

# Notice of Meeting and Agenda



## Planning Committee

**Venue:** Virtual Meeting,

**Date:** Tuesday, 30 August 2022

**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:**

This is a meeting which is open to members of the public.

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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 the Planning Committee on 14 June 2022<br>Submitted for Approval | 5 - 14 |
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## **5 Public Reports**

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### **Non-Planning Application Reports**

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|------------|---|---------|
| <b>5.1</b> | Planning Obligations Annual Report – 2021_2022 - Report by<br>Chief Officer Place   | 15 - 32 |
| <b>5.2</b> | Tree Protection in Midlothian and the Role of Trees in Mitigating<br>Climate Change and Protecting and Enhancing Biodiversity -<br>Report by Chief Officer Place  | 33 - 44 |
| <b>5.3</b> | Supplementary Guidance: Low Density Rural Housing – Report<br>by Chief Officer Place  | 45 - 46 |
| <b>5.4</b> | Guidance on the Role of Councillors in the Consideration of Pre-<br>Application Consultations for Major Developments - Report by<br>Chief Officer Place   | 47 - 56 |
| <b>5.5</b> | Pre - Application Report regarding Residential Development, the<br>Erection of a Primary School and Associated Roads,<br>Landscaping, Open Space, Footpath/Cycle Ways, Suds and<br>Infrastructure on Land South East of Auchendinny, The Brae,<br>Auchendinny, Penicuik (22/00577/PAC) – Report by Chief Officer<br>Place | 57 - 64 |
| <b>5.6</b> | Pre - Application Report regarding the Erection of High School,<br>Community Facilities, Veterinary Clinic, Formation of Sports<br>Pitches, Car Parking and Associated Works at Land East and<br>West of Seafield Moor Road, Bilston (22/00581/PAC) – Report by<br>Chief Officer Place                                    | 65 - 70 |

## **Planning Application Reports**

- 5.7**      Application for Planning Permission in Principle for a Mixed Use Development Comprising Class 2 (Professional Services), Class 8 (Residential Institutions), Class 9 (Residential), Class 10 (Non-Residential Institutions) and Sui Generis (Mixed Use of Retirement Flats and Assisted Living/Extra Care Flats) Uses; Affordable Housing; and Associated Enabling Works on an Area of Open Space at the Junction of the A701 and Pentland Road, Straiton. 21/00958/PP - Report by Chief Officer Place 71 - 96

## **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 11 October at 1 pm



# Minute of Meeting

Planning Committee  
Tuesday 30 August 2022  
Item No: 4.1



## Planning Committee

Date	Time	Venue
Tuesday 14 June 2022	2.00 pm	Via MS Teams

### Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Bowen	Councillor Curran
Councillor Drummond	Councillor McCall
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
William Venters	Principal Solicitor
Janet Ritchie	Democratic Services Officer

## 1. Apologies

Janet Ritchie, Democratic Services Officer welcomed everyone to the meeting advising as this was the first meeting of Planning of the new Council the first item of business was to appoint a Chair. Thereafter asked members of the Committee for nominations for a Chair.

Councillor Parry nominated Councillor Imrie, seconded by Councillor Smaill, there being no other nominations Councillor Imrie took the Chair.

## 2. Order of Business

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

## 3. Declarations of interest

No declarations of interest were intimated at this stage of the proceedings.

## 4. Minutes of Previous Meetings

No previous Minutes were submitted

## 5. Reports

Agenda No	Report Title	Submitted by:
5.1	Membership and Terms of Reference	Democratic Services
Outline of report and summary of discussion		
There was a report submitted by the Executive Director Place setting out the Membership and Terms of Reference of the Planning Committee. At the Council meeting on the 24 May 2022 it was agreed that the Planning Committee would comprise of all eighteen Members of the Council. An extract of the terms of reference is appended to this report.		
Decision		
The Planning Committee: a) Considered the appointment of a Chair and Councillor Imrie was nominated by Councillor Parry and seconded by Councillor Smaill. b) Noted the Membership and Terms of Reference		

Agenda No	Report Title	Submitted by:
5.2	The Scottish Planning System – A Handbook	Chief Officer Place
Outline of report and summary of discussion		
There was a report submitted by the Chief Officer Place advising that 'The Scottish Planning System: A Handbook' was prepared to give guidance to elected members and that this document will also be published on the Council's website.		

The Chair highlighted that an email from Mayfield and Easthouses Community Council had been received and members asked to consider this.

The Planning, Sustainable Growth and Investment Manager in presenting this report highlighted the main sections contained within the report and The Scottish Planning System: A Handbook which was prepared by Officers. He advised that should any Members require clarification or advice on any planning matter the Planning team would assist.

He highlighted that the Handbook would be published on the Council's website as this may be of assistance to Community Councils and referenced the email received from the Community Council which would be considered and any modifications if required would be made to the document.

#### Decision

The Planning Committee noted the contents of the report.

Agenda No	Report Title	Submitted by:
5.3	The Council's Scheme of Delegation for the Determination of Planning Applications and Other Planning Decisions	Chief Officer Place
Outline of report and summary of discussion		
<p>This report sought the Committee's approval for a scheme of delegation for planning matters, under which specific types of planning applications are delegated to the appointed officer to determine. The proposed scheme was appended to the report as Appendix A.</p> <p>The Planning, Sustainable Growth and Investment Manager outlined the proposals within the Scheme of Delegation and advised that there had not been a lot of changes since the approval of the previous Scheme of Delegation which had been approved by Council in September 2013. He advised if approved this would be formally submitted to the Scottish Ministers for approval.</p>		
Decision		
<p>The Planning Committee:</p> <ul style="list-style-type: none"><li>• Approved the 'Scheme of Delegation for the Determination of Planning Applications for Planning Permission and Other Planning Decisions' as set out at Appendix A of this report;</li><li>• Agreed that the Scheme of Delegation is formally submitted to Scottish Ministers for approval.</li></ul>		
Action		
The Planning, Sustainable Growth and Investment Manager		

Agenda No	Report Title	Submitted by:
5.4	Development Plan Scheme for Midlothian – Number 14 (DPSM14)	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to inform the Committee of the Development Plan Scheme for Midlothian number 14.</p> <p>The Planning, Sustainable Growth and Investment Manager in presenting this report advised that each year planning authorities are required to prepare, publish and submit a Development Plan Scheme to Scottish Ministers setting out their intentions with respect to preparing, reviewing and consulting on the development plan for their area over the coming 12 months.</p> <p>At its meeting of March 2022 the Committee approved the Development Plan Scheme but made a commitment to report the approved Plan back to the June 2022 meeting of the committee to ensure any newly elected members are informed of the status of the development plan. He further advised following approval in March this document was published online, circulated to registered consultees and Community Councils and distributed to Midlothian libraries. A Copy was also sent to the Scottish Government.</p> <p>In response to a question raised by Councillor Scott with regards to arable land and new developments the Planning, Sustainable Growth and Investment Manager advised that the policies were in place to protect prime agricultural land and this would also be taken into consideration when working on the next development plan.</p>		
Decision		
The Planning Committee noted the Development Plan Scheme for Midlothian Number 14		
Action		
The Planning, Sustainable Growth and Investment Manager		

Agenda No	Report Title	Submitted by:
5.5	Eskbank and Ironmills Conservation Area Character Appraisal and Management Plan and Newtongrange Conservation Area Character Appraisal and Management Plan	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to seek the Committee's agreement to adopt the 'Conservation Area Character Appraisal and Management Plans' (CACAMP) for the Eskbank and Ironmills Conservation Area, attached to this report as Appendix A and the Newtongrange Conservation Area, attached to this report as Appendix B.</p> <p>The Planning, Sustainable Growth and Investment Manager outlined the main sections of report and advised that following the public consultation no responses were received but following a meeting of representatives of the Eskbank &amp;</p>		



Newbattle Community Council and the Dalkeith & District Community Council to discuss the draft CACAMP and in response a minor amendment to paragraph 9 of the CACAMP was made to highlight the significance of the Justinlees Inn building.

In response to questions raised by Members the Planning, Sustainable Growth and Investment Manager provided clarity on conservation areas and planning permission and how these are considered, he advised that particular focus was given to the design and materials but also highlighted that this did not exclude modern techniques or materials but consideration was given on a site by site basis. He also provided clarity that minor changes to documents relate to formatting and typing errors and are not material changes to the document.

#### Decision

The Committee:

- Adopted the Eskbank and Ironmills Conservation Area Character Appraisal and Management Plan;
- Adopted the Newtongrange Conservation Area Character Appraisal and Management Plan;
- Authorised the Planning, Sustainable Growth and Investment Manager to make any necessary minor editing and design changes of the Conservation Area Character Appraisal and Management Plans prior to publication.

Agenda No	Report Title	Submitted by:
5.6	Supplementary Guidance: Low Density Rural Housing	Chief Officer Place
Outline of report and summary of discussion		
<p>Explain relationship between supplementary</p> <p>The purpose of this report was to seek agreement to the adoption of the Low Density Rural Housing Supplementary Guidance, a copy of which is appended to this report.</p> <p>The Planning, Sustainable Growth and Investment Manager advised that at its meeting In November 2017 the Council adopted the Midlothian Local Development Plan 2017 (MLDP), which included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas, one of these topic areas that needs further clarification is with regards to low density rural housing.</p> <p>At its meeting in November 2021, the committee approved the draft Low Density Rural Housing Supplementary Guidance for consultation and agreed to consider a further report on the Supplementary Guidance following the proposed consultation. Following the consultation 1 response was received and Appendix A outlines the comments received with the Officers responses and a track change copy of the draft Low Density Rural Housing Supplementary Guidance document showing proposed deletions and additions to the document arising from the consultation is attached to this report as Appendix B.</p>		

The Planning, Sustainable Growth and Investment Manager provided clarity on the relationship between the Supplementary Guidance and the Local Development Plan advising that the Supplementary Guidance is an additional document and once adopted will form part of the Development Plan. He also advised that the next local plan will be produced under new regulations which will change the process and what we now call the Supplementary Guidance will be incorporated as part of the Development Plan.

In response to a question raised by Councillor Smaill with regards to not having to use natural materials the Planning, Sustainable Growth and Investment Manager highlighted that this was to enable some additional housing, low in number in rural locations and the trade-off for a small number of units there would be investment in biodiversity and environmental enhancement.

#### Decision

The Committee:

- Agreed to the adoption of the Low Density Rural Housing Supplementary Guidance (as amended following the consultation process);
- Determined that the Low Density Rural Housing Supplementary Guidance will not have a significant environmental impact and so does not trigger the need for a formal Strategic Environmental Assessment;
- Instructed the Planning, Sustainable Growth and Investment Manager to undertake the required notification/advertisement advising that the Low Density Rural Housing Supplementary Guidance will not have a significant environmental impact and so will not be carrying out Strategic Environmental Assessment;
- Instructed the Planning, Sustainable Growth and Investment Manager to notify the Scottish Ministers of the Council's intention to adopt the Low Density Rural Housing Supplementary Guidance;
- To be advised of the outcome of the notification of the Scottish Ministers procedure.

#### Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.7	Application for Planning Permission 21/00982/PPP for Detailed Planning Permission for the Erection of Business (Class 4) Units and Drive-Through Coffee Shop (Sui Generis), with Associated Car Parking, Access, Infrastructure, and Landscaping; and Planning Permission In Principle for Business (Class 4) Use at Land at Sheriffhall South, Melville Gate Road, Dalkeith	Chief Officer Place

## Outline of report and summary of discussion

The Chair advised the committee to note that an email had been circulated to all members regarding this application which included the The Planning, Sustainable Growth and Investment Manager's responses.

The application was a hybrid application which comprised of a detailed application for the erection of 24 business (Class 4) units, spread across 5 blocks with a total floor space of 4257 sqm; a drive through coffee shop; with associated car parking, access roads and drainage infrastructure; and an application for planning permission in principle for a further three Class 4 plots all situated on land to the south of Sheriffhall roundabout.

There had been 15 representations objecting to the application and one neutral representation and consultation responses from the Coal Authority, Network Rail, Scottish Water, SP Energy Networks, Transport Scotland, the Council's Archaeology Advisor, the Council's Biodiversity Advisor, the Council's Land and Countryside Manager, the Council's Policy and Road Safety Manager, the Council's Senior Manager Protective Services, the Bonnyrigg and Lasswade Community Council and the Eskbank and Newbattle Community Council.

The Planning, Sustainable Growth and Investment Manager provided a summary of the application and the recommended decision.

Thereafter The Planning, Sustainable Growth and Investment Manager responded to questions and comments raised by the committee with regards to the number of trees lost and provided details on the ancient woodland which would be retained and that some trees would be removed but felt it was a good balance on the number lost against the economic development. Also raised was the requirement of a Coffee shop in this area and the Planning, Sustainable Growth and Investment Manager advised that there had been a lengthy discussion regarding this and he advised that it was agreed that the first 24 units were locked into being delivered at the same time as the Coffee Shop and that the Coffee Shop was an integral part of this development. A lengthy discussion took place regarding this and further concerns were raised with regards to litter, the woodland, flooding issues, walkways, cycle routes and safe travel and the Planning, Sustainable Growth and Investment Manager addressed all the issues raised providing reassurances and also confirmed that he would look at this personally to ensure there was an appropriate landscape scene for this site.

