

# Notice of Meeting and Agenda



## Planning Committee

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

**Date:** Tuesday, 16 May 2023

**Time:** 13:00

**Executive Director : Place**

**Contact:**

Clerk Name: Democratic Services  
Clerk Telephone:  
Clerk Email: [democratic.services@midlothian.gov.uk](mailto:democratic.services@midlothian.gov.uk)

**Further Information:**

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## **1 Welcome, Introductions and Apologies**

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## **2 Order of Business**

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

## **3 Declaration of Interest**

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

## **4 Minute of Previous Meeting**

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| <b>4.1</b> | Minute of meeting of 28 March 2023 submitted for approval | 3 - 10 |
|------------|---|--------|

## **5 Public Reports**

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|------------|---|---------|
| <b>5.1</b> | Discretionary Charging for the Planning Service - Report by Chief Officer Place   | 11 - 22 |
| <b>5.2</b> | Elected Member Workshops on National Planning Framework No. 4 And Midlothian Local Development Plan 2 and an Update on the Engagement - Report by Chief Officer Place | 23 - 32 |
| <b>5.3</b> | Tree Preservation Order - Cousland - Report by Chief Officer Place  | 33 - 80 |
| <b>5.4</b> | Pre-Application Report - Erection of Community_Education Campus and Associated Works at Mayfield Nursery School - Report by Chief Officer Place                       | 81 - 86 |

## **6 Private Reports**

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No items for discussion

## **7 Date of Next Meeting**

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The next meeting will be held on Tuesday 13th of June 2023.

# Minute of Meeting

Planning Committee  
Tuesday 16 May 2023  
Item No: 4.1



## Planning Committee

Date	Time	Venue
Tuesday 28 March 2023	1.00 pm	Council Chambers, Midlothian House

### Present:

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

### In Attendance:

Derek Oliver	Chief Officer Place
Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Alan Turpie	Legal and Governance Manager
Andrew Henderson	Democratic Services Officer

## 1. Apologies

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Apologies for absence were received from Councillor Curran, Councillor McCall, Councillor McManus and Councillor Winchester.

## 2. Order of Business

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

## 3. Declarations of interest

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None

## 4. Minutes of Previous Meetings

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The minute of the meeting of 28 February 2023 was submitted and approved as a correct record.

Councillor Pottinger made reference to the decision to reinstate the footpath at Easthouses Primary School. Peter Arnsdorf confirmed that this had been included as part of the plan to reinstate the school.

## 5. Reports

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Agenda No	Report Title	Submitted by:
5.1	Tree Preservation Order, Bilston	Chief Officer Place
Outline of report and summary of discussion		
<p>This report seeks the Committee's approval to confirm a Tree Preservation Order (TPO) 1 of 2022 issued on 1 December 2022 for eight individual trees (T1 - T8) and two groups of trees (G1 and G2) at Pentland Lea and The Firs, Seafield Road, Bilston.</p> <p>A brief discussion ensued in relation to Tree Preservation Orders in which the Planning, Sustainable Growth and Investment Manager clarified matters in relation to procedural issues and confirmed it is the land owners responsibility to maintain trees on their land and to also comply with a Tree Preservation Order.</p>		
Decision		
The Committee agreed the recommendations as detailed in the Report.		
Action		
Planning, Sustainable Growth and Investment Service Manager		



Agenda No	Report Title	Submitted by:
5.2	Prosecution for non-compliance with Enforcement Notice, 1 Laurel Bank Road, Mayfeild	Chief Officer Place
<b>Outline of report and summary of discussion</b>		
This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section S127 of the Town and Country Planning (Scotland) Act 1997, as amended, with regard the erection of a building comprising a garage and sun room at 1 Laurel Bank Road, Mayfield.		
<b>Decision</b>		
a) Planning Committee noted the contents of the report; and  b) Instructed Council Officers to take Direct Action to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.		
<b>Action</b>		
Planning, Sustainable Growth and Investment Manager		

Agenda No	Report Title	Submitted by:
5.3	Prosecution for non-compliance with Enforcement Notice, Edgehead Farmhouse, Pathhead	Chief Officer Place
<b>Outline of report and summary of discussion</b>		
This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, with regard the use of clear glazing rather than opaque glazing in windows forming part of an approved extension at Edgehead Farmhouse, Edgehead Road, Edgehead, Pathhead.		
<b>Decision</b>		
After careful consideration Planning Committee agreed;  a) To note the contents of the report; and  b) Instructed Council Officers to take Direct Action to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country		

Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.
<b>Action</b>
Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.4	Listed Building Enforcement Notice, 130 High Street, Dalkeith	Chief Officer Place
<b>Outline of report and summary of discussion</b>		
The purpose of this report is to advise the Committee of a listed building enforcement notice appeal decision with regard the removal of sixteen singled glazed, timber framed, sash and case windows, and the installation of sixteen double glazed, uPVC framed, tilt and turn windows in the front, rear and side facades at 130 High Street.		
<b>Decision</b>		
Planning Committee noted the enforcement notice appeal decision with regard to the removal of sixteen singled glazed, timber framed, sash and case windows, and the installation of sixteen double glazed, uPVC framed, tilt and turn windows in the front, rear and side facades at 130 High Street, Dalkeith.		
<b>Action</b>		
Planning, Sustainable Growth and Investment Manager		

Agenda No	Report Title	Submitted by:
5.5	NPF4 Impact on Outstanding Planning Applications.	Chief Officer Place
<b>Outline of report and summary of discussion</b>		
The purpose of this report is to seek the Committee's agreement that planning applications, considered prior to the adoption of National Planning Framework No. 4 (NPF4), that have a 'minded to grant' decision and are subject to the completion of a planning obligation are progressed to conclusion without referral back to the Committee or Local Review Body (LRB).		
A brief discussion ensued in relation to the report, Peter Arnsdorf clarified that all new applications would be subject to NPF4 and confirmed that should developers wish to remix a development it the application would be assessed under NPF4.		
<b>Decision</b>		
Planning Committee agreed that those planning applications, considered prior to the adoption of NPF4, that have a 'minded to grant' decision as set out in tables 1		

and 2 of the report are progressed to conclusion without being referred back to the Committee or the Local Review Body.

#### Action

Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.6	Land between Deanburn and Mauricewood Road, Penicuik (22.00253.DPP)	Chief Officer Place

#### Outline of report and summary of discussion

The planning application is for the erection of 35 dwellinghouses on land between Deanburn and Mauricewood Road Penicuik. The application proposes an amendment to the house types previously granted planning permission (17/00068/DPP) for part of the wider North West Penicuik development site.

#### Decision

After careful consideration Planning Committee agreed;

- a) That the Planning, Sustainable Growth and Investment Manager confirm that the sustainable drainage system would not impact local flooding; and
- b) That planning permission be granted for the following reason:

*The proposed development site will contribute to the sustainable delivery of housing in compliance with the policies of National Planning Framework 4 and is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) where there is a presumption in favour of an appropriate form of development. Furthermore, the principle of residential development on the site has been established by the grant of planning permission 17/00068/DPP. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies. The presumption for development is not outweighed by any other material considerations.*

Subject to:

- a. The prior amendment/modification of the planning obligation associated with planning permission 17/00068/DPP (and any other amendment planning applications) to ensure it covers the development approved under this application (22/00253/DPP). and
- b. the conditions as set out in the report.

#### Action

Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.7	Land East, North East of Auchendinny (22.00848.DPP)	Chief Officer Place
<b>Outline of report and summary of discussion</b>		
<p>The application is for the erection of 395 dwellings, formation of access road, car parking, landscaping and associated works on land east/north east of Auchendinny, The Brae, Auchendinny, Penicuik.</p> <p>A discussion ensued amongst members with regard to road access. The Planning, Sustainable Growth and Investment Manager confirmed that the northern access was for 345 units whilst the remaining 50 properties would be accessed from Firth Road. Members then took the opportunity to express concern in relation to paragraphs 8.8.3, 8.8.4 and 8.8.5 of the report. Peter Arnsdorf clarified that the local plan identified the site as local housing with a primary school and that when council approved the legal agreement it gave the council a year to take up the land for the school and that the council had not taken up this option, the second paragraph outlining that the land is vacant should the council wish to pursue this further. The Planning, Sustainable Growth and Investment Manager further clarified that with regard to active travel, developer contributions are being used to tie in with road infrastructure improvements in addition to discussions with bus companies to assess options.</p> <p>In response to comments regarding the possible use of modular housing for affordable developments, The Planning, Sustainable Growth and Investment Manager confirmed that this would be a possibility.</p> <p>After further discussions, Councillor Parry, seconded by Councillor Cassidy moved to reject the application due to the fact that under paragraph 8.8.3 the report referenced that the plan was part of the MLDP as site HS20 and that under section 8.8.5 reference was made to the use of the possible school site for landscaping, highlighting that no decision was taken by council to reject the building of a school on the site. After further discussion, Councillor Imrie, seconded by Councillor Smail moved to accept the recommendations subject to the removal of paragraphs 8.8.4 and 8.8.5. Thereafter, Councillor Parry and Councillor Cassidy agreed to the amended the initial motion to reflect the removal of paragraphs 8.8.4 and 8.8.5 from the report with the caveat that sustainable public transport systems be taken into account.</p>		
<b>Decision</b>		
<p>After careful consideration Planning Committee agreed;</p> <p>a) Not to consider paragraphs 8.8.4 and 8.8.5 in assessing the planning application;</p> <p>That planning permission be granted for the following reason:  <i>The proposed development site will contribute to the sustainable delivery of housing in compliance with the policies of National Planning Framework 4 and the vast majority of the site is allocated for housing in the Midlothian Local</i></p>		

*Development Plan 2017 (MLDP) forming part of the Council's committed housing land supply and where there is a presumption in favour of an appropriate form of development. The remainder of the site is located within the Countryside where the complimentary recreational development proposed (multi user cycle path) is of a scale and nature appropriate to the character of this area. This presumption in favour of development is not outweighed by any other material conditions.*

Subject to:

- a. The prior signing of a planning obligation to secure:
  - A financial contribution towards primary education capacity;
  - A financial contribution towards secondary education capacity;
  - A financial contribution towards the A701 realignment and A702 link road project/public transport;
  - A financial contribution towards off site children's play and open space improvements;
  - Long term maintenance arrangements for communal open space within the site; and
  - The provision of affordable housing (25%). The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- b. The conditions as set out in the report.

Action

Planning, Sustainable Growth and Investment Manager

## 6. Private Reports

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No items for discussion

## 7. Date of Next Meeting

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The next meeting will be held on Tuesday 16 May 2023 at 1.00pm

The meeting terminated at 2.00 pm



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## DISCRETIONARY CHARGING FOR THE PLANNING SERVICE

Report by Chief Officer Place

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### 1 PURPOSE OF REPORT

- 1.1 The purpose of the report is to inform the Committee of The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022, which came into effect on 1 April 2022, and to seek approval for new Planning Service discretionary fees to be applied for services and a surcharge to be applied to retrospective planning applications.

### 2 BACKGROUND

- 2.1 The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022, which came into effect on 1 April 2022, increased the fees which were required in connection with planning applications and introduced the opportunity to apply discretionary charging for services provided by the planning authority.
- 2.2 At its meeting on 21 March 2023 the Council agreed to introduce discretionary charging for the Planning Service. The discretionary charging for the Planning and Building Services was estimated to generate £16,000 for 2023/24 (£10,000 of which will be from the Planning Service).
- 2.3 Since the 2022 Regulations were published, the majority of planning authorities across Scotland have been considering their position in terms of charging and many planning authorities have already introduced discretionary charging. In arriving at a level for discretionary charging a survey of the charges imposed across the country has been conducted and likely costs of the services provided by the planning authority have been calculated.
- 2.4 The Regulations require the preparation of a Planning Fees Charter. The Planning Fees Charter which has been prepared, is attached to this report as Appendix A, combines the statutory planning application fees, existing charges for various services and the proposed discretionary charging schedule. Based on the survey work the planning authority has conducted the proposed discretionary charging schedule is fair and proportionate and covers the areas set out in sections 3 of this report.

