-to-date SESplan2 targets. Furthermore, the recently published draft NPF4 sets a target of 8,050 homes over ten years in Midlothian. This equates to an annual target of 805 homes or 4,025 over five years. The current supply of 4,500 homes is sufficient to cover these updated requirements if all the sites allocated and planned come forward and deliver.
- 8.23 The key message that an analysis of housing land supply provides is that, although we cannot say for certain if the Council is maintaining a five-year supply of effective housing land, it most likely is. SESplan2 provides a more up-to-date assessment of need than SESplan1. But, as the Plan was not approved (not due to erroneous housing demands calculations) it cannot be solely relied upon to provide a definitive measure of demand. Nevertheless, the SESplan2 measure of demand suggests that a lower target would have been required of Midlothian than in SESplan1. This suggests that the Council's supply would remain in surplus if SESplan2 was approved. NPF4 updates the targets further and keeps the requirement below the current supply. However, this document is only in preparation stage and is indicative only. It is acknowledge also that NPF4 considers the targets to be minimum requirements which should not, in of themselves, be used as inhibitors to otherwise sustainable development proposals.

- 8.24 This analysis adds weight to the Council's position set out in HLA21, and the Reporter's conclusions in the Examination of the LDP, that there is no shortfall in the supply of effective housing land. Therefore in deciding if the Council needs this site to contribute to its effective housing land supply, the answer is probably not, but there is no certainty based on the different approaches taken by Reporters at appeal.
- 8.25 The effect that this position has is to maintain the primacy of the development plan in the determination of applications for residential development. Whilst part of the development plan, the SDP, is out-of-date, the LDP is less than five years old and is promoting a development strategy that meets the substantial needs of the county. If a shortfall were identified, then the protective policies in the plan (RD1 and ENV4 in this case) would fall and there would be presumption in favour of the principle of development. But, there is likely to be a surplus of housing land within the plan area. This means that a proposal must identify significant material considerations that would be afforded sufficient material weight to overcome the primacy of the development plan.

Transportation and access

- 8.26 The application is supported by a transport assessment which provides estimates for trip generation created using TRICS, which is a system that compiles the results of over 8000 directional transport surveys relating to more than 110 types of development. The system uses data from across the UK and Ireland and allows users to set various constraints in order to generate estimated figures based on surveys from similar sites. TRICS is a widely used by transport consultants and roads authorities.
- 8.27 TRICS data was used to estimate the trips generated by the development (both detailed and in principle) during AM and PM peaks. The transport assessment estimates that the development will generate 25 arrivals and 38 departures during a typical AM peak and 38 arrivals and 37 departures during a typical PM peak. The trips for both AM and PM peak are equivalent to less than 1 trip per minute. The development would have 2 access points and trips would be spread across the 2 access points. As is noted above, TRICS is widely used by both transport consultants and roads authorities and its methodology is considered sound by transport engineering professions.
- 8.28 The statement concludes that the estimated volumes of traffic generated by the development could be easily accommodated by the surrounding road network. The statement and its conclusions have been assessed by Transport Scotland (the Roads Authority with responsibility for the A720 trunk road) and the Council's Policy and Road Safety Manager. Neither of the consultees has objected to the application. On the basis of the consultation responses from the expert

transportation consultees the planning authority is satisfied that the surrounding road network can satisfactorily accommodate the additional traffic likely to be generated by the proposal.

- 8.29 The site is well served by existing bus services at the nearest stops on the A701, with the Lothian Buses service 47 running at 20 minute intervals on weekdays and 30 minute intervals at the weekend. In addition, the Borders Buses service X62 runs at 60 minute intervals seven days a week. There are also bus services passing through Loanhead whose stops at the west end of Nivensknowe Road are within a 5 minute walk of the site. The A701 realignment project will allow the existing A701 to become an active travel and public transport corridor which will increase the potential for further services to serve the Pentland Park area. Within Midlothian the communities of Bilston, Bonnyrigg, Dalkeith, Eskbank, Penicuik, Roslin and Rosewell are all currently served by bus services that stop within easy walking distance of the site.