The Planning, Sustainable Growth and Investment Manager also confirmed that he would also bring back to a future committee meeting a paper regarding the tree policy confirming that policies are already in place and the MPF4 increases the balance given to tree planting and biodiversity.

Following discussion Councillor McKenzie, seconded by Councillor Pottinger moved to refuse Planning Permission.

As an Amendment, Councillor Winchester, seconded by Councillor Smaill moved to grant Planning Permission subject to the careful consideration of the conditions relating to the loss of trees and the litter collection plan.

On a vote being taken, 3 Members voted for the Motion and 12 Members for the Amendment, which accordingly became the decision of the Committee.

#### Decision

That Committee agreed that planning permission be granted for the following reason:

The majority of the site is an allocated economic land supply site and the main proposed use complies with the allocated use. The Class 4 development complies with policies STRAT1 and ECON1 of the Midlothian Local Development Plan 2017. The drive-through coffee shop will help finance the development infrastructure that will aid the delivery of a stalled allocated site and this is a significant enough material consideration to support development that is contrary to policies STRAT1, ECON1 and ENV1 of the Midlothian Local Development Plan. The planning history of the site is a material consideration that supports the development of drainage infrastructure within the Green Belt that is contrary to policy ENV1 of the Midlothian Local Development Plan.

Subject to developer contributions towards the A7 Urbanisation scheme and the Borders Rail Line.

Subject to the conditions as detailed within the Report and in particular careful consideration is given to the conditions relating to the Trees and also to the Litter Collection Plan

#### Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.8	Application for Planning Permission 21/00338/DPP for Erection of Food store (Class 1); Formation of Access Roads and Car Parking and Associated Works at Land at the Junction of the A701 and Pentland Road, Old Pentland, Loanhead.	Chief Officer Place
Outline of report and summary of discussion		
<p>The application was for the erection of a retail food store (Class 1), formation of access roads, car parking, and associated works on land at the junction of the A701 and Pentland Road, Old Pentland, Loanhead.</p> <p>There have been five representations objecting to the application and one neutral representation and consultation responses from Transport Scotland, Scottish Water, the Council's Biodiversity Advisor, the Council's Policy and Road Safety Manager, the Council's Flood Officer, the Council's Senior Manager Protective Services, the Roslin and Bilston Community Council, the Damhead Community Council and the Loanhead and District Community Council.</p> <p>The Planning, Sustainable Growth and Investment Manager provided a summary of the application and the recommended decision.</p>		

The Chair advised that this report was called into Committee by Councillor Winchester and invited Councillor Winchester to give her reasons for calling in this application. Councillor Winchester highlighted her reasons for this call-in advising that she had a number of emails supporting this application and felt it would benefit having a wider discussion.

Councillor Smaill referenced a previous debate under the plan approved in 2017 and highlighted that the retail world had moved on that this be approved subject to improvement to the landscape.

Councillor Parry questioned why the recommendation was to refuse when Councillors were receiving so many emails supporting this. In response The Planning, Sustainable Growth and Investment Manager confirmed that Elected Members seemed to have been contacted by more local residents than the planning department who had only received 6 representations. He further provided a detailed explanation on the reasons detailed within the report which supported the refusal of this planning permission advising that within the 2017 Plan this land was allocated as countryside and the hierarchy of retail development.

A lengthy discussion regarding the location of this application, objections received and the benefit to the community if this was approved. Concerns were also raised with regards to A701, the traffic management and the impact this will have on the area. The Planning, Sustainable Growth and Investment Manager advised that a traffic assessment had been considered and this could be accommodated within the traffic flow and a green travel flow would be a condition. Further discussion took place with regards to the side of the road this development was to be located and it was highlighted that there are existing facilities already on this side of the road.

Councillor Parry, seconded by Councillor Alexander moved a Motion to approve this Planning Application.

#### Decision

The Planning Committee approved this application subject to Developers Contributions for the A701 and delegate the conditions to be set by the Planning, Sustainable Growth and Investment Manager

#### Action

The 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 30 August at 1.00pm

The meeting terminated at 15:37





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## **PLANNING OBLIGATIONS ANNUAL REPORT – 2021/2022**

Report by Chief Officer Place

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### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to provide details of:
- a) The framework in which planning obligations secure developer contributions and governance behind their spent;
  - b) The planning obligations entered into by the Council in financial year 2021/2022; and
  - c) The value of contributions paid to the Council in financial year 2021/2022.

### **2 BACKGROUND**

- 2.1 Midlothian Council as the local planning authority has a legal responsibility to determine planning applications in accordance with the development plan, unless material planning considerations indicate otherwise. In determining a planning application, planning conditions and/or a planning obligation can be used to make a development acceptable in land use planning terms.
- 2.2 The use of planning obligations to secure developer contributions, transfer land, restrict uses of land or require physical works, is governed by:
- Legislation;
  - Scottish Government guidance;
  - case law;
  - planning policy; and
  - good practice and procedures.
- 2.3 The purpose of this report is to focus on the use of planning obligations to secure financial contributions. Planning obligations are also referred to as a legal agreement or a section 75 agreement.
- 2.4 The Planning (Scotland) Act 2019 provides that local planning authorities will be required to annually publish details of planning obligations that have been entered into. Whilst these provisions have not yet been enacted by secondary regulations it is considered good practice for such reporting to commence.

### 3 THE PLANNING OBLIGATIONS FRAMEWORK

#### The Legal Framework

##### Section 75 of Town and Country Planning (Scotland) Act

- 3.1 Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 provides a legal mechanism whereby developers can address the impact of their development on the local community through the provision of a financial contribution towards infrastructure, which in turn make the development acceptable in planning terms. Because of this mechanism, planning obligations are often referred to as section 75 agreements.

##### Section 69 of the Local Government (Scotland) Act 1973

- 3.2 Alternatively, an applicant for planning permission can make a one off financial contribution under Section 69 of the Local Government (Scotland) Act 1973 towards infrastructure costs required to mitigate the impact of a proposed development.

##### Modification and Discharge of Planning Obligations

- 3.3 The Planning etc. (Scotland) Act 2006 makes provisions for a landowner/developer to apply to the local planning authority to modify or discharge an existing planning obligation and also makes provision for making an appeal to the Department of Planning and Environment Appeals (DPEA) on behalf of Scottish Ministers in the event of the refusal of such an application. An applicant wishing to modify or discharge a planning obligation must formally apply to do so.
- 3.4 Midlothian Council should not consider any proposed amendments to an agreement without a formal application following the requirements set out in *The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010*.
- 3.5 The right to apply to modify a planning obligation is open to the applicant, but not the Council as the determining authority – if the Council wish to change an agreement it must seek the agreement of the applicant and then they must apply to modify the agreement.

##### Scottish Government Guidance - Circular 03/2012: Planning Obligations and Good Neighbour Agreements

- 3.6 Circular 03/2012: Planning Obligations and Good Neighbour Agreements sets out Scottish Government guidance on planning obligations and good neighbour agreements. The advice and guidance outlined in the circular provides a framework for preparing planning policies and supplementary guidance. In seeking and drafting an



agreement, the circular sets out five tests for consideration if in determining if an obligation is required and the content of that obligation if it is determined to be appropriate. The tests are:

- necessary to make the proposed development acceptable in planning terms;
- serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- fairly and reasonably relate in scale and kind to the proposed development; and
- be reasonable in all other respects

### Necessity Test

- 3.7 Planning obligations or other legal agreements should not be used to require payments to resolve issues that could equally be resolved in another way. Where a planning permission cannot be granted without some restriction or regulation, and before deciding to seek a planning obligation, the planning authority should consider the following options in sequence:
- i) The use of a planning condition: Planning conditions are generally preferable to a planning or legal obligation, not least as they are likely to save time and money for all concerned.
  - ii) The use of an alternative legal agreement: for example, an agreement made under a different statute, such as the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, the Sewerage (Scotland) Act 1968, the Roads (Scotland) Act 1984 etc. A planning obligation is not necessary where the obligations for a landowner or developer may be implemented, for example, by a one-off payment towards the cost of infrastructure provision or the maintenance of open space. There should be a presumption that this option be used where contributions are being sought for community benefits, which, while desirable, do not directly serve a planning purpose. Such benefits might include, for example, provision of infrastructure, which is desirable but not essential. While it would be for a planning authority to satisfy itself that a legal agreement was required, a legal agreement made under other legislative powers would not necessarily be required to meet all the policy tests required of planning obligations.
  - iii) The use of a planning obligation: Planning authorities should be clear that a planning obligation is only necessary where successors in title need to be bound by the required obligation, for example, where phased contributions to infrastructure are required.

### Planning purpose Test

- 3.8 Planning authorities should satisfy themselves that an obligation is related to the use and development of land. This judgement should be rooted primarily in the development plan. This should enable potential developers to be aware when undertaking development appraisals and in designing their proposals of the:
- likelihood of a planning obligation being sought, and,
  - likely financial requirements of that planning obligation.

### Relationship to proposed development Test

- 3.9 Planning obligations must relate to the development being proposed. Where a proposed development would either; create a direct need for particular facilities, place additional requirements on infrastructure (cumulative impact) or have a damaging impact on the environment or local amenity that cannot be resolved satisfactorily through the use of planning conditions or another form of legal agreement, a planning obligation could be used provided it would clearly overcome or mitigate those identified barriers to the grant of planning permission. There should be a clear link between the development and any mitigation offered as part of the developer's contribution. In addition, when determining whether a planning obligation is required, planning authorities should take account of the existence of any other agreements or conditions relating to infrastructure provision that already apply to the development.
- 3.10 Planning obligations should not be used to extract advantages, benefits or payments from landowners or developers, which are not directly related to the proposed development. The obligation should demonstrate that this test is met by specifying clearly the purpose for which any contribution is required, including the infrastructure to be provided.
- 3.11 In reaching decisions on applications for planning permission, planning authorities should attach no weight to offers made to undertake works, donate monies, or provide other incentives if these do not meet the tests contained in this circular for inclusion within an obligation. Planning authorities should also not be influenced by the absence of such offers. Authorities should bear in mind that obligations may be subsequently challenged either through an application to modify or discharge the obligation, on appeal against refusal to modify or discharge, or indeed in the Courts.

### Scale and Kind Test

- 3.12 Planning obligations must be related in scale and kind to the proposed development. Developers may, for example, reasonably be expected to pay for, or otherwise contribute towards the provision of, infrastructure, which would not have been necessary but for the

development. In assessing such contributions planning authorities may take into account the cumulative impact of a number of proposed developments, and use obligations to share costs proportionately. An effect of such infrastructure investment may be to confer some wider community benefit but contributions should always be proportionate to the scale of the proposed development. Attempts to extract excessive contributions towards the costs of infrastructure or to obtain extraneous benefits are unacceptable.

- 3.13 Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives, which are not strictly necessary to allow permission to be granted for the particular development. Situations may arise where an infrastructure problem exists prior to the submission of an application for planning permission. Where the need to improve, upgrade or replace that infrastructure does not arise directly from the proposed development then planning authorities should not seek to address this through a planning obligation. It is inappropriate to grant planning permission for a development which would demonstrably exacerbate a situation which was clearly already unsatisfactory.
- 3.14 Entering into an obligation can have financial consequences for developers and may make proposals uneconomic. Cash flow will also be affected where substantial sums of money have to be paid either before the development gets under way or at an early stage in construction. Staged or phased payments could help the overall viability and success of a project.
- 3.15 This is particularly relevant where infrastructure requires to be put in place before the development is completed, but the cost of doing so would make the development unviable. Planning authorities should give consideration to the possibility of infrastructure being funded, and development thus enabled, through other mechanisms, with costs being recovered through staged payments as development progresses.

#### Reasonableness Test

- 3.16 Planning obligations should be reasonable in the circumstances of the particular case. The following questions should be considered:
- is an obligation, as opposed to conditions, necessary to enable a development to go ahead? (this question should have regard to the necessity test set out in paragraph 15 above)
  - in the case of financial payments, will these contribute to the cost of providing necessary facilities required as a consequence of or in connection with the development in the near future?
  - is the requirement in the obligation so directly related to the regulation of the proposed development that it should not be permitted without it?

- will the obligation mitigate the loss of, or the impact upon, any amenity or resource present on the site prior to the development?
- 3.17 Where the answer to any of the questions would be no, a planning obligation is generally not appropriate.