### **3 PLANNING FEES CHARTER**

#### Pre-Application Enquiries

- 3.1 The provision of pre-application advice is a valuable service allowing planners to identify the acceptability of a proposed development scheme at an early stage (potentially saving developers resource); identify the appropriate supporting information to front load a planning application; provide assurance to applicants; and, assist in reducing determination timescales. It is a service which the planning authority has provided free of charge for many years, effectively subsidising the development industry.
- 3.2 There is a risk that in introducing charges for pre-application enquiries results in some potential applicants no longer using this service. This could result in some applications taking longer to determine and even potentially more notices of refusal being issued. However, the status quo of not charging for this service is unsustainable and the fees have been set at such a level that they make up a very small proportion of the overall development costs.
- 3.3 The fees proposed for pre-application enquiry charging and the level of service provided is set out in the Planning Fees Charter. The level of charging has been set after survey work, including examining what other authorities are currently charging and based on the likely time an officer will need to dedicate to a particular case. The proposed fees represent a very small proportion of the overall development costs, but are high value.
- 3.4 The Planning Fees Charter also sets out what needs to be submitted with the pre-application enquiry and also the service standard that the planning authority will aim to provide.
- 3.5 The Planning Fees Charter also includes certain exceptions to pre-application charging which includes planning applications made by disabled people for alterations to their principal residence and applications made by community councils where the application is intended for community benefit. In addition, in an attempt to encourage discussion regarding proposals for carbon reducing/renewables technologies, such as solar panels, on domestic properties it is proposed to exempt those types of developments from pre-application charging, where they are the sole development proposal in the scheme.

#### Non-Material Variations

- 3.6 It is quite common for developers to request changes to development schemes which have been through the planning process and have been approved. In these cases the developer will request that the change to the scheme be considered as a non-material variation. The planning authority has, until now, dealt with these requests without requiring a fee – some changes can be progressed under this non-material variation route where as other more material changes will need a new planning application.



- 3.7 The Regulations provide that an authority may introduce a charge of £200 for each request for a non-material variation to a planning permission under Section 64 of the Town and Country Planning (Scotland) Act 1997. The Planning Fees Charter sets out that a charge of £200 is applied for requests for non-material variations as set in the Regulations.

#### Compliance with Conditions and Discharge of a Conditions

- 3.8 The Regulations state that an authority may introduce a fee of £100 to provide written confirmation that a condition or conditions within the same application have been complied with. It is therefore recommended that this fee of £100 is levied for requests to provide written confirmation that a condition has been complied with, as set in the Regulations. The fee would apply to each request made and can cover more than one planning condition on the same planning consent. Each separate request will attract a new fee.

#### Retrospective Application Surcharges

- 3.9 The Regulations allow the introduction of a surcharge for applications for planning permission where the application relates to development carried out without permission. This allows for a surcharge of up to 25% over and above the normal fee that would have been required for the development concerned.
- 3.10 It is recommended that a surcharge of 25% is applied to the fee for such applications submitted. This will be applied where the development has been completed and also where it has been started without the appropriate planning permission, but is not yet complete. It is hoped that the introduction of a surcharge will reduce the number of unauthorised developments that are carried out without the necessary planning permission.

#### Section 50 Licence Certificate

- 3.11 Many planning authorities already charge for this administration service, where a 'Planning Certificate' is provided to applicants applying for a licence to ensure all the appropriate planning permissions are in place. The minor £60 fee is proportionate and covers the planning authority's administration costs.

#### Other Charges in the Planning Fees Charter

- 3.12 A range of other, already existing, charges including fees for high hedge applications, advertising planning applications, monitoring planning obligations, property searches and issuing property enquiry certificates are set out in the Planning Fees Charter in the interests of completeness and clarity.

## **4 RESOURCE IMPLICATIONS**

- 4.1 The Planning Service spends a considerable amount of time processing pre-application enquiries, non-material variations and requests for written confirmation of compliance/discharge of conditions at no additional charge. Considering the financial context and current demand for this service there is a

need to take a commercial approach for introducing service charges for pre-application enquiries, non-material variations and requests for written confirmation of compliance/discharge of conditions.

- 4.2 In charging for the abovementioned services it will mean that customers will rightly expect a paid-for service. This may result in re-balancing resources to provide those services whilst processing planning applications and progressing the review of its local development plan. The planning authority will monitor planning application performance to see if the implementation of Planning Fees Charter impacts on other parts of the wider Planning Service.
- 4.3 The planning authority's back office systems and processes will need to be updated to allow for the implementation of the Planning Fees Charter, if approved. The Planning Fees Charter will need to be made available on the Council's website.

## **5 RECOMMENDATION**

- 5.1 The Committee is recommended to approve the Planning Fees Charter.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 9 May 2023  
**Contact Person:** Peter Arnsdorf  
peter.arnsdorf@midlothian.gov.uk

**Background Papers:** The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022; and  
Planning Circular 2/2022 The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022

## Planning Fees Charter

The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022 set out the level of fees required as part of the submission of planning applications and other associated applications.

These Regulations replace the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004. They also introduce some additional categories of payment and enable the planning authority to charge discretionary fees for some services, to reduce or waive fees in certain cases and to apply a surcharge for retrospective applications. The Regulations require us, as planning authority, to set out what we will charge for these services, when and by how much fees will be reduced and clarify the level of surcharges applied. This information is set out below.

Planning applications and associated submissions will not be considered 'valid' until the fee has been received in full. Fees will be checked at the final point of validation, rather than the point of submission, as changes during the validation process can affect fees payable. Planning applications, discretionary service requests and associated submissions may be returned if the required fee is not received within five working days of the submission being lodged.

### Ways to Pay

Cheque – Please make cheques payable to 'Midlothian Council' and write the application reference number (\*\*/\*\*\*\*\*/\*\*\*), or the address of the application site and 'planning application' or 'pre-application enquiry' on the back of the cheque.

Card – Please call (0131) 271 3147. If paying by card please ensure you also provide us with the planning application reference number and the site address. Please note this telephone line is only staffed on a Monday, Wednesday or Friday.

BACS - Sort code: 83-17-26 Account number: 00128568 Once a payment is made please email [revenues.cash.collection@midlothian.gov.uk](mailto:revenues.cash.collection@midlothian.gov.uk) with confirmation of the planning application reference number, cash amount and the customer/company name. Please copy [dutyplanningofficer@midlothian.gov.uk](mailto:dutyplanningofficer@midlothian.gov.uk) into the email.

## Fees for Planning Applications

The fees associated with the submission of planning applications are set out in The Town and Country (Fees for Applications) (Scotland) Regulations 2022 (or subsequent amendments) and can be found via:

[The Town and Country Planning \(Fees for Applications\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2022/0001/eng/schedules/sch_1/1)

## Pre-Application Advice Charging

Below is the scale of fees related to pre-application enquiries:

Category	Definition	Charge	Standard Service Level	Additional service options	Required information
Householder (including change of use of land to private garden ground); and advertisement and signage proposals		£80 + VAT (£96)	Unaccompanied site visit to the site by the case officer; consultation with relevant internal consultees; and a written response provided within 30 working days based on the information provided, unless an alternative timescale is agreed.		<ul style="list-style-type: none"><li>• Completed pre-application form</li><li>• Location plan with red line;</li><li>• Block plan existing and proposed;</li><li>• Existing/proposed elevations;</li><li>• Existing/proposed floor plans;</li><li>• Draft outline design/access statement.</li></ul> <p>* all drawings to be provided at a scale to show the extent of the proposed development.</p>
Small Local Scale development	<ul style="list-style-type: none"><li>• 1 to 10 residential units;</li><li>• Up to 999 sqm of gross floor space;</li></ul>	£150 + VAT (£180)	Unaccompanied site visit to the site by the case officer; consultation with relevant consultees;		<ul style="list-style-type: none"><li>• Completed pre-application form</li><li>• Location plan with red line;</li><li>• Block plan existing and proposed;</li></ul>

	<ul style="list-style-type: none"> <li>• Agricultural buildings;</li> <li>• Glasshouses and polytunnels</li> <li>• Other development sites up to 0.49ha.</li> </ul>		and a written response provided within 30 working days based on the information provided, unless an alternative timescale is agreed.		<ul style="list-style-type: none"> <li>• Existing/proposed elevations;</li> <li>• Existing/proposed floor plans;</li> <li>• Draft outline design/access statement.</li> </ul> <p>* all drawings to be provided at a scale to show the extent of the proposed development.</p>
Larger Local Scale	<ul style="list-style-type: none"> <li>• 11 to 49 residential units;</li> <li>• Between 1000 sqm and 9999 sqm of gross floor space;</li> <li>• Other development sites above 0.5ha but below major scale development.</li> </ul>	£500 + VAT (£600)	Unaccompanied site visit to the site by the case officer; consultation with relevant consultees; and a written response provided within 35 working days based on the information provided, unless an alternative timescale is agreed.		<ul style="list-style-type: none"> <li>• Completed pre-application form</li> <li>• Location plan with red line;</li> <li>• Block plan existing and proposed;</li> <li>• Existing/proposed elevations;</li> <li>• Existing/proposed floor plans;</li> <li>• Draft outline design/access statement.</li> </ul> <p>* all drawings to be provided at a scale to show the extent of the proposed development.</p>
Major Scale	Major scale development as set out in The Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009	£1200 + VAT (£1440)	Unaccompanied site visit to the site by the case officer; consultation with relevant consultees; and a written response provided within 35 working days based on the information provided,	Up to two meetings with case officer £500; £200 for each meeting after the first two.	<ul style="list-style-type: none"> <li>• Completed pre-application form</li> <li>• Location plan with red line;</li> <li>• Block plan existing and proposed;</li> <li>• Existing/proposed elevations;</li> <li>• Existing/proposed floor plans;</li> <li>• Draft outline design/access statement.</li> </ul>

			unless an alternative timescale is agreed.		* all drawings to be provided at a scale to show the extent of the proposed development.
Listed Buildings	Proposals for alterations to listed buildings not covered by the categories above.	£80 + VAT (£96)	Unaccompanied site visit to the site by the case officer (access may be required); consultation with relevant consultees; and a written response provided within 30 working days based on the information provided, unless an alternative timescale is agreed.		<ul style="list-style-type: none"> <li>• Completed pre-application form</li> <li>• Location plan with red line;</li> <li>• Block plan existing and proposed;</li> <li>• Existing/proposed elevations;</li> <li>• Existing/proposed floor plans;</li> <li>• Draft outline design/access statement.</li> </ul> <p>* all drawings to be provided at a scale to show the extent of the proposed development.</p>
Section 75 modifications		£80 + VAT (£96)	Consultation with relevant consultees; and a written response provided within 35 working days based on the information provided, unless an alternative timescale is agreed.		<ul style="list-style-type: none"> <li>• Completed pre-application enquiry form.</li> </ul>

## **Exemptions from the above Pre-Application Enquiry Charging**

Pre-application enquiries to alter or extend an existing dwellinghouse, or to carry out operations within the curtilage of an existing dwellinghouse, are exempt from payment of a fee if the planning authority is satisfied that the proposed development is intended to improve access, safety, health or comfort for a disabled person who is living in the house as their principal residence.

Community Councils - pre-application enquiries from a community council are exempt from payment of a fee if the planning authority is satisfied that the proposed development is intended solely for community benefit.

Pre-application enquiries for local scale renewable energy projects are exempt. This exemption does not apply if the proposals form part of a wider development proposal.

Pre-application enquiries that are part of a collective or wider Planning Service funding arrangement are exempt – the Planning Service can advise applicants if their proposal falls within this exemption.

Do I need planning permission enquiries are not classed as pre-application enquiries and are therefore exempt.

## **Non-Material Variations**

A fee of £200 for each request for a non-material variation to a planning permission under Section 64 of the Town and Country Planning (Scotland) Act 1997.

## **Condition Compliance Fee (excludes AMSC applications relating to planning permission in principle)**

A fee of £100 to provide written confirmation that a condition has been complied with. An applicant may wish to seek written confirmation of compliance with more than one condition pertaining to the same application within a submitted request, which will result in a single fee of £100 being payable. Each subsequent written confirmation request pertaining to the same application will attract a further fee of £100. Where an enquiry relates to a householder development, which would benefit from planning application fee exemption under Reg 7 (means of access, etc. for disabled persons) it will be exempt from this fee.

Requests that are part of a collective or wider Planning Service funding arrangement are exempt – the Planning Service can advise applicants if their proposal falls within this exemption.

### **Discharge of Conditions (excludes AMSC applications relating to planning permission in principle)**

A fee of £100 to provide written confirmation that a condition can be discharged. Applicants will require to seek written confirmation of the discharge of conditions related to a grant of planning permission or other form of consent. Each submitted request will result in a single fee of £100 being payable. Each subsequent written request pertaining to the same application will attract a further fee of £100. Where a request relates to a householder development, which would benefit from planning application fee exemption under Reg 7 (means of access, etc. for disabled persons) it will be exempt from this fee.