Biodiversity

- 8.30 A preliminary ecology assessment (PEA) was submitted with the planning application. This was reviewed by the Council's Biodiversity Advisor, The Wildlife Information Centre (TWIC). TWIC reviewed the submission and whilst they queried some of the methodologies they have not raise significant concerns about the conclusions and recommendations contained in the PEA. The desk study data is more than three years old and this is beyond usual recommended dates, however as the application is for planning permission in principle further applications would be required before development could commence and therefore up to date surveys could be secured by condition were planning permission granted.

Use of Flats

- 8.31 The application form and supporting statements describe the proposed flats as being retirement flats. Whilst the planning authority acknowledges that certain operators, and affordable housing providers, market, operate and allocate flatted developments on an age restricted basis planning legislation and guidance provides no means for securing this. Retirement flats are not identified as a specific type of use within the Use Classes Order and the guidance from the Scottish Government is that occupancy restrictions, either in the form of conditions or planning obligations, should be avoided as they can be "*intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints*" (Para 50 Circular 03/2012).
- 8.32 In recent years a number of Scottish Government Reporter's decisions elsewhere in Scotland have confirmed that retirement flats should be assessed as normal flats. The planning authority therefore considers that the flats are homes which could be occupied by all sectors of

society, including families with school age children. Family homes would give rise to a need for additional capacity to be provided at the catchment schools and therefore the flats must be assessed for the possibility of incurring developer contributions.

Developer contributions

- 8.33 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
- Necessary to make the proposed development acceptable in planning terms (paragraph 15)
 - Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
 - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
 - Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
 - Be reasonable in all other respects
- 8.34 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.35 This proposed development, of which the principal element is the provision of a Classes 2, 8, 9, 10 and *sui generis* development, has been assessed in relation to the above guidance. Notwithstanding the fact that the application is recommended for refusal, draft Heads of Terms have been sent to the applicant on a without prejudice basis, however the applicant is not in agreement with the required level of financial contribution neither are they prepared to provide the required level of affordable housing. It is considered that, in the eventuality that Council Members were minded to grant planning permission, a planning obligation (Section 75 agreement) is required in respect of the following matters:
- The site is in the A701 Corridor and is therefore required to contribute towards the A701 Relief Road and A702 Link Road and associated works. A proportionate contribution will be sought:
 - Proportionate contributions will be sought towards primary and secondary education provision;
 - Provision of affordable housing (25%); and

- Maintenance of open space including children's play areas/open space and SUDS

9 RECOMMENDATION

That planning permission be refused for the following reasons:

1. *The majority of the application site is designated as countryside in the Midlothian Local Development Plan 2017. The proposed development is not for the furtherance of an established rural use and will not be of a rural scale and character. The proposal is contrary to policy RD1 of the Midlothian Local Development Plan 2017.*
2. *The indicative allocation of uses and floorspace for the land within the built-up area of Loanhead will create a scale and density of development that will have a significant detrimental impact on the character and amenity of the surrounding area and the residential amenity of the residential park homes in Pentland Park. The proposal is contrary to policies DEV2 and DEV4 of the Midlothian Local Development Plan 2017.*
3. *Development of an unallocated site that is adjacent to the undeveloped allocated site (Ec3 – West Straiton) will delay the early implementation of the allocated development site. The proposal is contrary to policy STRAT5 of the Midlothian Local Development Plan 2017.*
4. *The development does not accord with policies DEV3, IMP1 and IMP2 of the Midlothian Local Development Plan 2017 as it does not commit to deliver the required provision of affordable housing and developer contribution requirements towards infrastructure for new development.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 19 August 2022