### **Case Law**

- 3.18 The implementation and interpretation of the legislation and the Scottish Government guidance has been refined in response to legal challenge and appeals – key decisions in this regard is referred to as case law. The most significant decisions are as follows:
- 3.19 In Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Ltd [2017]; the Supreme Court confirmed the Court of Session’s earlier decision to quash the Aberdeen City and Shire Supplementary Planning Guidance on developer contributions. This was because the connection between the sites making financial contributions and the infrastructure that was being contributed towards was too trivial and was contrary to the tests set out in Circular 03/2012. It was considered not appropriate for developers to pay into a ‘general pot’ (in this case towards transportation infrastructure) – there has to be a clear link between the proposed development and a consequential need to deliver a specific piece of infrastructure.
- 3.20 In *R (on the application of Wright) v Resilient Energy Severndale Ltd & Anor [2019]*; the Supreme Court confirmed earlier decisions by the High Court and Court of Appeal to quash a planning permission granted by Forest of Dean District Council for a wind turbine. The Council in granting planning permission for the turbine had taken into account the developers offer to make a financial contribution to the local community. The Supreme Court in making their judgement commented:  
*“Resilient Severndale required planning permission for the carrying out of “development” of the land in question, as that term is defined in section 55(1) of the 1990 Act. The community benefits to be provided by Resilient Severndale did not affect the use of the land. “Instead, they were proffered as a general inducement to the Council to grant planning permission and constituted a method of seeking to buy the permission sought, in breach of the principle that planning permission cannot be bought or sold”*
- 3.21 In *R v South Holland DC ex parte Lincoln Co-operative Society (2001)*; a developer had offered the local planning authority £100,000 to redress the harmful effect of granting planning permission for a supermarket. The development was contrary to the development plan and a previous application for permission for the same development without any S106 (English version of S75) offer accompanying it had been earlier refused. Quashing the grant of planning permission, the

High Court held that although the planning obligation was one, which the local authority was entitled to take into account, it was at the very lower end of materiality; but that the weight to be given to it was entirely a matter for the decision maker. However there had been no evaluation of what could be achieved with that sum; and the decision was so much against the weight of the material before the authority that the only conclusion to be drawn was that the decision was obviously wrong. There were also no rational grounds for believing that the sum of £100,000 could significantly redress the harm envisaged by the development let alone outweigh it. The decision was such that no reasonable authority could have taken it.

### **Planning Policy**

- 3.22 There is a legal requirement to determine planning applications, including any associated planning obligation, in accordance with the development plan, unless material planning considerations indicate otherwise.
- 3.23 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP), adopted in November 2017. SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework (NPF) to be prepared by Scottish Ministers. Once approved, the NPF (which has been subject to consultation and is currently sitting with Scottish Ministers for final adoption) will form part of the development plan alongside local development plans. Until NPF is approved (likely to be autumn 2022), SESplan remains part of the development plan albeit increasing out of date.
- 3.24 Policies *IMP1: New Development* and *IMP2: Essential Infrastructure Required to Enable New Development to Take Place* of the MLDP require the developer to deliver, or contribute to, the required infrastructure to mitigate the impact of the development. Separately policy *DEV3: Affordable and Specialist Housing* enables the Council to secure affordable housing provision.
- 3.25 The above stated policies and the settlement statements within the MLDP specifically set out the topic areas for developer contributions connected to each allocated site from the following range of matters:
- Education provision;
  - Transport infrastructure (including towards Borders Rail, the A7 urbanisation scheme, Sheriffhall Roundabout upgrade and the A701 realignment and A702 spur);
  - Affordable housing provision (which could include a financial contribution);
  - Community facilities;

- Sport and leisure facilities;
  - Town centre improvements;
  - Open space and play provision/upgrades
- 3.26 The requirements set out in the MLDP are to mitigate the consequential impact of the allocated development and are associated with capital expenditure, not ongoing revenue costs (which in theory, are covered by increased revenue indirectly arising from the development).
- 3.27 Updated Supplementary Guidance is being prepared, setting out Midlothian Council's detailed requirements in respect of planning obligations to be secured from new development and provides further detail in support of the MLDP. The guidance will replace the Developer Contributions (2012) Supplementary Planning Guidance and Affordable Housing (2016) Supplementary Planning Guidance.

### **Good Practice and Procedures**

#### **The Negotiation of Planning Obligations**

- 3.28 MLDP policies and the Circular tests (reference above) form the basis for a planning obligation. If the Council has determined that, it is 'minded to grant planning permission' on the basis that it is only acceptable if provision is made towards essential infrastructure, then a planning obligation will be required. Officers prepare Head of Terms, essentially a framework document that sets out the value of the contributions sought, what the contributions are to be utilised towards and triggers for payments and the delivery of affordable housing. There is usually a degree of negotiation between the Council and the prospective developer over the Heads of Terms – planning obligations, (legal agreements) are agreements to be signed by both parties, not imposed requirements as in the case of planning conditions. The agreed Heads of Terms then forms the basis for solicitors representing both parties to prepare a formal legal agreement, which has to be signed by all parties and received by Registers of Scotland before the planning permission can be issued. The Councils Head of Terms are currently negotiated by the Planning Service and signed off by the Executive Director Place.
- 3.29 The above is the essence of the process for a Section 75 agreement. A Section 69 agreement is similar but the agreement is generally less complex (because it secures a one off, upfront payment to the Council – usually used for small scale developments) and does not require registration with Registers of Scotland.

#### **Midlothian Council's Own Developments**

- 3.30 The Council itself is one of the largest house builders in Midlothian delivering social housing. Developer contributions are secured as with private developments, however the Council cannot enter into a legal



agreement with itself. Nonetheless, Head of Terms are agreed in the same way as other planning obligations. The Heads of Terms then provide for the transfer of monies from the Housing Revenue Account (HRA) to the General Fund to provide for the delivery of identified infrastructure. In the interests of equity, consistency, transparency and the Council's fiduciary responsibility as a public authority it is important that it treats itself in the same way as it would a private developer.

#### Monitoring of Obligations

- 3.31 The Council has been proactively monitoring agreements since 2015. Monitoring activity principally involves checking whether a development has commenced and thereafter checking completion certificates issued by the Council as Building Standards authority. Usually the trigger for contribution payments is on the completion of a set number of dwellings, completion of a building (in the case of commercial development). Once a payment trigger has been identified as being reached the Council's finance team issue an invoice to the developer for the payment of the contribution. The agreements provide for the payment of late interest at 8% above the Bank of England base rate. Whilst there is a good professional working relationship between house builders and officers of the Council which generally results in timely payments of the correct amounts due, on a number of occasions in the last 5 years late payment interest has been charged and secured in respect of payments that were materially late. For the most part, the major house builders operating in Midlothian now proactively advise the Council when a payment trigger is approaching which is welcome and helpful.
- 3.32 Bi annual monitoring reports are presented to the Council's Capital Plan and Asset Management Board.

#### Modification of Planning Obligations

- 3.33 Once an agreement has been completed and planning permission issued it is then open to a developer to apply to modify or discharge provisions within the agreement. Modifications/variations are not uncommon and the reasons for them can include; adjustments to the trigger points for payments, providing for new planning permissions for the same site to be bound by the agreement, addressing changes in circumstance such as known costs for infrastructure and changing how an element of infrastructure is to be provided. It will also sometimes be the case that a developer will seek to modify or discharge an obligation on the basis that what is provided for is (in their view) unnecessary and or does not meet the tests set out in Circular 03/2012. The Council is required to consider what is proposed against the Circular tests, it cannot simply take the position that a developer originally agreed to pay a contribution at the time of the original agreement being drafted and therefore that position must be maintained. As the granting of a planning permission will be dependent upon a planning obligation

being completed a developer will sometimes agree to planning obligation provisions that they have reservations about, but enables the agreement to be completed and the planning permission secured. This avoids the uncertainty and delay of pursuing a planning appeal when the Council has resolved to support the scheme itself. The developer then has the opportunity to seek to modify the elements of the planning obligation that they have issue with, whilst having the benefit of the planning permission. In the event that the modification of a planning obligation is refused the right of appeal is to the Scottish Ministers. A developer taking such steps is operating entirely legitimately and the Council needs to be able to substantiate the requirement and basis for an obligation.

- 3.34 A case study to note - Aberdeenshire Council required that the granting of planning permission for wind turbines was subject to a planning obligation to secure a financial contribution towards affordable housing. In due course the developer applied to modify the agreement on the basis that this requirement failed to meet the Circular tests - a financial contribution towards affordable housing having no relationship to the acceptability of a wind turbine. Aberdeenshire duly refused the modification on the basis that the developer had agreed to make the contribution originally and it accorded with the Council's policy (in the Council's view). At the subsequent appeal the Scottish Ministers concluded that the developer had originally agreed to the contribution was in essence not relevant, secondly there did not appear to be such a policy as referenced by Aberdeenshire and furthermore there was no relationship between the acceptability or not of the wind turbines and an affordable housing commuted sum. The appeal was allowed and in addition expenses awarded against that Council for acting unreasonably.

#### Planning Applications, Decision Making and Planning Obligations

- 3.35 It is also worth noting that ultimately decisions about planning obligations become binary matters for the parties involved because for an obligation to be completed it requires agreement between the parties. For example, a Council may set out categories of contributions and quantum's for those contributions to a developer. The developer may express the view that some of those categories or the quantum cannot be justified. The Council may continue to maintain its position. Logically for the Council if it is of the view that certain provisions are necessary and the developer is not willing to provide those then the refusal of planning permission is the outcome. In coming to such a decision the Council would want to have regard to the potential prospect for success if an appeal against refusal were to be made and/or the prospects for managing to sustain a particular position under cross examination by leading counsel at a public inquiry. Planning obligations cannot be a matter of Councils just seeing what they can secure nor can planning permission be refused if a developer contribution requirement is not based on policy and the circular tests.



### Planning Obligations – a potential perspective from local communities

- 3.36 It is not an uncommon complaint from local communities that the local planning authority does not secure sufficient contributions towards infrastructure and the Council should negotiate harder with developers. The Council however cannot demand a wish list of contributions (unless substantiated by development plan policy) from developers. Furthermore, negotiations take place in the context of development plan policies and the circular and those would form an important context for any appeal to the Scottish Ministers. Whilst negotiations do need to be approached in a professional and robust manner an overly hard-line approach by a Council may result in an appeal and reduced contributions compared to that, which could have been agreed between the applicant and the Council.
- 3.37 Whilst there may sometimes be the potential for contemplating a particularly positive outcome having been achieved in negotiations, that needs to be considered in the context that a modification and appeal may follow. It is also worth bearing in mind that decisions by public authorities are potentially subject to judicial review by the Courts and the Council needs to be mindful of this both when seeking or indeed *not* seeking planning obligations. Each individual component and quantum of contribution also needs to be justified rather than an overall amount agreed and then divided up and distributed amongst pieces of infrastructure.

### Planning Obligations – a potential perspective from Developers

- 3.38 It is not wholly uncommon for developers to complain that obligation requirements are unfair or would in their view render the development unviable. A developer merely asserting that the contributions render the development is unviable does not make it so – it needs to actually be verified by the Council by the submission of financial and development costs information.
- 3.39 If it is verified that there is a viability issue - that is not the 'silver bullet' (from a developers point of view) that might sometimes be assumed. The Council still has to weigh up whether the benefits of the development (if there are judged to be benefits) outweigh the dis-benefits to not securing the necessary contributions. This is particularly so in relation to education contributions because the Council has a statutory duty to provide schooling places – if a development gives rise to more pupils and does not fund the those places – the Council will have to fund the places itself. A Council may also find itself open to challenge if it decides not to require contributions from developer A but does require them from developer B when the circumstances of the two cases are comparable.

## Spending of Contributions in Midlothian

- 3.40 In terms of the spending of contributions, the vast majority of contributions are de facto self-selecting as to what they can be utilised towards, most notably education contributions and contributions towards the various elements of strategic transport infrastructure. There are however some areas; play/open space, community facilities and town centre improvements where there is potentially a degree of discretion in some instances as to what infrastructure might be delivered and by whom. Such contributions are as such the responsibility of relevant service areas within the Council. Proposed capital spending is required to be reported to the Council's Capital Plan and Asset Management Board (Chaired by the Executive Director Place) and if agreed by the board is reported to Council for decision. It is worth noting that the majority of contributions secured in planning obligations are subject to time expiry clauses, i.e. if the contribution is not expended or legally committed within a specified period from when it is paid (most usually 10 years) it has to be returned to the developer. This highlights the importance of monitoring planning obligations. Contributions are also required to be spent in accordance with the provisions of the agreement. It is worth noting that particularly in relation to education infrastructure this Council forward funds new schools and extensions that assists in timely delivery. The developer contributions when they arrive and are therefore in effect paying the Council back for infrastructure that has already been delivered. For example, the Council is still collecting contributions towards the additional capacity created in the new St David's RC High School, which opened in 2003.

## **4 PLANNING OBLIGATIONS ENTERED INTO IN 2021/2022**

- 4.1 Appendix 1 attached to this report sets out the details of the planning obligations that were entered into in the last financial year (2021/2022). A total of £9,504,501.23 has been secured – note some payments will be indexed linked and as such will increase with inflation.

## **4 PLANNING OBLIGATIONS PAYMENTS RECEIVED IN 2021/2022**

- 4.2 Appendix 2 attached to this report sets out the details of the planning obligations that were received in the last financial year (2021/2022). A total of £12,127,065.16 has been recovered.

## **5 RECOMMENDATION**

5.1 It is recommended that the Committee:

- i) notes the information set out in the report and attached appendices; and
- ii) receive an annual report setting out the level of developer contributions secured by planning obligations and the sum of developer contributions recovered within the reporting financial year.