Requests that are part of a collective or wider Planning Service funding arrangement are exempt – the Planning Service can advise applicants if their proposal falls within this exemption.

### **Retrospective Applications Surcharge**

A surcharge will be applied to applications for planning permission where the application relates to development carried out or commenced without permission (Section 33 of the Town and Country Planning (Scotland) Act 1997). The surcharge will be applied both where development is complete, and where development has commenced but has not yet been completed. The fee shall be calculated for the development in accordance with the Regulations and then a surcharge of 25% will be added. (If an officer of the Planning Authority sees that development has commenced on a development while conducting a site visit the application will be made invalid until the additional fee is paid).

### **High Hedge Applications**

High Hedge applications attract a fee of £300. However, the difference between cost of work involved in assessment and the £300 fee will be refunded if less than £300. Please note that there is no pre-application advice service in relation to High Hedge applications.



### **Charge for Advertising a (non-EIA) Application**

Where applications have to be advertised in the local press on account of neighbour notification, bad neighbour development or potential departure from the development plan a charge of £80 will be required to cover the planning authority's costs. The application will not be determined until the advert fee has been settled.

### **Charge for Advertising an EIA Application**

The advert fee for EIA applications is calculated based on the space required in the newspaper.

### **Section 50 Licence Applications/Certificate**

A section 50 license application fee will be set at £60.

### **Property Search**

A property search fee will be set at £60.

### **Property Enquiry Certificate**

A property enquiry certificate fee will be set at £116.

## Monitoring Planning Obligations

Council agreed in 2016 that the planning authority would charge for monitoring obligations.

Charges for the monitoring and management of Planning Obligations are as follows:

Form of Development	Charge
Householder applications or local applications relating to the erection of a single dwellinghouse.	£105+VAT (=£126)
Local developments relating to more than a single dwellinghouse where the planning obligation relates only to the payment of financial contributions.	£525+VAT (=£630)
Local developments where the planning obligation relates to the payment of financial contributions and the provision of affordable housing and/or other infrastructure.	£1050+VAT (=£1260)
Major development where the planning obligation relates only to the payment of financial contributions	£1575+VAT (=£1890)
Major developments where the planning obligation relates to the payment of financial contributions and the provision of affordable housing and/or other infrastructure.	£2100+VAT (=£2520)
National and Major developments where the planning obligation relates to the payment of financial contributions and the provision of affordable housing and/or other infrastructure over a period of 10 years or more.	£5250+VAT (=£6350)



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## ELECTED MEMBER WORKSHOPS ON NATIONAL PLANNING FRAMEWORK NO. 4 AND MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 AND AN UPDATE ON MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 ENGAGEMENT

Report by Chief Officer Place

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### 1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to set out the date for the upcoming elected member workshops on National Planning Framework No.4 (NPF4) and the Midlothian Local Development Plan 2 (MLDP2). The report also provides an update on MLDP2 work streams and seeks approval of an Engagement Plan.

### 2 BACKGROUND

- 2.1 At its meeting of 28 February 2023 the Committee considered a report on the National Planning Framework No.4 (NPF4) and formally launched its review of its local development plan in accordance with the following indicative timescale:

#### Indicative Timescale for Production of MLDP2

	Key Stage	Approval Body	Timescale
1	Formal commencement of MLDP2	Planning Committee	February 2023
2	Invitations to community groups to prepare Local Place Plans (LPPs)	Planning Committee	March 2023
3	Widespread engagement to inform production of the MLDP2 Evidence Report*	Planning Committee	2023
4	Approval of MLDP2 Evidence Report for submission to Scottish Ministers "Gate Check"	Full Council	January 2024
5	Reporting the results of/feedback from Scottish Ministers "Gate Check" of the MLDP2 Evidence Report	Planning Committee	From March 2024
6	Approval of MLDP2 Proposed Plan for publication for representations (a 12 week formal consultation period)	Full Council	March/April 2025
7	Approval of the MLDP2 Draft Delivery Programme for publication	Full Council	March/April 2025

<b>8</b>	Approval of MLDP2 Proposed Plan for submission to Scottish Ministers – this may include a Modification Report making changes to the Proposed Plan following representations received	Full Council	December 2025
<b>9</b>	Examination into unresolved issues from representations received on MLDP2 Proposed Plan	N/A	From March 2026
<b>10</b>	Report of Examination Received from the Reporter from the Directorate for Planning and Environmental Appeals (DPEA) appointed by Scottish Ministers	N/A	September 2026
<b>11</b>	Adoption of MLDP2	Full Council	December 2026
<b>12</b>	Adoption of MLDP2 Delivery Programme	Planning Committee	March 2027

2.2 Following the Committee's decision on the 28 February 2023 the formal commencement of MLDP2 has been undertaken in accordance with stage 1 of the timeline and invitations to community groups to prepare Local Place Plans in accordance with stage 2 of the timeline has been undertaken. The Planning Service is now undertaking widespread engagement to inform the production of MLDP2 in accordance with stage 3 of the timeline. The plan for this engagement is set out in an Engagement Plan attached to this report as Appendix A.

2.3 The stated Committee report set out the following:

- An update on the adoption of NPF4;
- The implication of NPF4 in the assessment of planning applications;
- The new housing targets for Midlothian set by NPF4;
- An overview of the MLDP2 process, key issues for MLDP2 and the MLDP2 next stages; and
- The Development Plan Scheme for Midlothian No.15

### **3 ELECTED MEMBER WORKSHOPS**

3.1 As part of the engagement on MLDP2, it was agreed that workshops with elected members be arranged. The purpose of these workshops is to inform elected members of the implications of NPF4 for Midlothian and to start capturing elected members ambitions and ideas for MLDP2.

3.2 A present two sets of workshops are planned - the first in May 2023 and the second in September 2023. To maximise the opportunity for engagement with elected members, two sessions, split on a ward basis, are being held for each workshop set. The first set of workshops are being held on 29 May 2023 (invites have been issued) and the second set will be in September on a date to be confirmed. On 29 May 2023 there will be a morning workshop session for Dalkeith, Midlothian East and Bonnyrigg Ward elected members. In the afternoon of 29 May 2023 there will be a workshop for Midlothian West, Midlothian South and Penicuik Ward elected members.

## **4 UPDATE ON MLDP2 ENGAGEMENT**

- 4.1 At its meeting of 28 February 2023 the Committee agreed to commence the preparation of MLDP2. The first major stage in the preparation of MLDP2 is widespread engagement to inform the production of the Evidence Report. The Evidence Report will be produced later in 2023.
- 4.2 The purpose of the Evidence Report is to set out the evidence that will be used to inform what to plan for, before the Proposed Plan for MLDP2 looks at where development should take place and the document's spatial strategy and policy framework is produced. The Evidence Report will provide a summary of the evidence gathered by the Council, and an analysis of what the evidence means and its implications for the Proposed Plan.
- 4.3 Once approved by Council, the Evidence Report must be submitted to Scottish Ministers for assessment (known as the "Gate Check"). This process is intended to confirm Midlothian Council has sufficient information to start producing the Proposed Plan for MLDP2. The MLDP2 programme is to submit the Evidence Report to Scottish Ministers (through Scottish Government Directorate for Planning and Environmental Appeals (DPEA)) in early 2024.
- 4.4 There are a number of legislative requirements relating to engagement for evidence gathering (for the Evidence Report) with specific stakeholders, including the public at large, disabled people, gypsies and travellers, children and young people, community councils and (Government) key agencies. The aim is to include in the Evidence Report information about the lived experience of those who live and work in Midlothian, alongside technical data.
- 4.5 The Planning (Scotland) Act 2019 made changes to the planning system that mean that early phases of producing a new local development plan relate to the collection of evidence, and do not involve engagement or consultation on site specific matters, such as new development allocations (this action comes later in the process).

### MLDP2 Engagement Plan

- 4.6 During 2023 engagement will be taking place with community, local businesses and organisations, developers, third sector organisations, Government key agencies and other stakeholders to collect information for the Evidence Report.
- 4.7 An Engagement Plan for MLDP2 has been produced to explain how and when the Planning, Sustainable Growth and Investment Service will engage with these different groups during the production of MLDP2. A copy of this plan is provided in Appendix A of this report and it is requested that Committee notes and approves this plan.
- 4.8 The Engagement Plan will need to be regularly updated as work on the various stages of producing MLDP2 progress. The attached version

provides fuller details on the planned engagement up to the approval of the Evidence Report, and an outline of engagement in the following stages of MLDP2 preparation. The Engagement Plan expands on the information provided in the Participation Statement, which was agreed by Committee as part of the Development Plan Scheme 15 (DPS15).

#### Local Place Plans and MLDP2 Drop In Events

- 4.9 Invitations have been issued to community groups to prepare Local Place Plans. An in person event on Local Place Plans with the Midlothian Federation of Community Councils took place with Council staff at the Lasswade Centre on Saturday 25 March 2023.
- 4.10 Details of open to all 'Drop In Events' for MLDP2 arranged for May and June 2023 are below. These are intended to help collect information for the Evidence Report on the lived experiences of those who live and work in Midlothian:
- Thursday 4 May – 1pm to 7pm at Gorebridge Library
  - Tuesday 9 May - 1pm to 7pm at Loanhead Library,
  - Thursday 11 May - 1pm to 7pm at Dalkeith Library,
  - Tuesday 23 May - 1pm to 7pm at Lasswade Library,
  - Thursday 25 May - 1pm to 7pm at Newtongrange Library
  - Thursday 1 June - 1pm to 7pm at Penicuik Library

## **5 RECOMMENDATIONS**

5.1 It is recommended that the Committee:

- i) Note the details of the elected member workshops arranged with regard NPF4 and MLDP2;
- ii) Approves the MLDP2 Engagement Plan (Appendix A); and
- iii) Authorises the Planning, Sustainable Growth and Investment Service Manager to update the MLDP2 Engagement Plan as and when necessary.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 9 May 2023  
**Contact Person:** Grant Ballantine, Lead Officer Conservation and Environment, [grant.ballantine@midlothian.gov.uk](mailto:grant.ballantine@midlothian.gov.uk)  
**Background Paper:** The 28 February 2023 Committee report on NPF4 and MLDP2.  
**Appendices:** Appendix A: Midlothian Local Development Plan 2 Engagement Plan.

## MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 ENGAGEMENT PLAN

This Engagement Plan consists of following four parts, which reflects the process for preparing Midlothian Local Development Plan 2:

- PART 1 - EVIDENCE GATHERING (for Preparation of Evidence Report for Midlothian Local Development Plan 2);
- PART 2 - PREPARATION OF MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 PROPOSED PLAN AND DELIVERY PROGRAMME;
- PART 3 - PUBLICATION OF MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 PROPOSED PLAN AND PROPOSED DELIVERY PROGRAMME; AND
- PART 4 – ADOPTION AND IMPLEMENTATION OF MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2 AND DELIVERY PROGRAMME.