Application No: 21/00958/PPP

Applicant: Pentland Park Marine Ltd

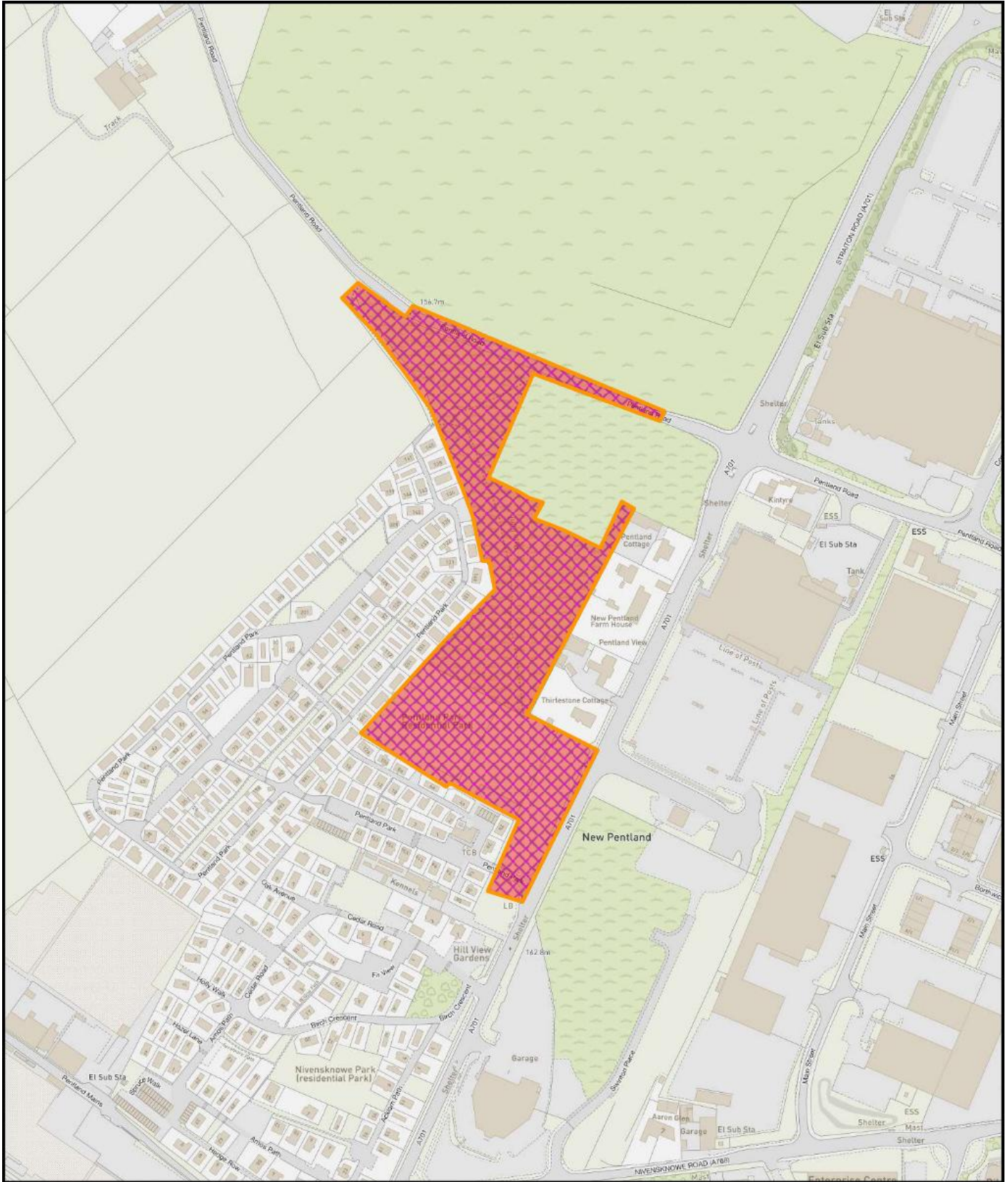
Agent: Marc Giles, Ryden

Validation Date: 26 November 2021

Contact Person: Graeme King

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Background Papers: 21/00055/PAC, 21/00237/SCR, 21/00338/DPP



**Education, Economy
& Communities**
Midlothian Council
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EH22 3AA

**Proposed mixed-use development
Land at Junction of A701 and Pentland Road**

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