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

**Date:** 19 August 2022

**Contact Person:** Matthew Atkins – Lead Officer Planning Obligations  
[matthew.atkins@midlothian.gov.uk](mailto:matthew.atkins@midlothian.gov.uk)

**Background Papers:** Planning obligations and their associated planning applications.

## Appendix 1: Planning Obligations Entered into 2021/22

Site	Proposed Development	Reference	Developer	Total Base Value at BCIS 2019 Q4 (333)	No of Affordable Units
Land at Gore Avenue and Newbyres Crescent, Gorebridge	Erection of 46 flatted dwellings; 17 dwellinghouses and 12 extra care units; formation of access roads and car parking; SUDS features and associated works	18/00099/DPP	Midlothian Council	£18,351.00	All
Land North of Seafeld Road, Bilston	Erection of 31 dwellinghouses; formation of access roads and car parking and associated works	19/01019/DPP	Taylor Wimpey	£594,177.00	8
Land SE of Tynewater Primary School, Pathhead	Erection of 42 dwellinghouses and 4 flatted dwellings; formation of access road and car parking and associated works	20/00538/DPP	Muir Homes	£493,554.00	12
6 Kentigern Mall, Penicuik	Change of use of retail storage to 7 flatted dwellings, external alterations including formation of door and window openings and balconies;	21/00335/DPP	Sheet Anchor Evolve (London) Ltd	£13,587.34	n/a
Former Newbattle Community High School, Dalkeith	Erection of 90 dwellings; formation of access road, car parking, landscaping and associated works	21/00877/DPP	Midlothian Council	£1,401,471.00	All
Land at the Cockatoo, Millerhill	Erection of 10 dwellinghouses; formation of access and associated works	20/00314/DPP	Cockatoo Bar and Restaurant	£222,291.89	n/a
Land North East of Sheriffhall Park and Ride, Shawfair	Erection of sport and leisure club; formation of access roads, car parking and associated works	20/00906/PPP	David Lloyd	£66,647.00	n/a
Land East of Auchendinny	Residential development including formation of access roads, parking, SUDS features and associated works and land safeguarded for possible education use	20/00089/DPP	SMH/Avant Homes/Miller Developments	£6,694,422	99
<b>Total</b>				<b>£9,504,501.23</b>	

## Appendix 2: Planning Obligation Payments Received 2021/22

Site	Application Reference	Developer	Category	Total Amount Paid in the Financial Year
Land 470M West Of Corby Craig Terrace Bilston Roslin	17/00968/DPP	Taylor Wimpey	Non-Denom Secondary Education	£510,127.87
Land 470M West Of Corby Craig Terrace Bilston Roslin	17/00968/DPP	Taylor Wimpey	Non-Denom Primary Education	£836,316.45
Housing Site S Land To The East And West Of Hunterfield Road Gorebridge	07/00352/FUL	Persimmon	Non-Denom Secondary Education	£580,503.20
Housing Site S Land To The East And West Of Hunterfield Road Gorebridge	07/00352/FUL	Persimmon	Non-Denom Primary Education	£47,444.80
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Non-Denom Secondary Education	£104,107.77
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Non-Denom Primary Education	£145,448.80
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Non-Denom Primary Education	£82,870.64
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Non-Denom Primary Education	£456,155.54
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Penicuik Nursery Capacity	£27,450.53
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Denom Primary Education	£140,622.25
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Denom Secondary Education	£18,900.00
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Penicuik Pool/Library	£440,399.40
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Penicuik Pavilion	£52,115.00
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	Penicuik All Weather Pitch	£56,442.40
Land Between Deanburn And Mauricewood Road Penicuik	17/00068/DPP	CALA	A702 Roundabout and Associated Works	£738,423.16
Land To North And South Of Lasswade Road Dalkeith	14/00420/PPP	Dandara	Border Rail	£99,263.44
Land To North And South Of Lasswade Road Dalkeith	14/00420/PPP	Dandara	Denominational Primary contribution	£21,971.97
Land To North And South Of Lasswade Road Dalkeith	14/00420/PPP	Dandara	Non Denominational Secondary Education	£314,730.25
Land To North And South Of Lasswade Road Dalkeith	14/00420/PPP	Dandara	Non-Denominational Primary Education Contribution	£205,073.81
Land South West of Tesco Superstore Dalkeith	18/00181/DPP	SC Dalkeith Limited	A7 Urbanisation	£48,823.98
Development Site H1 Wester Cowden Dalkeith	14/00444/PPP	Bellway Homes	Border Rail	£262,388.20
Development Site H1 Wester Cowden Dalkeith	14/00444/PPP	Bellway Homes	Denominational Secondary Contribution	£12,015.00
Development Site H1 Wester Cowden Dalkeith	14/00444/PPP	Bellway Homes	Non Denominational Secondary Education	£250,619.54
Development Site H1 Wester Cowden Dalkeith	14/00444/PPP	Bellway Homes	Town Centre Improvements	£24,072.30
Development Site H1 Wester Cowden Dalkeith	14/00444/PPP	Bellway Homes	Denominational Primary contribution	£58,041.01
Development Site H1 Wester Cowden Dalkeith	14/00444/PPP	Bellway Homes	Non-Denom Primary Education	£749,986.32
Land At Former Mayfield Inn Bogwood Road Mayfield	17/00170/DPP	Melville Housing Association	Non Denominational Secondary Education	£90,456.46
Land At Former Mayfield Inn Bogwood Road Mayfield	17/00170/DPP	Melville Housing Association	Non-Denominational Primary Education Contribution	£179,731.31

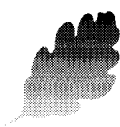
Land At Former Mayfield Inn Bogwood Road Mayfield	17/00170/DPP	Melville Housing Association	Childrens Play Mayfield	£4,337.24
Land At Former Mayfield Inn Bogwood Road Mayfield	17/00170/DPP	Melville Housing Association	Town Centre Improvements	£13,600.21
Land At Former Mayfield Inn Bogwood Road Mayfield	17/00170/DPP	Melville Housing Association	Border Rail	£15,756.00
Land At Former Mayfield Inn Bogwood Road Mayfield	17/00170/DPP	Melville Housing Association	Denominational Secondary Contribution	£1,620.00
Former Bonnyrigg Market Site High Street Bonnyrigg	17/00012/DPP	MNM Developments (Scotland) Ltd	Denominational Secondary Contribution	£1,350.00
Former Bonnyrigg Market Site High Street Bonnyrigg	17/00012/DPP	MNM Developments (Scotland) Ltd	Non Denominational Secondary Education	£77,998.27
Former Bonnyrigg Market Site High Street Bonnyrigg	17/00012/DPP	MNM Developments (Scotland) Ltd	Non-Denominational Primary Education Contribution	£131,770.00
Former Bonnyrigg Market Site High Street Bonnyrigg	17/00012/DPP	MNM Developments (Scotland) Ltd	Open Space and Play Equipment	£5,882.43
Former Bonnyrigg Market Site High Street Bonnyrigg	17/00012/DPP	MNM Developments (Scotland) Ltd	Border Rail	£24,483.99
Former Bonnyrigg Market Site High Street Bonnyrigg	17/00012/DPP	MNM Developments (Scotland) Ltd	A7 Urbanisation	£25,385.22
Land Bounded By A702 Old Dalkeith Road And The Wisp Millerhill Dalkeith	02/00660/OUT	Shawfair LLP	Shawfair Public Transport	£90,093.14
Land Bounded By A702 Old Dalkeith Road And The Wisp Millerhill Dalkeith	02/00660/OUT	Shawfair LLP	Border Rail	£55,884.80
Land Bounded By A702 Old Dalkeith Road And The Wisp Millerhill Dalkeith	02/00660/OUT	Shawfair LLP	Shawfair Combined Education	£494,302.70
Land Bounded By A702 Old Dalkeith Road And The Wisp Millerhill Dalkeith	02/00660/OUT	Shawfair LLP	Denominational Secondary Contribution	£5,265.00
Land Bounded By A702 Old Dalkeith Road And The Wisp Millerhill Dalkeith	02/00660/OUT	Shawfair LLP	Sheriffhall Roundabout	£46,690.28
Land North Of Dalhousie Dairy Bonnyrigg	16/00712/PPP	Walker Group	Border Rail	£45,955.00
Land North Of Dalhousie Dairy Bonnyrigg	16/00712/PPP	Walker Group	Denominational Secondary Contribution	£4,725.00
Land North Of Dalhousie Dairy Bonnyrigg	16/00712/PPP	Walker Group	Non Denominational Secondary Education	£268,973.48
Land North Of Dalhousie Dairy Bonnyrigg	16/00712/PPP	Walker Group	Non-Denominational Primary Education Contribution	£553,141.78
Site Hs11 Dalhousie South Bonnyrigg	18/00740/DPP	Walker Group	A7 urbanisation	£348,278.52
Site Hs11 Dalhousie South Bonnyrigg	18/00740/DPP	Walker Group	Open Space and Play Equipment	£122,785.19
Site Hs11 Dalhousie South Bonnyrigg	18/00740/DPP	Walker Group	Traffic Regulation Order	£2,000.00
Land Previously Occupied By The Roslin Institute Roslin	13/00877/PPP	Taylor Wimpey	A701 Relief Road	£146,777.77
Land Previously Occupied By The Roslin Institute Roslin	13/00877/PPP	Taylor Wimpey	Community Facilities Roslin	£37,718.22
Land Previously Occupied By The Roslin Institute Roslin	13/00877/PPP	Taylor Wimpey	Denominational Secondary Contribution	£7,290.00



Land Previously Occupied By The Roslin Institute Roslin	13/00877/PPP	Taylor Wimpey	Non Denominational Secondary Education	£424,139.34
Land Previously Occupied By The Roslin Institute Roslin	13/00877/PPP	Taylor Wimpey	Non-Denominational Primary Education Contribution	£276,363.47
Land At Soutra Mains Farm Pathhead	20/00890/S42	Soutra Mains	Border Rail	££2,626.00
Land At Soutra Mains Farm Pathhead	20/00890/S42	Soutra Mains	Denominational Primary contribution	££1,100.00
Land At Soutra Mains Farm Pathhead	20/00890/S42	Soutra Mains	School Transport from Soutra Mains	£10,202.00
Land At Soutra Mains Farm Pathhead	20/00890/S42	Soutra Mains	Non Denominational Secondary Education Sum	£14,924.00
Land 65M West of Rosslyn Bowling Club Main Street Roslin	18/00703/DPP	BDW Trading Limited	Community Facilities Contribution	£21,050.81
Land 65M West of Rosslyn Bowling Club Main Street Roslin	18/00703/DPP	BDW Trading Limited	Non-Denominational Primary Education Contribution	£435,897.00
Land South West Of Bilston Seafield Moor Road	12/00814/PPP	Barratt Homes	Denominational Secondary Contribution	£10,125.00
Land South West Of Bilston Seafield Moor Road	12/00814/PPP	Barratt Homes	Non-Denominational Primary Education Contribution	£759,975.00
Cockpen Farm Cockpen Dean Bonnyrigg EH19 3JF	21/00608/DPP	Miller Homes	Affordable Housing commuted sum	£78,762.00
Cockpen Farm Cockpen Dean Bonnyrigg EH19 3JF	21/00608/DPP	Miller Homes	Border Rail	£6,565.00
Cockpen Farm Cockpen Dean Bonnyrigg EH19 3JF	21/00608/DPP	Miller Homes	Community Facilities Contribution	£2,670.00
Cockpen Farm Cockpen Dean Bonnyrigg EH19 3JF	21/00608/DPP	Miller Homes	Non Denominational Secondary Education	£46,775.00
Cockpen Farm Cockpen Dean Bonnyrigg EH19 3JF	21/00608/DPP	Miller Homes	Non-Denominational Primary Education Contribution	£48,360.00
Land North West of Moat View Roslin	18/00535/PPP	Barratt Homes	A701 Relief Road	£57,052.25
Land West Of The Laird And Dog Hotel High Street Lasswade	18/00382/DPP	Dimension Homes	A7 urbanisation	£5,333.12
Land West Of The Laird And Dog Hotel High Street Lasswade	18/00382/DPP	Dimension Homes	Border Rail	£5,129.68
Land West Of The Laird And Dog Hotel High Street Lasswade	18/00382/DPP	Dimension Homes	Denominational Secondary Contribution	£270.00
Land West Of The Laird And Dog Hotel High Street Lasswade	18/00382/DPP	Dimension Homes	Non Denominational Secondary Education	£16,250.94
Land West Of The Laird And Dog Hotel High Street Lasswade	18/00382/DPP	Dimension Homes	Non-Denominational Primary Education Contribution	£33,422.82
Land West Of The Laird And Dog Hotel High Street Lasswade	18/00382/DPP	Dimension Homes	Open Space and Play Equipment	£2,303.44
Land At Greenlaw Mains Mauricewood Road Penicuik	12/00745/DPP	Taylor Wimpey	Non Denominational Secondary Education	£233,198.81
Land South Of 23 Straiton Mains Loanhead	17/00979/DPP	Peel Land and Property Investments Ltd	A701 Relief Road	£347,335.80
Land 150M North West of 1 Wester Shawfair Danderhall	21/00135/DPP	Buccleuch Property (Shawfair) Ltd	Border Rail	£62,882.00
Land 150M North West of 1 Wester Shawfair Danderhall	21/00135/DPP	Buccleuch Property (Shawfair) Ltd	Sheriffhall Roundabout	£137,786.04
<b>Total</b>				<b>£12,127,065.16</b>







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## **TREE PROTECTION IN MIDLOTHIAN AND THE ROLE OF TREES IN MITIGATING CLIMATE CHANGE AND PROTECTING AND ENHANCING BIODIVERSITY**

Report by Chief Officer Place

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### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to inform the Committee of the protection given to trees in Midlothian, their important role in mitigating the effects of climate change and their contribution to biodiversity.