### PART 1 - EVIDENCE GATHERING (for Preparation of Evidence Report for Midlothian Local Development Plan 2)

PLAN STAGE	WHO	WHAT	HOW	WHEN
Evidence Gathering	Community Councils (including the Federation of Midlothian Community Councils)	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and matters of importance and relevance to them.	Online and in person meetings.  Invitations to drop in events  Inviting them to prepare Local Place Plans.	Spring, Summer and Autumn 2023  Attended Federation meeting on 25 March 2023.
Evidence Gathering	Children & Young People (including school pupils)	As above, adapted to the specific interests/ perspectives of children and young people	Sessions in schools  Targeted communications electronically via existing networks	Summer and Autumn 2023  Invitation to schools for in-class sessions issued 24 April 2023
Evidence Gathering	Older People	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and matters of importance and relevance to them.	In person meetings utilising existing groups and networks	Spring, Summer and Autumn 2023

Evidence Gathering	Community Bodies & Groups	As above	Online and in person meetings.  Invitations to drop in events  Inviting them to prepare Local Place Plans.	Spring, Summer and Autumn 2023
Evidence Gathering	Gypsy & Traveller community	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and matters of importance and relevance to them.	In person meetings, utilising existing networks.	Summer and Autumn 2023
Evidence Gathering	Disabled People	As above	Online and in person meetings, utilising existing networks	Summer and Autumn 2023
Evidence Gathering	Key Agencies & Public Bodies (external to Midlothian Council) -NHS Health and Social Care Partnership -SEPA and Scottish Water -NatureScot and Historic Environment Scotland -Transport Scotland and SEStran -Scottish Forestry -Scottish Enterprise	Obtain information on infrastructure capacity constraints, and planned and needed investment in Midlothian.  Get advice on content and review of content of Evidence Report.	Teams meetings	Spring, Summer and Autumn 2023



Evidence Gathering	Landowners (including Landed Estates)	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and matters of importance and relevance to them. Matters to be engaged on will include estate diversification, climate change adaptation and net zero, current and future land use	Online and in person meetings	Spring, Summer and Autumn 2023
Evidence Gathering	Developers (including private housing developers, registered social landlords, and commercial developers)	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and relevant issues including, housing need and demanding, delivery of affordable, climate change adaption and net zero, labour and material supply issues.	Online and in person meetings	Spring, Summer and Autumn 2023
Evidence Gathering	Community Planning Partnership (all partners)	Awareness raising and getting access to community planning partners for their input to the Evidence Report	Online meetings	Spring, Summer and Autumn 2023
Evidence Gathering	Midlothian & East Lothian Chamber of Commerce (MELCC)	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and matters of importance and relevance to them.	Online meetings  Organisations and businesses questionnaire	Spring, Summer and Autumn 2023
Evidence Gathering	Midlothian Council services including:	Getting details issues across sections of the Council and what needs to be taken into account in	Online and in person meetings	Spring, Summer and Autumn 2023

	<ul style="list-style-type: none"> <li>-Education</li> <li>-NHS Health and Social Care Partnership</li> <li>-Housing</li> <li>-Land and Countryside</li> <li>-Waste</li> <li>-Fleet</li> <li>-Environmental Health</li> <li>-Building Standards</li> <li>-Economic Development</li> <li>-Property Maintenance</li> <li>-Estates</li> </ul>	the next Midlothian Local Development Plan. Highlight the importance critical corporate role of Midlothian Local Development Plan 2.		
Evidence Gathering	Infrastructure providers including: <ul style="list-style-type: none"> <li>-Network Rail</li> <li>-bus operators in Midlothian</li> <li>-energy providers (electricity and gas)</li> <li>-telecoms providers, including broadband</li> </ul>	Obtain information on infrastructure capacity constraints, and planned and needed infrastructure investment in Midlothian.	Online meetings	Spring, Summer and Autumn 2023
Evidence Gathering	Neighbouring local authorities	Understand cross border and shared interests	Online and in person meetings	Summer and Autumn 2023
Evidence Gathering	General public	Seek views and have regard to them in the preparation of the Evidence Report and Proposed Plan. Seek information on lived experience of living and/or working in Midlothian and matters of importance and relevance to them.	Drop in events  Online questionnaires	Spring, Summer and Autumn 2023

**PART 2 - PREPARATION OF MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2  
PROPOSED PLAN AND PROPOSED DELIVERY PROGRAMME (To be updated  
at appropriate time)**

<b>PLAN STAGE</b>	<b>WHO</b>	<b>WHAT</b>	<b>HOW</b>	<b>WHEN</b>
Preparation of Proposed Plan and Proposed Delivery Programme	Relevant parties, where necessary, referenced in Part 1 of this document	Engagement with relevant parties on evidence and content while producing the Proposed Plan and Proposed Delivery Programme	TBC – Likely in person and virtual	Spring 2024 and Spring 2025

**PART 3 - PUBLICATION OF MIDLOTHIAN LOCAL DEVELOPMENT PLAN 2  
PROPOSED PLAN AND PROPOSED DELIVERY PROGRAMME (To be updated  
at appropriate time)**

<b>PLAN STAGE</b>	<b>WHO</b>	<b>WHAT</b>	<b>HOW</b>	<b>WHEN</b>
Publication of Proposed Plan and Proposed Delivery Programme	Parties referenced in Part 1 of this document, including the Key Agencies for the Proposed Delivery Programme	Consultation with parties on the published Proposed Plan and Proposed Delivery Programme	TBC – Likely in person and virtual	Spring and Summer 2025

**PART 4 – ADOPTION AND IMPLEMENTATION OF MIDLOTHIAN LOCAL  
DEVELOPMENT PLAN 2 AND DELIVERY PROGRAMME (To be updated at  
appropriate time)**

<b>PLAN STAGE</b>	<b>WHO</b>	<b>WHAT</b>	<b>HOW</b>	<b>WHEN</b>
Adoption of Midlothian Local Development Plan 2 and Delivery Programme	Parties referenced in Part 1 of this document , including the Key Agencies for the Proposed Delivery Programme	Engagement with parties to help deliver the adopted Midlothian Local Development Plan 2 (MLDP2) and its Delivery Programme	TBC – Likely in person and virtual	Adoption of MLDP2 in December 2026 and adoption of Delivery Programme within three months. Then ongoing to Winter 2036





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## **TREE PRESERVATION ORDER (1 of 2023) AT LAND AT THE KILN (KILN COTTAGE), QUARRRYBANK, COUSLAND AND LAND AT NORTHFIELD FARM, COUSLAND**

Report by Chief Officer Place

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### **1 PURPOSE OF REPORT**

- 1.1 This report seeks the Committee's approval to confirm a Tree Preservation Order (TPO) 1 of 2023 issued on 25 January 2023 for twelve individual trees (T1 – T12) and four groups of trees (G1 to G4) at land at The Kiln (Kiln Cottage), Quarrybank, Cousland. The report also seeks the Committee's approval to amend the TPO.

### **2 BACKGROUND**

- 2.1 At its meeting of 10 January 2023 the Committee determined to issue a TPO regarding twelve individual trees (T1 – T12) and four groups of trees (G1 to G4) at land at The Kiln (Kiln Cottage), Quarrybank, Cousland.
- 2.2 The TPO was issued on the basis that a report regarding the confirmation of the TPO, once the owner of the land and other interested parties have had the opportunity to make comment, be reported to Committee for consideration. The following details of the case are set out in the 10 January 2023 Committee report attached as Appendix B:
- Site location and description;
  - Background and justification for issuing the TPO;
  - Details of the TPO proposal;
  - Location plan;
  - Local development context plan; and
  - Site photos
- 2.3 The TPO came into effect on 25 January 2023 and continues in force for six months (until 25 July 2023) or until the Order is 'confirmed', which is the process of making the TPO permanent (until it is removed).
- 2.4 Following the service of the TPO the landowners were given the opportunity to make representation. Furthermore, in accordance with the Regulations, a notice was published in the Midlothian Advertiser and on the Council's website and the Tynewater Community Council (who informed the Cousland Village Hall Association) were also notified of the

decision to issue the Tree Preservation Order and invited to make a representation. In addition, a site notice was attached to nearby gates and fences in three locations advising of the TPO and the consultation process. Interested parties were given until 31 March 2023 to make representations, this was extended to 17 April 2023 for the property owner in response to a request from their agent. Legislation requires that a period of at least 28 days is made available for representation to be submitted to the Council following a decision to make a Tree Preservation Order.

- 2.4 One representation on behalf of the landowner and two representations from interested parties were received. The representations are attached as Appendix C.

### **3 REPRESENTATIONS**

- 3.1 The Council received one representation objecting to the issuing of the TPO on behalf of the owners of land at The Kiln (Kiln Cottage), Quarrybank, Cousland. The representation included a tree survey report, the accompanying letter stated:

*“On the 28<sup>th</sup> of March 2023 I carried out a visual tree assessment with the aid of an acoustic hammer and girthing tape, surveying all trees within the extent of TPO 1-2023. Many are of poor merit, have low amenity value and aesthetics and are not worth of preservation. T16 is a particularly nice specimen although wire is running through the lower stem. In summary I would like to propose a management plan going forward even if TPO 1-2023 is to be made....”*

- 3.2 The tree health and safety and stability issues raised have since been the subject of a work to tree application (23/00256/WTT). The application requested permission to carry out tree safety and tree management works including felling of 17 individual trees for health and safety and structural reasons, pruning works and the removal of ash trees due to ash dieback disease. The work to tree application was granted on 25 April 2023 and conditioned replacement tree planting on site. As a consequence the proposed TPO plan, attached to this report as Appendix A, and schedules have to be updated to take into account the tree removals. Replacement planting has been conditioned through the work to tree application and will be protected by the TPO if confirmed by the Committee.
- 3.3 It is considered that the tree safety concerns raised in the tree survey report have been addressed by the work to tree application, leaving the remaining trees in the modified TPO to be confirmed should the Committee determine to do so. This ensures that the protected trees can continue to contribute to tree canopy cover and the landscape amenity of Cousland, whilst safety issues have been addressed. It is advised therefore that the above representation has been addressed and should not prevent the confirmation of the TPO.
- 3.4 The Council received two further representations. The first supported the issuing of the TPO and stated:

*“I want to say I am glad to see the tree preservation order being put in place for trees at this site, as we have had woodpeckers and birds of prey utilising the trees on this piece of land and it would be sad to see any of them be taken down, especially since every tree counts in battling climate change and saving our natural environment.”*

- 3.5 The second representation requested an amendment to the TPO land description to more accurately describe the TPO land parcels, and requested the TPO be modified in order to remove tree groups G3 and G4 from the TPO as these trees need regular work in order to allow farm vehicles and livestock access. The representation states:

*“With reference to the above order and relative map, I would like to draw your attention to the group of trees marked as G4 and part of G3. These are not within the boundary of the land at Kiln, Quarrybank, Cousland, but are within the land at Northfield Farm, Cousland. There is a gated farm access road off the main road between G3 and G4 which is in constant use for farm vehicles and livestock to access fields on either side of the road.”*

- 3.6 In response the TPO title can be modified to include the names of both land parcels within the TPO.
- 3.7 The work to tree application process for TPO trees makes provision for land owners, tenants and occupiers to continue to manage their trees through the submission of an application detailing the proposed pruning or felling works required; the submission is then considered by the Council and approved if the proposed works are acceptable. The application process allows the Council to balance the needs of landowners and occupiers and tree safety issues with the aim of retaining tree cover. The retention of tree groups G3 and G4 in the TPO will ensure that the management of the trees can take place whilst preserving overall tree cover on the approach to Cousland from the west.
- 3.8 The work to tree application 23/00256/WTT includes proposals to crown lift some trees within Group 3 and Group 4 to facilitate vehicle access, and removal of ash trees in these groups due to Ash Dieback. The application was approved subject to conditions, particularly requiring replacement planting of Hawthorn within these tree groups. It is possible that these tree works will resolve the access issues raised in this representation. Should it be necessary, the tenant or landowner, or a third party (such as a qualified arborist or arboricultural consultant) can submit a new work to tree application requesting permission to carry out further tree works. It is advised therefore that the concerns raised about the inclusion of Group 3 and Group 4 can be resolved through the normal work to tree application process, and should not prevent the confirmation of the TPO.
- 3.9 With regard the description of the land parcels covered by the TPO the representation states:

*“With regards to the land ownership for tree Group 4 & part of Group 3 this is the same as the rest of the tree preservation order.... So in effect there are two land parcels, one being the Kiln, Quarrybank, and the other being Northfield Farm, Cousland. Therefore, to help me understand the situation better it would be really useful if you could clarify why Group 4 & part of Group 3 were included in the TPO initially when they are in different land parcels.”*

- 3.10 The TPO title can be amended to reference both land parcels namely land at The Kiln, Quarrybank and also land at Northfield Farm, Cousland.
- 3.11 In response to the consultation process and the approved works to trees application reference it is proposed to amend the TPO as follows:
- The TPO title is amended to read: Land at The Kiln, Quarrybank and land at Northfield Farm, Cousland;
  - The number of individual trees listed in the TPO at Schedule 1 is reduced from twelve to eight due to some tree safety works, consented through work to tree application 23/00256/WTT. The works have included permission for felling of a number of mature trees on site, some of which were numbered individually in the original TPO and some of which were part of the tree groups G1 to G4. The permission also covers removal of all Ash trees in Groups 3 and 4;
  - The TPO Schedules will be updated to remove reference to the individual trees removed, and to remove reference to the Ash trees in Groups 3 and 4 owing to the removal of Ash due to Ash dieback; and
  - The TPO plan is amended to illustrate the reduction in individual trees.