### **2 BACKGROUND**

- 2.1 At its meeting of 13 June 2022 the Committee requested a report with regard:
- the current legislation and policies that seek to protect trees and encourage their planting as part of the development process;
  - the value trees have in mitigating against climate change; and
  - trees contribution towards biodiversity.
- 2.2 This report is structured as follows:
- a) Section 3 sets out the legislative and regulatory framework with regard trees in Midlothian and includes consideration of:
    - Midlothian Local Development Plan 2017 (MLDP) policy ENV11;
    - The use of planning conditions when granting planning permission to secure planting and the protection of trees during construction;
    - Tree protection as part of a conservation area; and
    - Tree Preservation Orders (TPO);
    - Scottish Forestry Tree Felling Licenses.
  - b) Section 4 sets out the role of trees in mitigating climate change and their role in supporting and enhancing biodiversity.
  - c) Section 5 sets out how we increase protection for trees and increase the tree canopy cover in Midlothian.

### **3 THE LEGISLATIVE AND REGULATORY FRAMEWORK**

- 3.1 The legislative and regulatory framework with regard the protection of trees in different circumstances is set out below – outwith these

categories of protection and consideration there are no 'default' tree protection regulations:

#### Midlothian Local Development Plan 2017 (MLDP) Policy ENV11

- 3.2 MLDP policy ENV11 Woodland, Trees and Hedges is the primary policy for the protection of trees and hedges in the local development plan and is a consideration in the assessment of development proposal via the planning application process. Policy ENV11 states:

*“Development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.*

*Where an exception to this policy is agreed, any woodland, trees or hedges lost will be replaced with equivalent. Removal of woodland, trees and hedges will only be permitted where it would achieve significant and clearly defined additional public benefits. If a development would result in the severing or impairment of connectivity between important woodland habitats, workable mitigation measures should be identified and implemented, preferably linked to a wider green network.”*

- 3.3 The presumption of policy ENV11 is against tree and/or hedge loss and sets out the position that their removal will only be supported where it would achieve significant and clearly defined additional public benefits. It also provides details of mitigation measures required where trees or hedges are removed. The policy protection afforded by policy ENV11 only applies in circumstances and locations where a planning application is being considered – it does not apply in circumstances where a planning application is not required.
- 3.4 The Council collects data on the location of ancient and semi-ancient woodland in Midlothian. This helps inform assessments on planning applications.

#### Planning Conditions attached to a Grant of Planning Permission

- 3.5 In granting planning permission for development the local planning authority can impose a condition/s to; protect a tree, protect a group of trees and/or require the planting of new trees. Such conditions can be subject to review/appeal or amendment by way of a subsequent planning application. Non-compliance with tree protection and landscaping conditions can result in planning enforcement action being taken to secure compliance.

### Tree Protection as part of a Conservation Area

- 3.6 In a designated conservation area, legislation requires the Council to be notified of any works undertaken on trees that are above 75 millimetres in diameter (or where the tree is in a woodland it is 100 millimetres where the work is done to improve the growth of other trees), at a point 1.5 metres above ground level. These works would include cutting down, uprooting, topping or lopping of the tree. The notification of the Council of works to trees in a conservation area occurs through the submission to the Council of a 'Work To Tree' (WTT) application. Applications can be made through the Council's website.
- 3.7 The Council has six weeks to consider the application and decide whether or not a Tree Preservation Order (TPO) should be placed on the tree/s. If a TPO is not placed on the tree/s, then works applied for can proceed and the applicant is notified of the decision. Legislation does not require the need for replacement tree planting where trees, not being designated as a TPO in a conservation area, are being felled, although the Council does encourage replacement tree planting in such circumstances. The Council also works with applicants to encourage appropriate tree care works and management.
- 3.8 The Council cannot refuse a WTT consent or grant a WTT consent subject to conditions for tree works in a conservation area where the trees are not subject to a TPO. This is because the WTT process is prior notification of works *not* an application for consent. As such the Council cannot consider representations on a WTT notification. This report also sets out the protection afforded to trees subject to a TPO and how TPOs are designated.
- 3.9 The Council does not need to apply for a WTT application with regard trees on Council owned land in a conservation area. Statutory undertakers (utility providers) also have rights that exclude the need for a WTT application in a conservation area.
- 3.10 A plan showing the location of conservation areas and TPOs in Midlothian can be viewed on the Council's website.
- 3.11 Scottish Government guidance in the form of Planning Circular 1 2011: Tree Preservation Orders sets out in paragraphs 81 and 82 the penalties for undertaking unauthorised works to trees in conservation areas (without prior notification) and sets out replacement planting requirements. It is an offence to undertake tree works in a conservation area without going through the notification procedure – the Council can use its discretion to require replacement planting if trees are removed without going through the notification process.
- 3.12 Penalties - Planning Circular 1 2011: Tree Preservation Orders (paragraph 81)

“Anyone who cuts down, uproots, wilfully destroys a tree or wilfully damages, tops or lops a tree in a conservation area in such a manner as to be likely to destroy it, without giving the six weeks prior notification is guilty of an offence. A person found guilty of an offence shall be liable on summary conviction to a fine not exceeding £20,000 and on conviction of indictment to a fine”

3.13 Replacement of trees - Planning Circular 1 2011: Tree Preservation Orders (paragraph 82)

“If a tree in a conservation area is removed, uprooted or destroyed in contravention of section 172 of the Act (the Town and Country Planning (Scotland) Act) the landowner is placed under a duty to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. The same duty applies if a tree is removed because it is dead, dying or dangerous or because it is causing a nuisance. The duty attaches to subsequent owners of the land, although the planning authority has powers to dispense with the duty.”

Tree Preservation Orders (TPOs)

- 3.14 Planning Circular 1 2011: Tree Preservation Orders sets out in paragraphs 29 and 30 that “It is an offence for any person in contravention of a TPO to cut down, uproot, wilfully destroy a tree or wilfully damage, top or lop a tree in such manner as to be likely to destroy it without the consent of the planning authority. A person guilty of an offence shall be liable on summary conviction to a fine not exceeding £20,000.”
- 3.15 Unlike the notification procedure for works to trees in conservation areas that are not subject to a TPO, there is no size threshold for which an application is necessary for works to trees subject to a TPO. An application for works to trees subject to a TPO is required, irrespective of the scale of works proposed and the size of the tree for which the works are proposed.
- 3.16 Works can be undertaken on trees subject to a TPO, including felling, but an application for (not just notification of) works must be submitted to the local planning authority and approval must be received from the local planning authority prior to works commencing. This approval is sought through the submission of a WTT application. Applications can be made through the Council’s website.
- 3.17 The local planning authority can require replacement tree planting where trees are subject to a TPO are felled. Although the priority is to retain trees protected by a TPO for amenity, climate change and biodiversity reasons it is acknowledged that sometimes trees need to

be felled for health and safety reasons or to facilitate a development in the public interest.

- 3.18 Alternatively, if the tree/s subject of a TPO is within the site boundary of a proposed development, then the proposed works to the tree/s can be applied for through the planning application process and considered as part of the determination of the application. A planning permission will take precedence over a TPO. Therefore a planning permission can allow the removal of a tree/s designated under a TPO.

#### *Designation of a TPO*

- 3.19 Midlothian Council has the power to issue a TPO on individual trees, groups of trees or areas of woodland if it appears to the local planning authority that:
- It is expedient to do so in the interest of amenity and/or,
  - that an individual tree, a group of trees or area of woodland is of cultural or historical significance.
- 3.20 At present the legislation does not support issuing a TPO solely on climate change mitigation or biodiversity grounds – despite it becoming increasingly evident that trees make a significant and positive contribution with this regard, and increasingly a planning judgment with regard ‘amenity’ can indirectly relate to climate change mitigation and biodiversity value. When considering the designation of an individual tree, a group of trees or area of woodland as a TPO consideration is given to the type of tree/s, the health and condition of the tree/s, their location, their contribution to local amenity and their cultural and historical value.
- 3.21 Since 1977 Midlothian Council, and its District Council predecessor, has designated 75 different TPOs in Midlothian covering a mix of individual trees, groupings of trees and areas of woodland. However, in some instances the trees subject to a TPO have been removed.
- 3.22 The primary legislation, regulations and guidance with regard TPOs and trees in conservation areas is as follows:
- The Town and Country Planning (Scotland) Act 1997 as amended by the 2006 Planning etc. Act and the 2019 Planning (Scotland) Act;
  - The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended;
  - The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010; and
  - Scottish Planning Circular 1 2011: Tree Preservation Orders

### Scottish Forestry Tree Felling Licenses

- 3.23 With the exception of private garden ground, irrespective of any other designations affecting a tree or woodland, where more than 5m<sup>3</sup> of timber is to be felled, a felling license from Scottish Forestry (formerly Forestry Commission Scotland) is required. Up to 5m<sup>3</sup> of timber can be felled in one location in each quarter of a year without the need for a felling license. Where an application is made to Scottish Forestry, the Council will be consulted.
- 3.24 Estimating and visualising what 5m<sup>3</sup> of timber looks like is difficult - for comparison it is about the size of one medium oak tree, or a cuboid space approximately one metre wide, two metres tall and 2.5 metres long.
- 3.25 A felling license is not required for felling works in a private garden. Therefore where a private garden is not in a conservation area, or trees are not subject to a TPO or planning conditions, there is no protection against tree felling or any legislation requiring the replacement of trees felled. In these circumstances the Council has no authority to stop felling or require replanting to replace felled trees.

### Protection of Trees

- 3.26 The report sets out the protection given to trees in Midlothian and provided for by legislation and regulations. Section 3 of this report sets out this is achieved by the:
- The application of MLDP policy ENV11 in the assessment of planning applications;
  - The use of planning conditions to safeguard trees and secure planting of trees;
  - Works to trees in a conservation areas;
  - Tree Preservation Orders; and
  - The requirements for tree felling licenses from Scottish Forestry.
- 3.27 This report indirectly highlights the gaps there are in tree protection, namely:
- The policy framework of the MLDP only applies to trees affected by a planning application. It does not provide direct protection for trees where a planning application is not required;
  - planning conditions will only apply to sites where there has been a grant of planning permission and that permission is being implemented;
  - Conservation areas only cover certain parts of Midlothian and where there is no TPO the Council cannot require replacement tree planting for felled trees. The only way the Council can stop tree works, in any location, is for the tree/s to be protected by a TPO;
  - TPOs only cover a comparatively small number of the trees in Midlothian and their issuing and review can be an administrative and resource intensive process; and

- Felling licenses are controlled by Scottish Forestry, not the Council, and permit up to 5m<sup>3</sup> of felling in a location every quarter of a calendar year.

## **4 THE ROLE OF TREES IN MITIGATING CLIMATE CHANGE AND PROTECTING AND ENHANCING BIODIVERSITY**

### Brief Summary of the Primary Cause of Climate Change

- 4.1 There is an increasing understanding of greenhouses gases (e.g. carbon dioxide, methane, and nitrous oxide) and their relationship with climate change, and how increases in their presence in the earth's atmosphere, increases the temperature of the earth.
- 4.2 In brief, when short-wave radiation from the sun reaches Earth, most of it passes straight through the atmosphere and hits the Earth's surface - the Earth then absorbs most of this radiation and in exchange gives off longer-wavelength infrared radiation which in 'normal' circumstances heads back out to space, with some of it being trapped by the planet's atmosphere to maintain the earth's temperatures. The increasing volume of greenhouse gases traps an ever increasing amount of this infrared radiation in the atmosphere and in turn the radiation acts like a blanket causing the planet to heat up as heat is increasingly retained in the atmosphere. This process is known as the 'greenhouse effect'.
- 4.3 Since the industrial revolution (the second part of the 19<sup>th</sup> Century), we've been adding more and more greenhouse gases into the atmosphere, trapping even more radiation and in turn generating more heat. Instead of keeping Earth at a warm, stable temperature, the greenhouse effect is heating the planet at a much faster rate. We call this the 'enhanced greenhouse effect' and it's the main cause of climate change. Increasing global temperatures will lead increasingly to drought, flooding, wildfires, crop failures, economic pressures and failures, poor air quality and accelerated reductions in biodiversity.
- 4.4 To reduce climate change and the enhanced greenhouse effect, the amount of greenhouse gases being released into the Earth's atmosphere needs to be reduced.
- 4.5 Trees (in particular mature trees) are a well-known and accepted means of absorbing and retaining greenhouses gases, particularly carbon dioxide. The safeguarding and planting of trees is therefore all the more important as temperatures continue to rise.

### Trees - Mitigating Climate Change

- 4.6 Using i-tree software Council officers have undertaken indicative work to identify the tree canopy coverage in Midlothian and also the environmental and financial value of the trees. Table 1 below, shows



the findings. The blanks in the table are where no financial value could be calculated using the software.

**Table 1: Tree Canopy Study Results in Midlothian** (source: i-tree)

	Bonnyrigg Ward	Dalkeith Ward	Penicuik Ward	Midlothian East Ward	Midlothian South Ward	Midlothian West Ward	TOTAL	VALUE
% Canopy Cover	15.5%	11.4%	8.5%	9.1%	12%	15.4%	<b>12%</b>	-
Carbon sequestered annually (metric tonnes)	362.5	872.5	2,143.9	2,651.9	4,870	2,113.4	<b>13,014.2T</b>	-
CO2 equivalent sequestered annually (metric tonnes)	1329	3,199.2	7,864.2	9,713.4	17,860	7,742.3	<b>47,708.1T</b>	<b>£1,735,353</b>
Carbon stored (total) (metric tonnes)	9102.7	21,911.8	5,389.1	66,510.4	122,300	53,017.3	<b>278,231.3T</b>	-
CO2 equivalent stored (total) (metric tonnes)	33,376.5	80,343.1	19,759.1	243,851.3	448,500	194,400.3	<b>572,178.8T</b>	<b>£43,581,317</b>
Carbon Monoxide removed annually (kg)	119.7	257.3	632.8	780.9	1,610	622.6	<b>4,023.3kg</b>	<b>£285</b>
Nitrogen Dioxide removed annually (kg)	652.8	1,403	3,450.3	4,258.3	8,770	3,394.6	<b>21,929kg</b>	<b>£491.54</b>
Ozone removed annually (kg)	6501.3	13,973	34,363.4	42,410.6	87,360	33,808.5	<b>218,416.8kg</b>	<b>£25,637</b>
Sulphur Dioxide removed annually (kg)	411.4	884.1	2,174.3	2,683.5	5,530	2,139.2	<b>13,822.5kg</b>	<b>£86</b>
Particulate Matter (2.5-10 microns) removed annually (kg)	2,177.7	4,680.4	11,510.5	14,206	29,260	11,324.6	<b>73,159.2kg</b>	<b>£18,612</b>
Particulate Matter (<2.5 microns) removed annually (kg)	315.9	679	1,669.8	2,060.8	4,240	1,642.8	<b>10,608.3kg</b>	<b>£52,995</b>

4.7 The table shows the canopy cover percentages of all six Midlothian Council Wards. The average tree coverage (canopy) across Midlothian is 12%. The average for the United Kingdom is 13%, but the average in the European Union is 35% (source: Friends of the Earth). Globally just under a third of the world is covered in trees (source: Columbia University).

4.8 Table 1 highlights trees in Midlothian were responsible for:



- an annual equivalent carbon dioxide sequestration of 47,708 metric tonnes with a financial value of £1,735,353; and
- the trees store an equivalent 572,178 metric tonnes of carbon dioxide with a financial value of £43,581,317.

4.9 The carbon storage of the trees is critical in the efforts to reduce the effects of climate change. Trees/forests help stabilise the earth's climate by absorbing almost a third of the carbon dioxide released from burning fossil fuels every year - around 2.6 billion tonnes.

#### Trees - Protecting and Enhancing Biodiversity

4.10 The protection and enhancement of biodiversity is closely linked to climate change and trees are a key player in this finely balanced relationship. The below list identifies some of the benefits provided by trees in this relationship (source: includes Earth Eclipse, Greenpeace and The Woodland Trust):

- Trees produce the only natural source of oxygen on earth - an acre of land full of mature trees can produce enough oxygen for 18 people in a year;
- Trees absorb pollutant gases such as carbon dioxide, nitrogen oxides, sulphur dioxide, ammonia, and ozone from the air and purify it. They filter particulates out of the air and trap them on their bark and leaves. Table 1 above shows the estimated volume of harmful gasses that are absorbed annually by trees in Midlothian. Removing the trees reduces this ability to store carbon dioxide and other greenhouse gases and their loss results in them going back into the atmosphere;
- Trees provide shelter and habitat for humans and animals. As an example a mature oak trees alone supports 2,300 species – 326 of which are entirely dependent on oak for their survival (source: The Woodland Trust);
- Trees are a major source of food and nutrition for humans, birds and animals both directly and indirectly;
- Trees are and can be a primary source of energy for heat and fuel, and can be sustainably produced;
- Trees reduce heat through providing shade and releasing water vapour through leaf pores to help lower temperatures and keep air moist;
- Trees help prevent soil erosion through binding soil together and help reducing flooding through take up of water through root systems, reducing run off of soil and sediment into rivers, and slowing down the rates of water flow from rain fall;
- Trees help with the appreciation of issues related to the Climate Emergency and connectivity with the natural world; and
- Trees, woodland and biodiversity help positively towards wellbeing and mental health.

- 4.11 Approximately 80% of the world's land biodiversity including many varieties of trees, plants, animals, birds, insects and fungi working together in complex ecosystems are found in woodlands and forests - forests cover about a third of the Earth's land area and about half of that is intact.

## **5 INCREASING PROTECTION FOR TREES AND TREE CANOPY COVER IN MIDLOTHIAN**

- 5.1 To help mitigate the effects of climate change, protect and enhance biodiversity and provide enhanced amenity for the residents of Midlothian it is necessary that importance is placed on:
- Preserving existing trees; and
  - Promoting appropriate tree planting and woodland management.
- 5.2 There are challenges in delivering these objectives, namely:
- The balance of decision making on planning applications between tree protection and development;
  - The suitability and condition of trees in domestic gardens and their longevity, where people wish to remove them;
  - Protection of woodland outwith settlements not protected by TPOs;
  - The additional resources required to designate further TPOs and to determine applications for works to trees, e.g. management or felling requests;
  - Limited influence over new tree planting regimes outwith the Council's landholdings; and
  - Connecting fragmented woodland and wildlife habitats.

### Assessment of Planning Applications

- 5.3 There is a balance to be had in the assessment of planning applications between supporting development, economic growth, the provision of need infrastructure and the loss of trees. In response to the Climate Emergency the preservation of trees, particularly mature and semi-mature trees, must have significant weight in the assessment of development proposals. Officers do already give significant weight to tree preservation in assessment of planning applications - this must remain at the forefront of the assessment of development proposals.

### Midlothian Local Development Plan No. 2

- 5.4 The next local development plan, Midlothian Local Development Plan No. 2, which will be prepared during the current administration of the Council, presents an opportunity for greater tree preservation and increased tree canopy cover in Midlothian by:
- Consideration of new TPOs in Midlothian to help safeguard trees, particularly on sites that may potentially be allocated for development. TPOs could be considered for important strategic woodlands across Midlothian;

- Not allocating sites for development that will lead to loss of mature trees, even for access into the site;
- Require proposed development sites, including existing allocations which do not have planning permission, to have a set percentage of tree canopy coverage on the site;
- The promotion of further tree/woodland planting; and
- The Council considering using its own estate to plant new community woodlands as part of its net zero carbon ambitions, its ambitions to enhance biodiversity and to deliver quality environments for its residents, businesses and visitors.

## **6 RECOMMENDATION**

6.1 The Committee is recommended to note the contents of the report.

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

**Date:** 19 August 2022

**Contact Person:** Grant Ballantine, Lead Officer Conservation and Environment  
 grant.ballantine@midlothian.gov.uk

**Background Papers:** Midlothian Local Development Plan 2017





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## **SUPPLEMENTARY GUIDANCE: LOW DENSITY RURAL HOUSING**

Report by Chief Officer, Place

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### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to update Committee on the adoption of the Low Density Rural Housing Supplementary Guidance.

### **2 BACKGROUND**

- 2.1 At its meeting of 14 June 2022 the Committee agreed to adopt the Low Density Rural Housing Supplementary Guidance following a formal consultation process which ran from 9 December 2021 to 5 January 2022 and agreed that the supplementary guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment. In addition the Committee:
- a. instructed the Planning, Sustainable Growth and Investment Manager to undertake the required notification/advertisement advising that the Low Density Rural Housing Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
  - b. instructed the Planning, Sustainable Growth and Investment Manager to notify the Scottish Ministers of the Council's intention to adopt the Low Density Rural Housing Supplementary Guidance; and
  - c. required notification of the outcome of the notification to the Scottish Ministers.
- 2.2 The notification/advertisement referred to in paragraph 2.1a was published in the Midlothian Advertiser newspaper on 23 June 2022. The advertisement was required to comply with Strategic Environmental Assessment legislation and regulations and was for information purposes only.
- 2.3 In line with paragraph 2.1b Scottish Ministers were informed of the Council's intention to adopt the supplementary guidance. Scottish Ministers informed the Council by letter dated 10 August 2022 that they did not propose to issue a direction in relation to the guidance and that the Council is free to adopt the guidance. The adopted version of the

Low Density Rural Housing Supplementary Guidance document is on the Council's website.

### **3 RECOMMENDATION**

3.1 The Committee is recommended to note the contents of the report.

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

**Date:** 19 August 2022  
**Contact Person:** Alison Challis, Planning Officer  
[alison.challis@midlothian.gov.uk](mailto:alison.challis@midlothian.gov.uk)  
**Background Papers:** Midlothian Local Development Plan 2017 adopted 7 November 2017.



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## **GUIDANCE ON THE ROLE OF COUNCILLORS IN THE CONSIDERATION OF PRE-APPLICATION CONSULTATIONS FOR MAJOR DEVELOPMENTS**

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 recommended procedures for Councillors in the pre-application process.

### **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 (a copy is appended to this report), was last reported to the Committee at its meeting of 6 June 2017. The guidance clarifies the position with regard Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 The Planning, Sustainable Growth and Investment Service manages the planning application process, and offers an advice service to anyone considering making an application. Giving pre-application advice helps applicants to gain clear, impartial and professional advice at an early stage regarding any key issues that need to be addressed prior to submitting a formal development proposal. Advice can be provided for developments requiring planning permission, advertisement consent, conservation area consent or listed building consent.
- 2.3 The team currently provides free (this is subject to review) pre-application advice on over 200 projects each year, the vast majority of which is with regard local developments. However a small number of requests relate to major developments and are subject to a formal process as defined by regulations. A major application is defined by regulations and constitutes proposed developments over a specified size. For example; a development comprising 50 or more dwellings, a business/industry use with a gross floor space exceeding 10,000 square metres, a retail development with a gross floor space exceeding 5,000 square metres and sites exceeding 2 hectares. A major application (with the exception of a Section 42 application to amend a previous grant of planning permission) cannot be submitted

to the planning authority for determination without undertaking a formal pre application consultation (PAC) with local communities.

- 2.4 With regard to the role of Councillors in the pre-application process, the Councillors' Code of Conduct states the following at paragraph 7.8:

*'7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.'*

- 2.5 It is reasonable for constituents to expect their local elected representatives to have a provisional view on a major planning application proposal within their locality. The above guidance provides for this within specific terms. The further guidance and recommended procedures identified below seek to enable Members to be confident about expressing a provisional view whilst being safeguarded from challenge on grounds of partiality. It also remains the case that Members can at any time contact the Council's planning officers for advice and guidance.

### **3 PROCEDURES**

- 3.1 The Councillors Code of Conduct enables Councillors to express a 'without prejudice' view and to raise material considerations with regard to a major application.

#### Report Pre-Application Consultations to Committee

- 3.2 To enable Councillors to express an early view on a major application it is proposed to report to the Committee details of formal pre-application consultations by prospective applicants. The report will outline the proposal, identify the key development plan policies and material considerations and state a provisional without prejudice planning view regarding the principle of development.
- 3.3 The Committee will be 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.



### Meetings and Site Visits

- 3.4 Outwith the Committee process elected members may be invited to attend meetings or site visits with prospective applicants as part of the pre-application consultation process. When attending a meeting or site visit in connection to a major application, it is recommended that the elected member request a planning officer to attend. Any planning issues raised at the meeting can then be noted by officers.
- 3.5 Prior to the submission of a major planning application it is a statutory requirement on the prospective applicants to undertake public consultation in the locality including at least one 'public event' (usually a public exhibition). It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance) not offer views, as the forum for doing so will be at the meeting of the Planning Committee referred to in paragraphs 3.2 and 3.3 above.
- 3.6 Members will be aware that from time to time they are approached unsolicited by phone, e-mail or face to face contact (e.g. at surgeries), by applicants, supporters and objectors to applications. Clearly, a planning officer will not be present on such occasions but it would be reasonable for the Elected Member to note that s/he had raised (or was intending to raise) the following material considerations at the appropriate meeting of the Planning Committee.

### Determining a Subsequent Application

- 3.7 In terms of handling individual applications once they have been submitted, the Councillors' Code of Conduct seeks to reinforce the principles of fairness and impartiality in relation to the determination of any statutory application including planning applications. Councillors must not be, or be seen to be biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations.
- 3.8 Councillors are expected to approach their decision-making with an open mind in the sense 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.
- 3.9 In reporting a major application to the Committee for consideration, reference will be made to any pre-application advice given.

## **4 RECOMMENDATION**

4.1 It is recommended that the Committee:

- a) notes the established guidance and Committee procedures set out in this report; and
- b) agrees to receive a regular report regarding any formal pre-application consultations by prospective applicants.

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

**Date:** 19 August 2022  
**Contact Person:** Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager  
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**The Scottish  
Government**  
Riaghaltas na h-Alba

# Guidance on the Role of Councillors in Pre-Application Procedures



Commissioner for Ethical Standards  
in Public Life in Scotland



**COSLA**

**To:- All local authorities in Scotland**

## **GUIDANCE ON THE ROLE OF COUNCILLORS IN PRE-APPLICATION PROCEDURES**

### **1.0 Introduction**

- 1.1 The Scottish Government is keen to ensure that councillors are confident in engaging at the pre-application stage on substantial development proposals, adding value to the process, while continuing to act within the terms of the Councillors' Code of Conduct. Their involvement at this stage in the planning process is not a substitute for formal consideration and decision-making on development proposals. But this early engagement is intended to better inform councillors of proposals that may subsequently come before them, support a degree of certainty by enabling an early exchange of views and discussion of key issues that councillors want to see addressed, and assist officers of the authority in negotiating on those issues.
- 1.2 We are seeking a consistency of approach across Scotland that will both support certainty from strong early engagement and also enable councillors to participate confidently, backed by a clear remit and procedure to do so. We wish to ensure that councillors, and other parties, are clear of their roles and responsibilities through procedures set out by their own authority.
- 1.3 This guidance should form the basis of agreed and adopted local procedures for pre-application discussions which should be prepared as a matter of priority. Considerations to be taken into account in producing those procedures are set out in section 4 below.
- 1.4 In producing this guidance, the Scottish Government has worked closely with the Commissioner for Ethical Standards in Public Life in Scotland and received endorsement for the relevant sections of its contents.