## **4 PLANNING ISSUES**

- 4.1 The individual trees identified in the TPO (subject to amendment) are worthy of protection on their own merits, as individual trees characteristic of their pastoral setting. Tree Groups G1 and G2 are worthy of protection as tree groups related to The Kiln/Northfield Farm and farm buildings; and Tree Groups G3 and G4 appear to be self-seeded groups marking the former quarry location and therefore providing a link to the site's historic and cultural importance to the village, whilst also contributing to the woodland setting on the approach to Cousland from the west.
- 4.2 The individual trees and tree groups feature in views from the north and on the approach to Cousland from the west. They are also widely visible from the dwellings on the northern side of Cousland at Beech Grove. They add to the setting and amenity of the area and help to integrate the more recent development at Beech Grove into the village as a whole, giving a sense of containment to the village.
- 4.3 The tree groups in particular contribute to the local biodiversity green network, providing connections and canopy cover between Cousland and the nearby Bellyford Burn corridor, which runs in a west to east direction to the north of the site at approximately 240 metres from the sites boundary.



- 4.4 The trees form part of the landscape character of the area and contribute to the local green network. The issuing of a TPO will be an important tool in protecting the trees aiding in the preservation of local amenity, biodiversity and habitat connectivity.
- 4.5 During the consultation period following the issuing of the TPO a work to tree application (23/00256/WTT) was submitted by the landowner proposing tree works within the TPO area. The work to tree application was based on a tree survey report carried out by a qualified arboricultural consultant company and identified some recommended tree works based on health and safety and stability issues. The application requested the felling of 17 individual trees, trees T1, T2 T8 and T10 as numbered on the original TPO plan and a number of trees within Tree Groups 1 and 2, some tree pruning works and removal of ash trees within Groups 3 and Group 4 due to Ash Dieback. The application was approved with conditions, in particular the provision of replacement planting.
- 4.6 The confirming of the TPO (with modification as set out in this report) will be an important tool in perpetuating canopy cover in the area in order to address the climate emergency, protecting the trees for their amenity and place functions and preserving local biodiversity and habitat connectivity.

## **5 PROCEDURES**

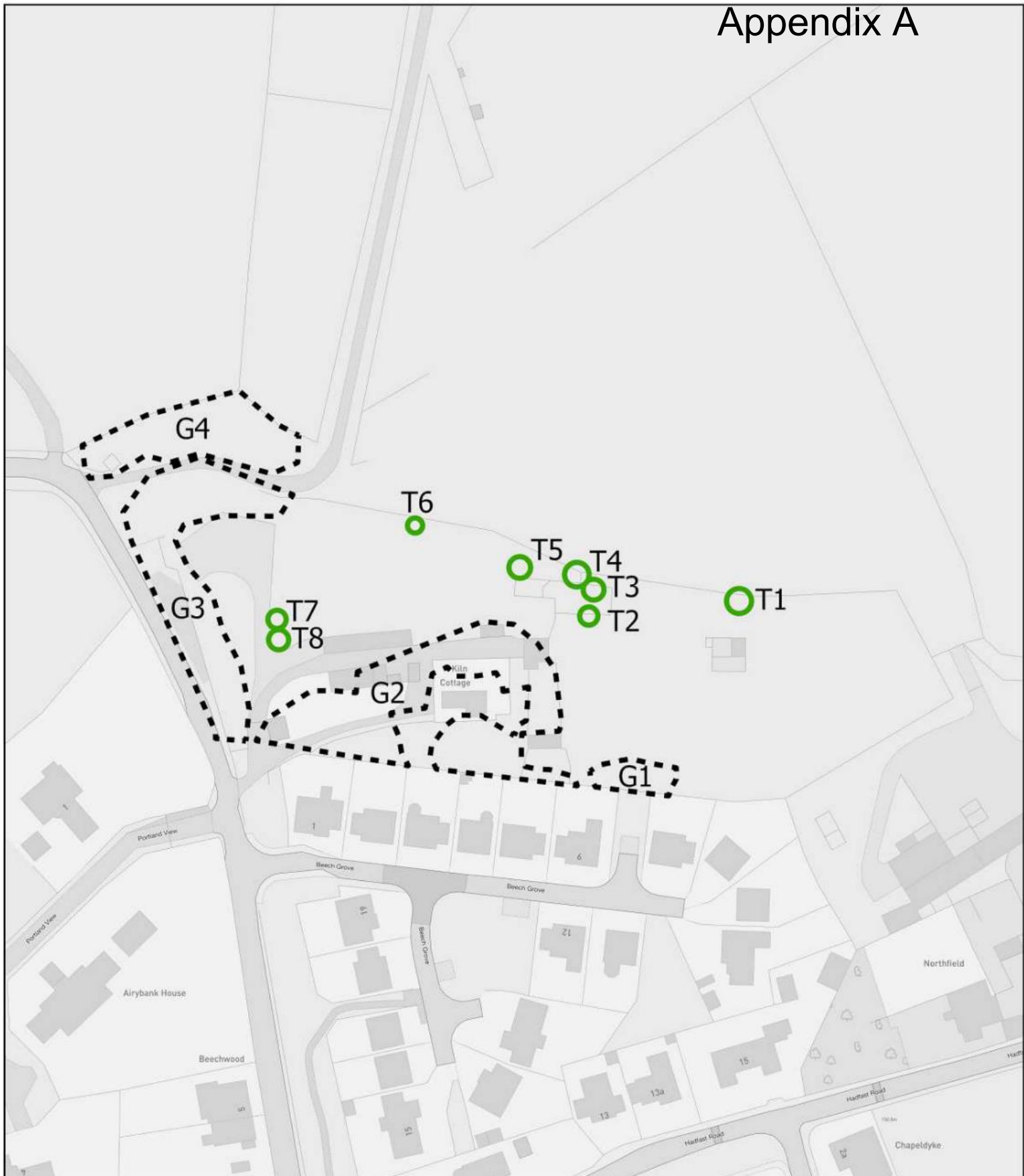
- 5.1 The provision for issuing a Tree Preservation Order is set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. A planning authority may make a Tree Preservation Order if it appears to them to be “expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historic significance” (Scottish Government Planning Circular 1/2011: Tree Preservation Orders). The TPO subject of this report has been made on amenity grounds.
- 5.2 The TPO will continue to remain in effect to the end of the six month period (ending 25 July 2023). If the local planning authority wishes the TPO to stay in effect beyond the six months it must ‘confirm’ the order.
- 5.3 To ‘confirm’ the Order the LPA must register the TPO in the Land Registry of Scotland, place a copy on its own TPO register and notify Scottish Forestry (previously the Forestry Commission Scotland), interested persons and any person who has made a representation (in this case no representations were received).

## **6 RECOMMENDATION**

- 6.1 It is recommended that Committee:
- a) Confirm the Tree Preservation Order (1 of 2023) as modified for eight individual trees (T1 – T8) and four groups of trees (G1 to G4) at land at The Kiln, Quarrybank Cousland and land at Northfield Farm, Cousland; and
  - b) Instruct the Planning, Sustainable Growth and Investment Service Manager to carry out the necessary procedures, following confirmation and endorsement of a tree preservation order, that are required by the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 9 May 2023  
**Contact Person:** Grant Ballantine  
grant.ballantine@midlothian.gov.uk  
**Background Papers:** January 2023 Committee Report (Appendix B)



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

Land at The Kiln, Quarrybank, Cousland and Land at Northfield Farm, Cousland.

This is the plan relative to the Midlothian Council Tree Preservation Order No. 1 of 2023

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Scale: 1:1,500

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### **TREE PRESERVATION ORDER REGARDING TREES AT THE KILN (KILN COTTAGE), QUARRYBANK, COUSLAND**

Report by Chief Officer Place

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#### **1 PURPOSE OF REPORT**

- 1.1 This report seeks the Committee's approval to issue a Tree Preservation Order (TPO) on twelve individual trees and four groups of trees located at The Kiln (Kiln Cottage), Quarrybank, Cousland.

#### **2 LOCATION AND SITE DESCRIPTION**

- 2.1 The site is located on the northern edge of Cousland, immediately adjacent to dwellings on Beech Grove Cousland.
- 2.2 The trees are located on pasture land, garden ground and amongst outbuildings at the property known as The Kiln or Kiln Cottage, Quarrybank, Cousland and on land immediately adjacent to the unnamed road running west from Cousland to the A6124.

#### **3 BACKGROUND**

- 3.1 A planning history search for the site identified that there have been no planning applications relating to the site.
- 3.2 Residential development on land to the west of the site at Airybank, comprising five dwellinghouses, is separate from the site by the unnamed road that leads to the A6124.
- 3.3 There have been a number of historic planning applications from 1993 to 2011 regarding land to the north of the site at the former Cousland Limeworks. The original applications related to the use of the land for the disposal of inert waste material and the restoration of the land for use as a horse-riding and training centre. Subsequent applications related to the extension of the landfill site and to extensions of time allowed for the infilling and restoration of the site. Further, applications supported the erection of an equestrian centre, manager's house, temporary caravan, equine pool, stables, hay store, indoor riding school, the erection of wind turbines and a change of use from agricultural land to an equestrian use to create gallops. The two turbines which were the

subject of applications 05/00145/FUL and 05/00462/FUL have since been dismantled and replaced with new turbines (applications 11/00401/DPP and 11/00402/DPP).

- 3.4 The site which is the subject of the proposed TPO was historically a quarry as depicted in the ordnance survey (OS) six inch map from 1888 to 1913. Historical maps from between 1885 to 1914 also show the site as being part woodland. The 1937 to 1961 OS map of the site still shows the quarry but now also includes a cottage in the location of Kiln Cottage and by the time of the 1944 to 1971 OS map the quarried area is located further north of the site, with buildings in the area around Kiln Cottage and tree cover to the south of the cottage.
- 3.5 In the more recent past the site has been in use for agricultural purposes and in part forming garden ground for Kiln Cottage. The former quarry area closest to the road remains disused and vegetated with self-seeded woodland. Kiln Cottage appears to be currently empty and the agricultural buildings on the site appear disused and derelict. At the time of two site visits in early 2022 and late summer 2022 the land appears not to be in use for grazing or any other agricultural use.

## **4 PROPOSAL**

- 4.1 It is proposed to issue a Tree Preservation Order (TPO) covering twelve individual trees and four tree groups as shown on the attached location plan, in the attached photographs and as described below:
- 4.2 As a whole the individual trees proposed for protection are a diverse mix of broadleaf and conifer species, many of which are mature or semi-mature ranging from the native trees found within the fields, through to the more diverse species of trees within the garden ground of the cottage which includes a line of prominent Larch and mature Beech trees as well as other garden trees.
- 4.3 There are some Ash trees amongst the individual trees proposed and within some of the groups. Within the woodland groups, there are some signs of Ash Dieback disease, whereas the individual trees proposed within the order were not showing advanced signs when last inspected. In particular, the two large mature Ash trees within the fields are significant in size and age, and as is consistent with Ash Dieback progression, are not suffering from the disease to the extent that younger trees may. It is acknowledged however that should a TPO be issued the condition of any Ash trees will require to be reviewed.
- 4.4 Tree Group 1 comprises a mature group of Larch, Scots Pine, Oak and Hawthorn within the field on the southern edge of the site directly to the north of Beech Grove. This group of trees helps to define the character and setting and amenity of the adjacent dwellings on Beech Grove.

- 4.5 Tree Group 2 comprises a mix of broadleaf and conifer species located along the southern site boundary with Beech Grove and in the area around the cottage on the site known as The Kiln or Kiln Cottage and amongst the outbuildings. This accounts for the varied species and ages of the trees in the group, some of which are mature, whilst others are semi-mature and younger. The trees in the group provide the setting for the cottage as well as contribute to the setting for the village of Cousland by defining the northern edge of the settlement. This group includes of Larch, Beech, Scots Pine, Lime, Cypress, Oak, Rowan, Malus, Prunus, Holly.
- 4.6 Tree Groups 3 and 4 define the edge of the road leading away from Cousland to the A6124. These groups appear to be self-seeded on the remains of the former quarry. The species in these two groups include Ash, Sycamore and Hawthorn. These groups are important in visually defining the road on the approach to the village, and along with the other trees in the proposed TPO contribute to green network connections locally.

## **5 PROCEDURES**

- 5.1 The provision for issuing a Tree Preservation Order is set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. A planning authority may make a TPO if it appears to them to be “expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historic significance” (Scottish Government Planning Circular 1/2011: Tree Preservation Orders).
- 5.2 Following the service of a TPO the owner of the land and other interested parties have the opportunity to make representation. However there is no right of appeal against a Tree Preservation Order.
- 5.3 The TPO shall be in effect for six months, during which time representations from the owner of the land and other interested parties will be considered. If the local planning authority wishes the TPO to stay in effect beyond the six months it must ‘*confirm*’ the order.