### **2.0 Context**

- 2.1 The responsibility which councillors have to make proper and reasoned decisions on planning matters in terms of the Councillors' Code of Conduct ("the Code") provides the context for this subject.
- 2.2 Amendments to legislation arising from the Planning etc (Scotland) Act 2006 changed some aspects of the roles of councillors. In addition to councillors being responsible for decisions both on policy and strategic issues and also individual planning applications (unless delegated), additional measures were introduced regarding enhanced scrutiny of applications and the authority's Local Review Body.

- 2.3 One of the policy drivers for change was the introduction of more "front-loading" of engagement. It was also recognised that through early councillor involvement and expression of provisional views; more certainty and confidence would come from informing the process and avoiding unexpected issues emerging at a late stage.

### **Policy and Strategy**

- 2.4 The Code explicitly allows councillors to discuss or debate matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided.
- 2.5 As noted at section 7.7 of the Code *"....in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and masterplans prepared for specific sites in anticipation of planning applications."*

### **Individual Applications**

- 2.6 In terms of handling individual applications once they have been submitted, the Code seeks to reinforce the principles of fairness and impartiality in relation to the determination of any statutory application including planning applications. Councillors must not be - or be seen to be - biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations.
- 2.7 Councillors are expected to approach their decision-making with an open mind in the sense 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.

## **3.0 Pre-application Discussions**

- 3.1 Paragraph 7.14 of the Code makes it clear that it is Page 53 of 96 entirely appropriate for councillors, to attend public meetings/events (including those relating to statutory pre-application consultation). Pre-application consultation was introduced as one of the measures to improve early engagement with the community on prospective applications for national and major developments.
- 3.2 As a matter of Scottish Government policy the early engagement of councillors in pre-application discussions has been encouraged as part of the wider reform of the planning system. As already indicated this early engagement is intended to better inform members of proposals that may later come before them formally, enable an early exchange of views and discussion of key issues that councillors want addressed and to assist officers in negotiating on those issues. This is helpful to prospective

applicants, aiding their understanding of local issues and informing the development of their plans before submitting applications.

**3.3 The Code includes a key provision in this regard at paragraph 7.8:-**

*'7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.'*

- 3.4** It is not only appropriate and acceptable for councillors to engage and provide a provisional view at the pre-application stage; it can also be a helpful and responsible thing to do, contributing towards greater certainty and more efficient processing of subsequent applications.
- 3.5** Any opinions or views expressed by councillors at that stage must be made mindful of the overarching requirements of fairness and impartiality and of keeping an open mind. This will be particularly important as any conduct inconsistent with these requirements may compromise the determination of any subsequent planning application.

## **4.0 Pre-Planning Application Procedures**

### **Key Considerations for Pre-application Discussions**

**4.1** The following considerations should be applied by local authorities in drawing up procedures for councillors to engage in pre-application discussions:

- Emphasis should be given to providing meaningful guidance and a helpful service that adds value to the preparation of applications.
- Councillors should be able to air points of view at the pre-application stage on the understanding that the general issues aired in, or the outcomes of, the discussions will be placed into the public domain.
- Any procedures must be compliant with the requirements of the Councillors' Code of Conduct.
- Local authorities should consider their own procedures in implementing this guidance and set out which councillors are to be involved in pre-application discussions. This could be the relevant committee which determines planning applications or could be the members of that committee setting in a consultative forum (rather than as a formal committee).
- Procedures should be conducted in a consistent and transparent manner to avoid suspicions that councillors may have prejudiced their positions.

## **Key Provisions for Pre-application Procedures**

- 4.2 The considerations referred to in paragraph 4.1 above apply to the establishment of any forum in which a provisional view is to be considered and generated.
- 4.3 The forum in which discussion is to take place (committee, panel, other grouping) should be identified. Discussions should usually be held in public. However, where seen as appropriate or necessary, local authorities should carefully consider if they should be held in private. Guidance in paragraph 4.7 should continue to be followed.
- 4.4 The status and purpose of the process should be clear, articulate and publicly available. It is essential to make it clear that persons who may wish to comment on the application if it comes to be submitted will - at the appropriate time - have a full right to make representations.
- 4.5 The unique status of pre-application proposals should be clearly identified in the agenda for any meeting, including covering reports and any other introductory material prepared by officers. Such items should be clearly distinguished from other development management issues.
- 4.6 To avoid any misunderstanding (for councillors, interested parties and members of the public) it may be appropriate for the committee clerk to introduce the item in sufficient detail to allow participants to understand the purpose of the event, the broad nature of the proposals and to emphasise that the outcome is limited to the generation of a provisional view.
- 4.7 Officers should take a note of the meeting and prepare a minute which should be made publicly available in accordance with the requirements of good practice and the council's established conventions.

## **Training for Councillors**

- 4.8 To assist in enhancing public confidence, authorities should consider the need for further councillor training so that members can demonstrate objective levels of competence in planning generally and in the pre-application and development management processes, in particular.

## **Review of Procedures**

- 4.9 Procedures should be kept under review by cross council, planning and professional networks to ensure the dissemination of best practice.

## **5.0 Timescales for Introduction of the Procedures**

- 5.1 Each local authority should establish its own pre-application procedures as a matter of priority.

February 2014







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**PRE - APPLICATION REPORT REGARDING RESIDENTIAL DEVELOPMENT, THE ERECTION OF A PRIMARY SCHOOL AND ASSOCIATED ROADS, LANDSCAPING, OPEN SPACE, FOOTPATH/CYCLE WAYS, SUDS AND INFRASTRUCTURE ON LAND SOUTH EAST OF AUCHENDINNY, THE BRAE, AUCHENDINNY, PENICUIK (22/00577/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 residential development, the erection of a primary school and associated roads, landscaping, open space, footpath/cycle ways, sustainable urban drainage system (SUDS) and infrastructure on land south east of Auchendinny, The Brae, Auchendinny, Penicuik.
- 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 6 June 2017 (a copy of which is also on the Committee's agenda under a separate item). The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 The pre application consultation for residential development, the erection of a primary school and associated roads, landscaping, open space, footpath/cycle ways, SUDS and infrastructure on land south east of Auchendinny, The Brae, Auchendinny, Penicuik was submitted on 25 July 2022. The applicant is Bellway Homes Limited (Scotland East).
- 2.3 The site has an extant planning permission for residential development including formation of access roads, parking, SUDS and associated

works and land safeguarded for possible education use (application 20/00089/DPP for 395 dwellings was approved by Committee at its meeting of November 2020) – the site has been subject to a change in ownership/developer (previously a coalition of Stewart Milne Homes, Avant Homes and Miller Developments) and the site layout is to be remixed and amended and as such the applicant considered it appropriate to re-consult the local community and other interested parties. A previous pre-application consultation was reported to the Committee at its meeting of 14 November 2017.

- 2.3 As part of the pre-application consultation process, a public event would have been arranged in 'normal' times, however, this is no longer a requirement as a consequence of the ongoing Covid-19 public health emergency. Legislative requirements for pre-application consultations have been amended for a temporary period under the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020. The changes remove the requirement for a public event, but as an alternative require prospective developers to advertise where relevant consultation material can be viewed online. The legislation does not prescribe the method of consultation but the guidance does set out the Scottish Government's expectations - which includes giving interested parties the opportunity to make comment. On the conclusion of the online event the applicant could submit a planning application for the proposal. Whilst the stated temporary suspension is still in place until 1 October 2022 the relaxation of Coronavirus restrictions means that it is once again possible for public events to be carried out and the applicant has decided to return to the 'normal' approach. A public event for this PAN will take place at the Glencourse Centre on 22 September 2022. On the conclusion of the consultation process, 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 18 October 2022. 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 notice have been sent by the prospective applicant to the local elected members in ward 4 (Midlothian West), Christine Grahame MSP Midlothian South, Owen Thompson MP Midlothian, The Glencourse Association, Glencourse Primary School and the Roslin & Bilston, Penicuik & District and Rosewell & District Community Councils.
- 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 June 2017 (and elsewhere on today's Committee agenda) 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 currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). SESplan June 2013 is older than five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework (NPF) to be prepared by Scottish Ministers. Once approved, the NPF (which has been subject to consultation and is currently sitting with Scottish Ministers for final adoption) will form part of the development plan alongside local development plans. Until NPF is approved (likely to be autumn 2022), SESplan remains part of the development plan albeit increasing out of date.
- 3.3 The site is situated on the north-eastern fringes of Auchendinny near Penicuik. It is bound to the west by The Brae (B7026) and residential properties located on Firth Crescent, Firth Road and The Brae. Directly to the north and northeast of the site lies an unclassified road, with the former Oatslie Landfill and agricultural fields beyond. A single residential property (Lee Lodge) is also located along the site's northeastern boundary. The River North Esk Valley and associated woodland bounds part of the site to the south and southeast. In addition, a number of residential properties are located along parts of the southern boundary (including Small Steps Cottage, Sandia, Firth View Firth lodge and others within the same hamlet). The site comprises an irregular shaped parcel of land. The site slopes from the north to the southwest and southeast towards the nearby River North Esk Valley.
- 3.4 The adopted development plan for the area is the Midlothian Local Development Plan 2017 (MLDP). The MLDP identifies the central and northern part of the site as being an allocated housing site, Hs20 identified for 350 dwellings and a primary school. There is a presumption in favour of residential development and the provision of a school on this part of the site. The southern part of the site is identified as countryside, prime agricultural land and a protected river valley where there is protection against inappropriate development including residential land uses. A small piece of the site on its eastern boundary is also identified as countryside, prime agricultural land, protected river valley and an important nature conservation site where there is protection against inappropriate development including residential land uses. An

application for the proposed development will be assessed against the following MLDP policies:

- STRAT3 – Strategic Housing Land Allocations;
- DEV2 – Protecting Amenity within the Built-Up Area;
- DEV3 - Affordable and Specialist Housing;
- DEV5 – Sustainability in New Development;
- DEV6 – Layout and Design of New Development;
- DEV7 – Landscaping in New Development;
- DEV9 – Open Space Standards;
- TRAN1 – Sustainable Travel;
- TRAN2 – Transport Network Interventions;
- TRAN5 – Electric Vehicle Charging;
- IT1 – Digital Infrastructure;
- RD1 – Development in the Countryside;
- ENV4 – Prime Agricultural Land;
- ENV7 – Landscape Character;
- ENV8 – Protection of River Valleys;
- ENV9 – Flooding;
- ENV10 – Water Environment;
- ENV11 – Woodland, Trees and Hedges;
- ENV14 – Regionally and Locally Important Nature Conservation Sites;
- ENV15 – Species and Habitat Protection and Enhancement;
- ENV17 – Air Quality;
- ENV18 – Noise;
- ENV23 – Scheduled Monuments;
- ENV24 – Other Important Archaeological or Historic Sites;
- ENV25 – Site Assessment, Evaluation and Recording;
- NRG6 – Community Heating;
- IMP1 – New Development;
- IMP2 – Essential Infrastructure Required to Enable New Development to Take Place;
- IMP3 – Water and Drainage.

3.5 Development considerations identified in the MLDP relevant to housing/school part of site Hs20 include:

- provision of a new primary school, sited to relate to the new development and the wider catchment area;
- the impact of the new development on Auchendinny and on the hamlet of Woodhouselee;
- the need to develop/expand the green network in the area including links with the existing footpath in the middle of Auchendinny;
- development to be restricted to the MLDP site boundary but land to the south can be utilised as open space;
- a requirement for substantial boundary planting to minimise the impact on the North Esk Valley;
- inclusion of appropriate links as a contribution to the green networks in the area;

- retention and enhancement of vegetation along the boundaries including around the former driving range in the north of the site; and
  - a pedestrian tree lined avenue linking Firth Crescent to and throughout the site.
- 3.6 Road access, affordable housing and developer contributions are also significant considerations.
- 3.7 If an application is submitted there will be a presumption in favour of residential development and the provision of a school on the land allocated for such uses (not the areas of countryside included with the site – which can be used for landscaping and planting), in accordance with the provisions of the MLDP, subject to securing developer contributions towards infrastructure including education provision and affordable housing. The previous grant of planning permission is a significant material consideration which supports residential development and the provision of a primary school on the site.
- 3.8 The views of consultees and representors will be material considerations in the assessment of an application for the proposed development. The Council's Learning Estate Strategy 2017-2047 will also be a material consideration in the assessment of an application for the proposed development.

## **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 be 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 that they are minded towards if persuaded that they should.