## **6 PLANNING ISSUES**

- 6.1 The site’s disused and partially derelict state has increased the prospect that the land may be sold or redeveloped, which in turn could threaten the existence of the identified trees. Trees T1 to T12 are worthy of protection on their own merits, as individual trees characteristic of their pastoral setting. Tree Groups G1 and G2 are worthy of protection as tree groups related to The Kiln/Kiln Cottage and farm buildings; and Tree Groups G3 and G4 appear to be self-seeded groups marking the former quarry location and therefore providing a link to the site’s historic



and cultural importance to the village, whilst also contributing to the woodland setting on the approach to Cousland from the west.

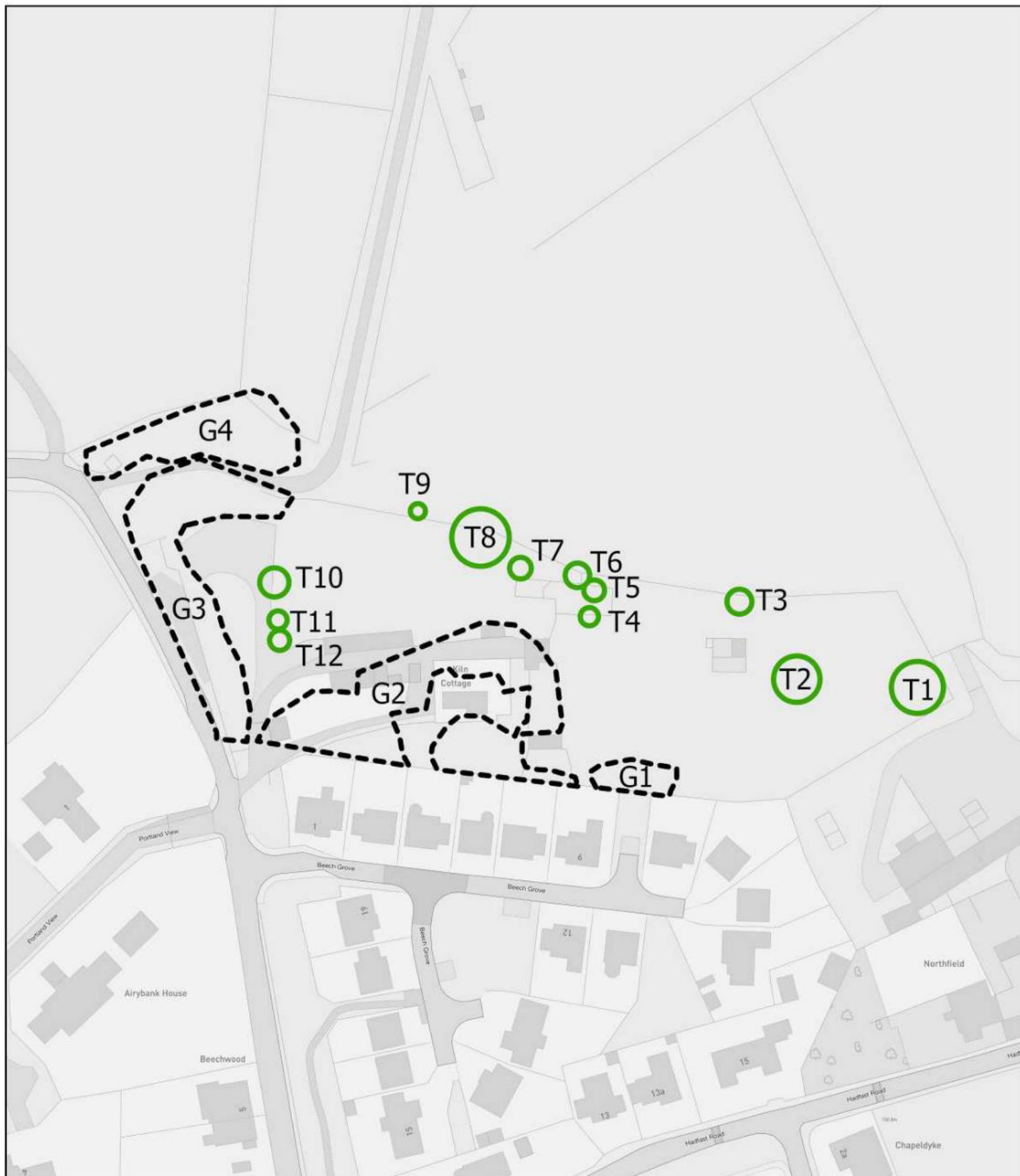
- 6.2 The individual trees and tree groups feature in views from the north and on the approach to Cousland from the west. They are also widely visible from the dwellings on the northern side of Cousland at Beech Grove. They add to the setting and amenity of the area and help to integrate the more recent development at Beech Grove into the village as a whole, giving a sense of containment to the village.
- 6.3 The tree groups in particular contribute to the local biodiversity green network, providing connections and canopy cover between Cousland and the nearby Bellyford Burn corridor, which runs in a west to east direction to the north of the site at approximately 240 metres from the sites boundary.
- 6.4 The trees form part of the landscape character of the area and contribute to the local green network. The issuing of a TPO will be an important tool in protecting the trees aiding in the preservation of local amenity, biodiversity and habitat connectivity.

## **7 RECOMMENDATION**

- 7.1 It is recommended that the Committee:
  - a) Agrees to the issuing of a TPO to protect the identified trees at The Kiln, Quarrybank, Cousland; and
  - b) Agree to receive a further report to consider confirming the TPO once the owner(s) of the land and other interested parties have had the opportunity to make comment.

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 20 December 2022  
**Contact Person:** Grant Ballantine  
grant.ballantine@midlothian.gov.uk  
**Background Papers:** Site location plan and site photographs



**Planning Service  
Place Directorate**  
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## The Kiln (Kiln Cottage), Quarrybank, Cousland Proposed Tree Preservation Order 1 of 2023

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Proposed Tree Preservation Order at: The Kiln, Quarrybank, Cousland

Site Photos: Dates 28<sup>th</sup> March 2022 and 18<sup>th</sup> August 2022

### **Individual Trees**

T2 Ash with T1 Ash in background, looking East



T8 (with T7-T5 in background), looking North-East



T10,11,12 (with G3 and G4 in the background), looking North



### Tree Groups

G1 with G2 in background, looking West





G1 looking South-East with Beech Grove to the rear



G2 looking East



G2 looking South, including Kiln Cottage



G3 (with G4 in background). Looking North from the site entrance gate





G3 and G4 viewed from the road to Cousland, looking East



Site Wide Views: Looking West across the site with T2 in the foreground and groups G2 in the background





31/03/2023

To whom it may concern,

Please find attached my findings in the form of a report, I have several concerns regarding the trees situated within the proposed TPO (TPO1-2023) area at Kiln Cottage Cousland.

On the 28<sup>TH</sup> of March 2023 I carried out a visual tree assessment with the aid of an acoustic hammer and girthing tape, surveying all trees within the extent of TPO 1-2023. Many are of poor merit, have low amenity value and aesthetics and are not worth of preservation. T16 is a particularly nice specimen although wire is running through the lower stem.

In summary I would like to propose a management plan going forward even if TPO 1 -2023 is to be made, all supporting data and information can be found in appendix A and E of the report.

All beech apart from T16 are to be removed due to various stages of decay throughout the lower stem, due to their size and location they pose significant risk to both property and life.

The Larches and Leylandii should be removed, all are in decline and some are causing structural damage to both existing buildings and boundary walls and not worthy of preservation.

Ash trees-26,28 33,34 are all removed due to their high level of Ash die back, and alternative species are planted as replacements.

Groups 3 and 4 - as stated in the council's report these are self-seeded hedge rows and trees compromising predominantly of Ash, Sycamore and Hawthorn.

I would like to propose remove all the Ash from within these groups and high prune the trees on the southern edge of 4 and northern edge of 3 to allow continued access for stock trucks and tractors as although situated out of my client's land holding the neighbouring farmer requires access at all times of the year for stock.

My client has no issues with replanting and maintaining native species once trees have been removed but on the basis that they can be relocated to somewhere more suitable to avoid having the same issues reoccurring in essence right tree right place.

If at all possible we would like to arrange a meeting on site with yourselves and my client to discuss this further.

If you have any further questions or queries, please don't hesitate to contact me.

[Redacted] FDSc BSc Hons

Operations Manager.

Forest Direct Ltd



TREE SURVEY REPORT  
FOR



Forest Direct Ltd



DATE 30/03/23



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## 1. Introduction

Forest Direct Ltd (FDL) was instructed to carry out a tree safety survey and produce an associated report for [REDACTED] for the purposes of this report is referred to as **Kiln Cottage**. The survey will cover all trees located within the survey area and within falling distance of public highways, footpaths and buildings.

### Description and area

Kiln Cottage is composed of several out buildings and small steading located in the village of Cousland. Following a Tree Preservation order being subjected on the land held by [REDACTED] Forest direct were asked to carry out a tree survey to find trees that posed a risk to the public/property and provide evidence for the removal of the tree preservation order.

## 2. A defensible tree safety survey

As the owner of a broad and varied population of trees across the estate, the landowner has a duty of care to ensure, as far as reasonably practicable, that trees within its ownership are unlikely to cause harm.

In practice this requires a balance between the interests of the owner of trees, those of the people that may be harmed by them and those of the general public. It is not possible to ensure complete and guaranteed safety unless no trees are present.

The basis of a defensible tree safety policy should include the following:

- An awareness of hazards, risks and legal obligations.
- Awareness of social, amenity and environmental values.
- The decision process and how it is implemented.
- Recording monitoring and feedback.

It is suggested that the aim for tree management across Kiln Cottage should include the following:

- To manage the tree population to maintain a reasonable balance between the landscape, biodiversity, economic and health benefits, that trees by their very presence provide, whilst ensuring, by sound management and practice, that the risk of harm to persons and property is minimised as far as is reasonably practical.

### Hazard classification

Hazards are classified by the following criteria:

- Failure potential: how likely is it that the tree or part of the tree will fail?
- What is the size of the tree or part that is most likely to fail?
- Target rating: how likely the tree or part of the tree will hit something on failure and what is the relative value of any damage.

It should be noted that a hazard classification is predominantly a means of risk assessment for prioritisation of works and the hazard assessment will always be subjective. Although most trees may contain deadwood and defects, these are only assessed and recorded when considered significant as

part of the risk assessment carried out during the tree safety survey.

### Frequency of inspection

It is unlikely that there are sufficient resources to inspect all trees on a daily or even an annual basis. Therefore, the frequency of inspection is determined by the following criteria:

- Tree surveyor competency and Zones of risk.

### Surveyor competency:

Generally, there are three levels of competence which are detailed as follows:

- Level 3: Detailed survey by competent Arboriculturist or Forest Manager trained in tree hazard evaluation; to be carried out initially and at intervals according to the agreed “Zones of Risk”.
- Level 2: Survey to be carried out by trained contracting Arboriculturist whenever carrying out remedial works to trees. This will often include an aerial inspection when climbing to carry out such works and will include a written report allowing updating of the electronic tree database.
- Level 1: Survey to be carried out by in house staff or tree wardens trained to LANTRA Level 1: Basic Tree Inspection and/or Engineer level (as stated in the DoE Circular Roads 52/75 Inspection of Highway Trees) to identify and report trees which develop obvious defects in the time period between Level 2 or 3 surveys, including: the development of fungal fruiting bodies; dieback or death; structural failure (particularly following storms); lifting of root plates or increased leaning of trees; exudation from stems or branches or other.

Forest Direct’s Operations Manager, [REDACTED], holds the Lantra Tree Inspection qualification and has been carrying out arboriculture works and surveys for the past 13 years and is also an specialist advisor for the Scottish government.

Tree surveyor [REDACTED] holds the Lantra Tree Inspection qualification and has been carrying out arboriculture works and surveys for the past 4 years.

### Limitations of tree survey

The findings and recommendations contained within this report are valid for a period of twelve months from the date of survey. Trees are living organisms and subject to change. Therefore, it is strongly recommended that some level of tree safety assessment is carried out on an annual basis. The recommendations relate to the site that exists at present and to the current level and pattern of usage. The degree of risk and hazard may alter as the site or its surroundings are developed or changed, and as such may require re-inspection and re-appraisal.

The level of risk associated with the assessed trees will vary with their condition and size but will also vary with the public usage and surroundings of their location. Zones are continually reviewed when monitoring inspections are carried out to ensure that any changes to existing zones or inclusion of new areas are carried out.

### Zones of risk

Zones of risk have been classified as Very High; High; Moderate and Low. In addition, an indication of the likely associated land-use is detailed in the table below:

<b>Risk Zone Categories</b>	<b>Indication of detail</b>
Very High Risk(A): Arterial road traffic routes; high use pedestrian pathways; Emergency facilities; Railway lines; Playgrounds & play areas; High priority trees in lower risk areas.	Level 1 survey: Six monthly and following storms. Level 2 survey: When remedial work is undertaken. Level 3 survey: 1 year or on request following Level 1 survey conclusions
High Risk: Main roads(B); Trees within the influencing distance of residential property; Schools (low use areas).	Level 1 survey: Six monthly and following storms. Level 2 survey: When remedial work is undertaken. Level 3 survey: 2 years or on request following Level 1 survey conclusions
Moderate Risk(C): Minor roads, public rights of way (including bridleways and footpaths); Residential parking areas; Woodlands.	Level 1 survey: Six monthly and following storms. Level 2 survey: When remedial work is undertaken. Level 3 survey: 2/3 years or on request following level one survey conclusions
Low Risk(D): Low use roads (farm and estate tracks and roads); other open spaces.	Level 1 survey: Six monthly and following storms. Level 2 survey: When remedial work is undertaken. Level 3 survey: 5 years or on request following level one survey conclusions

## 3. Tree survey objectives and recommendations

The objective of this survey is defined to be:

- Retain and ensure the long-term future of the trees within *Kiln cottage*.
- Ensure that the risk to the general public is minimised.
- Ensure that any liability claim is minimised.

### Tree safety survey specification

The tree safety survey aims to achieve the above objectives by identifying the tree resource across the land parcel at Kiln Cottage and assessing their location and health.

The survey will identify any hazards and assess the level of risk to road users and the general public and propose a programme of remedial works to remove the hazards where possible and/or minimise the risks.

The survey will cover the following tree cover at Kiln Cottage:

- *Assess all trees located within the TPO area at Kiln cottage.*

The survey records the following information to build up an initial database of trees recommended for remedial tree surgery work or monitoring and the proposed timescale for the work.

### Tree Description:

- Every tree that requires remedial work or monitoring will be given a unique reference number



and its location recorded.

- Species, height class, age class, vigour, zone of risk and date assessed will be recorded as appropriate.
- Tree location will be recorded on an associated plan.

#### Status:

The following information relating to the health of the tree and any hazards present may be recorded.

- The presence of deadwood (as a percentage).
- crown dieback (as a percentage).
- decayed trunk.
- wounds/cavities.
- fungal attack/decay.
- obstruction.
- dead.
- habitat potential.
- damaged/unstable roots.
- deformed leaves/buds.
- dangerous limbs/branches.
- continuing decline and vigour.

#### Action required:

Any recommended remedial work relating to the above hazards is recorded and detailed for the relevant individual tree or group of trees. This section also records the priority for any action on the basis that:

- Urgent (U): requires work as soon as possible.
- 6 months (6): suggest work within approximately 6 months of the survey;
- 12 months (12): suggest work within approximately 12 months of the survey;
- 18 months (18): suggests work within approximately 18 months of the survey;

Also assessed and recorded is:

- Estimated labour time and cost based on a 2- or 3-person tree surgery team.
- The frequency of required monitoring is also assessed and recorded.

## 4. Survey Method:

The tree safety survey method is based on a ground level visual assessment of all trees which are within falling distance of the *public highway, footpaths, situated within the area covered by the TPO and which are of significance in the context of reasonable tree safety management.*

The tree survey was carried out on foot by [REDACTED] on the 28<sup>th</sup> of March 2023

Trees recommended for remedial work or specific monitoring were assigned a unique reference number and their locations recorded on a map and precise geolocations.

#### Survey data management

The data collected has been entered into the FDL bespoke tree management database to produce a detailed report on proposed remedial work and a programme of monitoring inspections to achieve and maintaining the required level of risk management. In addition, the data is used to estimate the costs of the remedial work.



The tree safety survey report has been provided as a digital copy but a paper copy of the report can be provided if required.

## 5. Summary, Recommendations and Budget costing

The main objective is to retain and ensure the long-term future of the trees across the land holding at Kiln *cottage* whilst ensuring that the risk to the public and any potential liability claim is minimised.

Following a visual tree assessment, a database has been created of all trees that require remedial work or monitoring. The data generates a programme of work required to achieve a prudent level of risk management to be carried out and the recording of specific trees that require monitoring.

The remedial tree works recommended are fully detailed and appended to the report. A summary is set out in the table below with an estimated budget cost. It should be noted that the budget cost provided is a guide only and the actual cost will be dependent on receiving competitive quotes from suitable contractors.

Retention category	Number of trees	Total Days	Estimated Price
Urgent	1	1	
6 Months	6	15.5	
12 Months	3	3	
18 Months	10	9.5	
		<b>Total Cost (exc VAT):</b>	

### Future inspection and budget costs

Future inspection frequencies and associated budget costs should be considered in the context of the risk management objectives and strategy for Oxenfoord Estate. Further assistance and budget costs can then be provided if required.

Monitor frequency (Months)	Number of trees
3	0
6	0
12	1



## 6. APPENDICES:

Appendix A: Summary of Works Recommended  
Please see attached spreadsheet.

Appendix B: Maps  
Please see attached.

- i) Locations of all trees recorded.
- ii) Locations of trees recommended for remedial work.
- iii) Locations of trees recommended for specific monitoring

## Appendix C: Protected species:

### Bats

Bats are a protected species under the European protected species legislation and neither they nor their roosts may be disturbed without authority from Nature Scot, Natural England or DEFRA.

It is quite possible that bat roosts are present in some of the older trees for which works are proposed, particularly those with multiple cavities and ivy.

It will be essential for those carrying out works on the trees to be alert for the presence of bats and the need to contact the relevant body in advance of carrying out works to obtain a license if found.

Bat roost may be found in the following features:

- Woodpecker holes/cavities/hollow sections/splits and frost cracks.
- Within ivy/beneath loose bark and in dense epicormic growth.
- In bat or bird boxes.

The tree survey records a potential bat habitat which should be assessed before work is carried out. Please note that the record of potential bat habitat is not a conclusive survey or confirm the presence of bats.

It is desirable to retain bat roost features where no safety conflict exists. In general, trees should be inspected and assessed for potential bat roosts prior to tree surgery works commencing and following agreement on a programme of works with the contractor.

The following guidance should be referred to in all situations other than woodland:  
*Nature Scot/Natural England Guidance Note SIN010 Bats: European Protected Species.*

### General

Although it is illegal to knowingly (recklessly) disturb nesting wild birds, bats and badgers, protection legislation does not prevent normal operations that do not knowingly disturb protected species out with their normal breeding seasons.

Professional organisations are tending to proceed on the following basis:

- Undertake a survey in advance of work using a competent person or qualified ecological surveyor.
- Prepare an informal environmental risk assessment to show that known site sensitivities and appropriate mitigation have been considered.
- Record survey results and comments.
- Proceed with works but postponing those trees with known presence of protected species.

This recommendation would be overridden by works prescribed in an emergency or to preserve public health or safety. In these situations, it is prudent to record actions taken both written and digitally in case of future investigation and to seek independent legal advice.

*Appendix D: Specific issues identified during survey.*

The following issues should be addressed prior to commencement of any of the recommended tree surgery works detailed in this report.

Item	Issue Raised	Action Required/Taken
1	Tree Preservation Orders (TPOs)	Check with Local Authority Planning if trees with work proposed are designated with a TPO
2	Conservation Areas	Check with Local Authority Planning if trees with work proposed are designated within a Conservation Area
3	Scottish Forestry – Felling Permissions	The Forestry Act (1980) requires a licence to be obtained for the felling of timber exceeding five cubic metres (subject to specific exemptions).
4	Potential damage to habitats of protected species	Any contractors carrying out remedial work should be aware of the potential for nesting birds or bat roosts while working on the trees. Any such evidence should be passed to the works supervisor and work stopped immediately.



*Appendix E: Supporting Pictures*



T3





T5





Leylandii in G1





T6





T7





T8





T9





T10



T11





T12





T13





T 18





T19



T20





T21





T23



Ref:	Common name	Age class	Vigour	Height (m)	Crown radius (m)	Height of crown development (m)	Estimated remaining contribution (years)	Est BS Category	DBH (cm)	Tree protection radius (m)	Tree protection area (m2)	Zone of risk	Status	Action Required	Clarifying or Further Recommendations	Estimated days to complete job	Priority	Ongoing Monitoring Frequency	
1	Laylandi	Semi mature	Moderate Vigour	11	1	0.5	<25	C	124	14.88	695	High Risk (B)						Not required	
2	Laylandi	Semi mature	Moderate Vigour	9	0.5	3	<25	C	82	9.84	304	High Risk (B)						Not required	
3	Laylandi	Semi mature	In Decline	6	3	1.5	>10	U	180	21.6	1465	High Risk (B)	Remove	Remove due to multiple failed limbs		1	12 Months	Not required	
4	Laylandi	Young	Moderate Vigour	9	3	2.5	<20	C	75	9	254	High Risk (B)						Not required	
5	Laylandi	Semi mature	In Decline	8	7	0.5	>10	U	293	35.16	3882	High Risk (B)	Remove due to existing building being damaged by roots and multiple limb fracturing	Remove		2	18 Months	Not required	
6	Laylandi	Semi mature	In Decline	8	4	2.3	>10	u	100	12	452	High Risk (B)	Multiple failed leaders pruned back at some point with new leaders forming.	Reduce back to for one main leader or fell and supplementary replant with native species	Native replant	1	18 Months	Not required	
G1	Group of hollys,prunus,tulip and laylandi	Young/semi mature	Moderate Vigour	0.5-10	5-11		<20	C		0	0	Moderate Risk (C)						Not required	
7	Larch	Mature	Deep Decline	7	8	6	>5	U	160	19.2	1158	High Risk (B)	Lifting root plate, large wound with decay up stem with dull hollow notes when hit with acoustic hammer, previous limb failures.	Remove		1	6 Months	Not required	
8	Larch	Mature	Deep Decline	11	5	6	>10	U	170	20.4	1307	High Risk (B)	Lifting root plate causing structural damage to building previous snapped limbs hanging.	Remove		1	18 Months	Not required	
9	Larch	Mature	Deep Decline	10	8	6	>5	U	220	26.4	2188	High Risk (B)	Remove as soon as possible lifted root plate and tree within falling distance of dwelling	Remove			0	Not required	
10	Larch	Mature	In Decline	10	8	5	>10	u	180	21.6	1465	High Risk (B)	Bird or insect workings in upper stem. Close Proximity to existing builds causing minor damage	Remove and plant alternative in better location.	Native replant	1	18 Months	Not required	
11	Larch	Semi mature	In Decline	11	6	9	>10	u	125	15	707	High Risk (B)	Wire fence running through lower stem, causing structural damage to a wall.	Remove / replant appropriately		1	12 Months	Not required	
12	Larch	Mature	In Decline	11	5	8	<10	C	165	19.8	1231	High Risk (B)	Wire in lower stem. Crown snapped out with hanging branches	Remove wire and reduce crown		1	18 Months	Not required	
13	Beech	Mature	Deep Decline	15	12	7	>10	U	480	57.6	10418	High Risk (B)	Dull notes when hit with acoustic hammer, rot in base and large limb, concrete fencing stay running into root plate	Remove due to significant rot and proximity to building		3	6 Months	Not required	
14	Larch	Mature	In Decline	12	8	8	<10	C	230	27.6	2392	High Risk (B)	Poor specimen with old areal antenna growing into stem. Remove branches off shed roof by 4m			0.5	18 Months	Not required	
15	Laylandi	Semi mature	In Decline	8	6	3	<10	C	155	18.6	1086	High Risk (B)	Previous crown damage, blocking out sunlight to young oak and semi Mature beech	Remove to allow other native species to flourish and allow supplemental planting	Native replant	1	18 Months	Not required	
16	Beech	Semi mature	Vigorous	17	6	6	<25	B	215	25.8	2090	High Risk (B)		Remove wire in trunk and neighbouring laylandi to allow beech to flourish		0.5	18 Months	Not required	
17	Lime	Mature	Moderate Vigour	16	6	4	<20	C	260	31.2	3057	High Risk (B)	Causing damage to neighbouring boundary wall	Remove dead wood and reduce crown by 3-4m to balance and rejuvenate.		0.5	18 Months	Not required	
18	Beech	Mature	Deep Decline	14	8	8	>10	U	340	40.8	5227	High Risk (B)	Large cavity present in base, hollow tones up to 2m. Leaning towards neighbouring property with old antenna growing into trunk	Remove and replant	Native replant	2.5	6 Months	Not required	
19	Lime	Mature	Moderate Vigour	14	4	6	<10	C	240	28.8	2604	High Risk (B)	Try and elevate root plate lifting which is damaging boundary wall.	Reduce crown by 4m on all sides to reduce wind sail area		1	12 Months	Not required	
20	Scot's pine	Semi mature	Moderate Vigour	8	3	6	>10	u	130	15.6	764	High Risk (B)	Monitor due to poor previous pruning cuts	Monitor 6 monthly			12 Months		
21	Larch	Mature	Deep Decline	13	4	10	>10	U	250	30	2826	High Risk (B)	Basal cavity going approximately 18inches into stem, hollow/dull tones throughout lower stem upto 2.5m. Root plate lifting on lateral surface roots which are also damaging boundary wall.	Remove and replant alternative species.	Native replant	1	6 Months	Not required	
22	Scot's pine	Mature	Moderate Vigour	13	2.5	10	<10	C	185	22.2	1548	High Risk (B)						Not required	
23	Beech	Mature	Moderate Vigour	14	14	0.5	<10	C	242	29.04	2648	High Risk (B)	Previously pruned badly, long lateral branches in need of reducing, along with laterals over neighbouring property, crown could do with some thinning out of crossing branches.	Thin out crown and reduce lateral spread		1	18 Months	Not required	
24	Hawthorn	Mature	Poor	6	3	1.5	>10	U	130	15.6	764	Moderate Risk (C)	Wire growing through stem previous limb fractures	Remove wire and monitor			12 Months	Not required	
25	Hawthorn	Mature	Poor	5	2.5	0.2	>10	U	90	10.8	366	Moderate Risk (C)	Wire growing through stem previous limb fractures	Remove wire and monitor			12 Months	Not required	
26	Ash	Semi mature	Poor	8	3	2.2	>10	u	170	20.4	1307	High Risk (B)	Ash die back stage 3	Remove			12 Months	Not required	
27	hawthorn	semi mature	average	3.5	2	1.5	<10	c	45	5.4	92	Moderate Risk (C)						18 Months	Not required
28	Ash	semi mature	Poor	10	5	0.5	>10	u	95	11.4	408	High Risk (B)	Ash die back stage 3	Remove			12 Months	Not required	
29	Hawthorn	Mature	average	3	3	0.5	<10	c	43	5.16	84	Moderate Risk (C)						18 Months	Not required
30	Hawthorn	Mature	average	3	3	0.5	<10	c	25	3	28	Moderate Risk (C)						18 Months	Not required

31	Hawthorn	Mature	average	3	3	0.5	<10	c	50	6	113	Moderate Risk (C)					18 Months	Not required
32	Hawthorn	Mature	average	5	3	1.5	<10	c	40	4.8	72	Moderate Risk (C)					18 Months	Not required
33	Ash	mature	poor	8	3.5	2	>10	u	270	32.4	3296	Moderate Risk (C)	Ash dieback stage 3	remove			6 Months	Not required
34	Ash	Mature	Poor	11	4	4	>10	u	210	25.2	1994	High Risk (B)	Ash dieback stage 3/4	remove			6 Months	Not required
G3	Group of Predominly pycamore hawthorn and Ash,	young semi mature	Moderate Vigour	0.2-12	5-12		<10 except for ash	C/U		0	0	High Risk (B)	G3 consists of a mixture of young/ semi mature native species in various states, a total of 26 ash trees have been identified with Ash back these range from levels 2-3 on the ADB scale.	Remove all ash to ensure public safety due to proximity of the road replant with another native species that isnt suseptable to any present disease.	Classified as High risk due to the amount of traffic on the road although classed as a minor road.	4	6 Months	Not required
G4	Group of Predominly pycamore hawthorn and Ash,	young semi mature	Moderate Vigour	0.2-12	5-12			C/U		0	0	Moderate Risk (C)	G3 consists of a mixture of young/ semi mature native species in various states of health. A total of 1 ash tree have been identified with Ash back at level 3.	Remove all ash to ensure public safety due to proximity of the road replant with another native species that isnt suseptable to any present disease.		1	6 Months	Not required



G4

G4 Placemark 1 4 Ash At Stage 3 Dieback

G3 Ash Placemark 2 9 Ash Trees Showing Signs Of Die Back Ranging From 2-4

G3

G2

Kiln Cottage

BEECH GROVE

Couslan

## Ellie Mills

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**From:** Sheena Devlin on behalf of Conservation  
**Sent:** 27 January 2023 08:40  
**To:** Grant Ballantine; Bee Muskens-Aretos  
**Subject:** FW: Positive representation for TPO order at Land at The Kiln, Quarrybank

**From:** [REDACTED]  
**Sent:** 26 January 2023 19:22  
**To:** Conservation <Conservation@midlothian.gov.uk>  
**Subject:** Positive representation for TPO order at Land at The Kiln, Quarrybank

**CAUTION:** This email originated from outside Midlothian Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good morning

I want to say I am glad to see the tree preservation order being put in place for trees at this site, as we have had woodpeckers and birds of prey utilising the trees on this piece of land and it would be sad to see any of them be taken down, especially since every tree counts in battling climate change and saving our natural environment.

Thanks

[REDACTED]

Sent from [Outlook for Android](#)

## Ellie Mills

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**From:** Grant Ballantine  
**Sent:** 24 March 2023 12:15  
**To:** Ellie Mills  
**Cc:** Sheena Devlin  
**Subject:** FW: Tree Preservation Order No 1 2023 - Land at Kiln, Quarrybank, Cousland

Hi Ellie,

Can you please review the below representation received on the above.

Thanks, Sheena, for passing on.

Grant

Grant Ballantine  
Lead Officer Conservation and Environment  
Planning, Sustainable Growth and Investment Service  
Place Directorate  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3ZN

**Please note that I work Tuesday to Friday inclusive and am unavailable on Mondays.**

Email: [grant.ballantine@midlothian.gov.uk](mailto:grant.ballantine@midlothian.gov.uk)

Website: [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

**We are reviewing the Midlothian Local Development Plan** [Midlothian Local Development Plan 2 | Development plans and policies | Midlothian Council](#)

**If you have any questions about the review, or would like to be added to our MLDP2 mailing list, please email [LDP@midlothian.gov.uk](mailto:LDP@midlothian.gov.uk)**

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**From:** Sheena Devlin <Sheena.Devlin@midlothian.gov.uk> **On Behalf Of** Conservation  
**Sent:** 24 March 2023 11:39  
**To:** Grant Ballantine <Grant.Ballantine@midlothian.gov.uk>  
**Subject:** FW: Tree Preservation Order No 1 2023 - Land at Kiln, Quarrybank, Cousland

Sorry Grant, I'm having to send this one to you as I don't know whether it would be Ellie or Bee, and I know you like to be aware sometimes of what's coming in with this regard.

Thanks

Sheena

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**From:** [REDACTED]  
**Sent:** 21 March 2023 19:45  
**To:** Conservation <[Conservation@midlothian.gov.uk](mailto:Conservation@midlothian.gov.uk)>  
**Subject:** Tree Preservation Order No 1 2023 - Land at Kiln, Quarrybank, Cousland

**CAUTION:** This email originated from outside Midlothian Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

**For Attn: Planning Manager**

Dear Sir/Madam

With reference to the above order and relative map, I would like to draw your attention to the group of trees marked as G4 and part of G3.

These are not within the boundary of the land at Kiln, Quarrybank, Cousland, but are within the land at Northfield Farm, Cousland.

There is a gated farm access road off the main road between G3 and G4 which is in constant use for farm vehicles and livestock to access fields on either side of the road. To maintain this access safely, I will need to be able to manage these trees on a regular basis.

Therefore, I would appreciate if you could review the above order with the intention of removing G3 and G4 from Tree Preservation Order No 1 2023

If you require any further information regarding the above, please do not hesitate to contact me.

I look forward to hearing from you in due course.

Kind Regards

[Redacted Signature]

[Redacted Name]

Sent from [Mail](#) for Windows





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**PRE - APPLICATION REPORT REGARDING DEMOLITION OF EXISTING BUILDINGS AND ERECTION OF NEW COMMUNITY CAMPUS COMPRISING DENOMINATIONAL AND NON-DENOMINATIONAL PRIMARY SCHOOL, ADDITION SUPPORT NEEDS (ASN), NURSERY WITH ASSOCIATED SPORTS PITCHES, PARKING AND ROADWAYS AND REFUSE STORE AT MAYFIELD NURSERY SCHOOL, STONE AVENUE, MAYFIELD (23/00245/PAC)**

Report by Chief Officer Place

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## **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 the demolition of existing buildings (Mayfield Nursey School, Saint Luke's RC School and Mayfield Primary School) and erection of new community campus comprising denominational and non-denominational primary school, additional support needs (ASN), nursery with associated sports pitches, parking and roadways and refuse store at Mayfield Nursery School, Stone Avenue, Mayfield.
- 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 pre-application consultation for demolition of existing buildings and erection of new community campus comprising denominational and non-denominational primary school, ASN, nursery with associated sports pitches, parking and roadways and refuse store at Mayfield Nursery School, Stone Avenue, Mayfield was submitted on 3 April 2023. The applicant is Midlothian Council.

- 2.3 As part of the pre-application consultation process, two public events are scheduled to be held at Mayfield Primary School. The first is on Thursday 27 April 2023 and the second is still to be confirmed; these meetings were/will be advertised via the Midlothian Advertiser, social media, the issuing of media release and on the local community radio (at least 7 days prior to each event). Furthermore, promotional posters have been displayed at Newbattle High School, the leisure centre and library and are also to be posted within local shops. Upon the conclusion of the public events the applicant could submit a planning application for the proposal.
- 2.4 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 be submitted is 27 June 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 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.
- 2.5 Copies of the pre application notices have been sent by the prospective applicant to the local elected members in Ward 5 - Midlothian East and Mayfield, Easthouses Community Council, the Mayfield Parents Council, the St Lukes Parents Council, Owen Thompson MP, Colin Beattie MSP and Christine Grahame MSP.
- 2.6 It is reasonable for an Elected Member to attend one of the events 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.

### **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 proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan (2017).
- 3.3 The application site comprises a primary school, nursery, associated buildings, parking and large areas of grass and hardstanding. The site is located within a primarily residential area within the built-up area of Mayfield and is surrounded by residential dwellinghouses on all sides. The main vehicular access to the site is taken from Stone Avenue.
- 3.4 The relevant policies of the Midlothian Local Development Plan 2017 (MLDP) are 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; DEV9 – Open Space Standards; TRAN5 – Electric Vehicle Charging; IT1 – Digital Infrastructure; ENV7 – Landscape Character; ENV9 – Flooding, ENV10 – Water Environment; and, ENV15 – Species and Habitat Protection and Enhancement.

- 3.5 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 14 - Design, quality and place; Policy 15 - Local Living and 20 minute neighbourhoods; and, Policy 21 - Play, recreation and sport.
- 3.6 The views of consultees and representors will be material considerations in the assessment of an application for the proposed development.
- 3.7 The site is within the built-up area of Mayfield and is used for educational purposes and as such there is a presumption in favour of appropriate re-development of the site to provide enhanced education and community facilities. Detailed consideration will have to be given to design matters, in particular the site layout, the siting, design and appearance of buildings and other structures, the materials used, landscaping, open space, parking, biodiversity and sustainability, in order to ensure compliance with sustainable place-making policies within the MLDP and NPF4. It will also be necessary to give careful consideration to the impact of the proposed development on the amenity of neighbouring residents, as well as transport and active travel arrangements.

#### **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**

<b>Date:</b>	9 May 2023
<b>Application No:</b>	23/00245/PAC
<b>Applicant:</b>	Midlothian Council
<b>Agent:</b>	JM Architects
<b>Validation Date:</b>	03 April 2023
<b>Contact Person:</b>	Whitney Lindsay
<b>Email:</b>	Whitney.Lindsay@midlothian.gov.uk