## **5 RECOMMENDATION**

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

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

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

**Date:** 19 August 2022  
**Application No:** 22/00577/PAC  
**Applicant:** Bellway Homes Limited (Scotland East)  
**Agent:**  
**Validation Date:** 25 July 2022  
**Contact Person:** Alison Ewing  
**Email:** [alison.ewing@midlothian.gov.uk](mailto:alison.ewing@midlothian.gov.uk)











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**PRE - APPLICATION REPORT REGARDING THE ERECTION OF HIGH SCHOOL, COMMUNITY FACILITIES, VETERINARY CLINIC, FORMATION OF SPORTS PITCHES, CAR PARKING AND ASSOCIATED WORKS AT LAND EAST AND WEST OF SEAFIELD MOOR ROAD, BILSTON (22/00581/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 erection of a high school, community facilities, veterinary clinic, formation of sports pitches, car parking and associated works at land to the east and west of Seafield Moor Road, Bilston.
- 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 6 June 2017 (a copy of which is also on the Committee's agenda under a separate item). The guidance clarifies the position with regard to Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 The pre application consultation for the erection of a high school, community facilities, veterinary clinic, formation of sports pitches, car parking and associated works at land to the east and west of Seafield Moor Road, Bilston was submitted on 28 July 2022. The proposal will provide a replacement for the existing Beeslack High School in Penicuik - the Council will likely be the applicant for the planning application.
- 2.3 As part of the pre-application consultation process, a public event would have been arranged in 'normal' times, however, this is no longer a requirement as a consequence of the ongoing Covid-19 public health

emergency. Legislative requirements for pre-application consultations have been amended for a temporary period under the Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020. The changes remove the requirement for a public event, but as an alternative require prospective developers to advertise where relevant consultation material can be viewed online. The legislation does not prescribe the method of consultation but the guidance does set out the Scottish Government's expectations - which includes giving interested parties the opportunity to make comment. On the conclusion of the online event the applicant could submit a planning application for the proposal. Whilst the stated temporary suspension is still in place until 1 October 2022 the relaxation of Coronavirus restrictions means that it is once again possible for public events to be carried out and the applicant has decided to return to the 'normal' approach. Public events for this PAN will take place at Beeslack High School in the weeks beginning 12 September and 10 October 2022. On the conclusion of the consultation process, 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 21 October 2022. 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 notice have been sent by the prospective applicant to the local elected members in wards 1 (Penicuik) and 4 (Midlothian West) and the Damhead & District, Loanhead & District, Rosewell & District, Roslin & Bilston and Penicuik & District Community Councils.
- 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 June 2017 (and elsewhere on today's Committee agenda) 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 currently proposed development complies with development plan policies unless material planning considerations indicate otherwise.
- 3.2 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). SESplan June 2013 is older than

five years. A replacement SESplan was prepared but rejected by Scottish Ministers in May 2019. The Planning etc. (Scotland) Act 2019 removed the duty to prepare Strategic Development Plans, placing strategic planning matters within a National Planning Framework (NPF) to be prepared by Scottish Ministers. Once approved, the NPF (which has been subject to consultation and is currently sitting with Scottish Ministers for final adoption) will form part of the development plan alongside local development plans. Until NPF is approved (likely to be autumn 2022), SESplan remains part of the development plan albeit increasing out of date.

3.3 The site is situated to the west of Bilston on either side of Seafield Moor Road. It comprises two grazing fields and the trees and hedgerows that surround the fields. The western field is immediately adjacent to the Midlothian Innovation Centre and is identified in the Midlothian Local Development Plan 2017 as forming part of the Midlothian Science Zone. The eastern field is situated at the edge of Bilston; it forms part of the built-up area of Bilston and is part of the allocated housing site h55.

3.4 The adopted development plan for the area is the Midlothian Local Development Plan 2017 (MLDP) which identifies the western portion of the site as being within the Midlothian Science Zone where there is a presumption in favour of development that supports and expands bioscience research and development; and the eastern portion of the site as being within the built-up area of Bilston where there is a presumption in favour of appropriate development. An application for the proposed development will be assessed against the following MLDP policies:

- STRAT1 – Committed development;
- STRAT3 – Strategic Housing Land Allocations;
- STRAT5 – Strategic Employment Land Allocations;
- DEV1 – Community Identity and Coalescence;
- 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;
- ECON2 – The Midlothian Science Zone;
- TRAN1 – Sustainable Travel;
- TRAN2 – Transport Network Interventions;
- TRAN5 – Electric Vehicle Charging;
- IT1 – Digital Infrastructure;
- ENV7 – Landscape Character;
- ENV9 – Flooding;
- ENV10 – Water Environment;
- ENV11 – Woodland, Trees and Hedges;
- ENV15 – Species and Habitat Protection and Enhancement;
- ENV17 – Air Quality;
- ENV18 – Noise;
- ENV22 – Listed Buildings;

- ENV25 – Site Assessment, Evaluation and Recording;
- NRG6 – Community Heating;
- IMP1 – New Development;
- IMP2 – Essential Infrastructure Required to Enable New Development to Take Place;
- IMP3 – Water and Drainage.

3.5 The views of consultees and representors will be material considerations in the assessment of an application for the proposed development. The Council's Learning Estate Strategy 2017-2047 will also be a material consideration in the assessment of an application for the proposed development.

3.6 There is a presumption in favour of *appropriate development* within the site; the land to the east of Seafield Moor Road is identified for housing and the land to the west of Seafield Moor Road is within the Midlothian Science Zone where there is long term support for bioscience research and development. Although the proposed development does not fall within the stated development categories (housing and bioscience) the sites are within the built-up area and there is the potential to set out material considerations which support the proposed development on the site – these would include the provision of much needed education and community facilities which would benefit from their strategic location in close proximity to the Midlothian Science Zone and their central location to serve the dispersed communities of Bilston, Roslin, Loanhead and Auchendinny.

## 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 be 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 that they are minded towards if persuaded that they should.

## 5 RECOMMENDATION

5.1 It is recommended that the Committee notes:

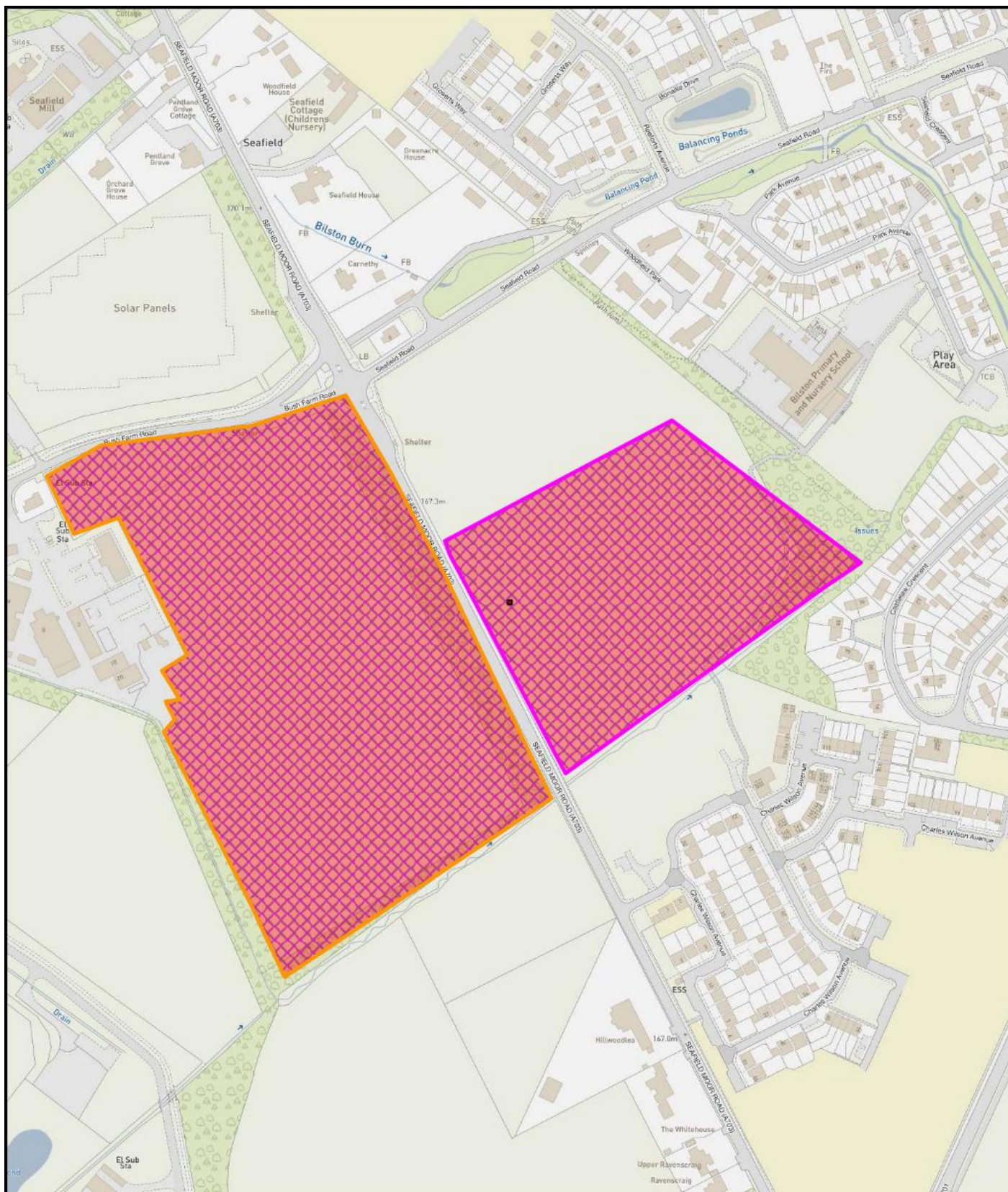
- a) the provisional planning position set out in this report;

- 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>	19 August 2022
<b>Application No:</b>	22/00581/PAC
<b>Applicant:</b>	Midlothian Council
<b>Agent:</b>	Architype
<b>Validation Date:</b>	28 July 2022
<b>Contact Person:</b>	Graeme King
<b>Email:</b>	<a href="mailto:graeme.king@midlothian.gov.uk">graeme.king@midlothian.gov.uk</a>





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

## Erection of high school & community facilities Land East and West of Seafeld Moor Road, Bilston

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File No.22/00581/PAC

Scale: 1:4,000





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

Report by Chief Officer Place

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## **1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION**

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



## **2 LOCATION AND SITE DESCRIPTION**

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

## **3 PROPOSAL**

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



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

3.3 The application is accompanied by:

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

## 4 BACKGROUND

### Application Site

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

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

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

#### Land to east

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

#### Land to north

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

#### Land to west

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

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

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

## **5 CONSULTATIONS**

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

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

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

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

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

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

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

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

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

## 6 REPRESENTATIONS

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

6.2 The grounds for objection are as follows:

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

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

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

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

6.4 The neutral representation raises the following points:

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

## **7 PLANNING POLICY**

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

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



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

- 7.3 The following policies are relevant to the proposal:

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

- 7.4 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.
- 7.5 **Policy 6 (HOUSING LAND FLEXIBILITY)** - each planning authority in the SESplan area shall maintain a five years' effective housing land supply at all times. The scale of this supply shall derive from the housing requirements for each local development plan area identified through the supplementary guidance provided for by SESplan policy 5. For this purpose planning authorities may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the local development plan.
- 7.6 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified strategic development areas may be allocated in local development plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) the development will be in keeping with the character of the settlement and local area; (b) the development will not undermine green belt objectives; and (c) any additional infrastructure required as a result of the development is either committed or to be funded by the developer.
- 7.7 **Policy 13 (OTHER COUNTRYSIDE DESIGNATIONS)** requires Local Development Plans to review and justify additions or deletions to other countryside designations fulfilling a similar function to those of the Green Belt as appropriate. Opportunities for contributing to the Green Network proposals should also be identified.

Midlothian Local Development Plan 2017 (MLDP)

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



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

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

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

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

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

## National Policy

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

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

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

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

## **8 PLANNING ISSUES**

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

### Principle of development

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

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

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

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

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

#### The Supply of Effective Housing Land

- 8.8 The Council is required to maintain a five year supply of effective housing land at all times (SPP paragraph 125). The number of homes required in a local authority area is identified through the Strategic Development Plan (SESplan) (to be replaced by NPF4) and is met by the development strategy and policies of the MLDP. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall. Sites accepted in this way are presumed in favour (in principle) subject to the applicant demonstrating that:

- they are effective;
- they contribute towards sustainable development;
- avoid any significant impacts on their locality in relation to amenity and environmental concerns; and
- their impact on local infrastructure can be mitigated.

- 8.9 The supply of effective housing land in Midlothian is subject to annual review in the Housing Land Audit (HLA21 – the 2022 audit is in an advanced stage of preparation). The HLA is reviewed and endorsed by Homes for Scotland, the umbrella body which represents the housebuilding industry. The effectiveness of the housing land supply is also reviewed in the MLDP Action Programme. This will identify the trigger for introducing actions to make up any shortfall, if one is identified. These actions will be set out in the latest Action Programme approved by Council. Similarly, the MLDP also sets out policies to address a shortfall in the housing land supply where this arises during the lifetime of the plan. One such action would be the support for early delivery of safeguarded sites, provided that a proposal can demonstrate it can/will contribute to new homes to make up the shortfall – this approach is supported by the MLDP. Whilst the Committee has previously approved housing development on



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

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



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

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

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

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

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

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

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

#### Transportation and access

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

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

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

#### Biodiversity

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

#### Use of Flats

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

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

#### Developer contributions

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



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

## 9 RECOMMENDATION

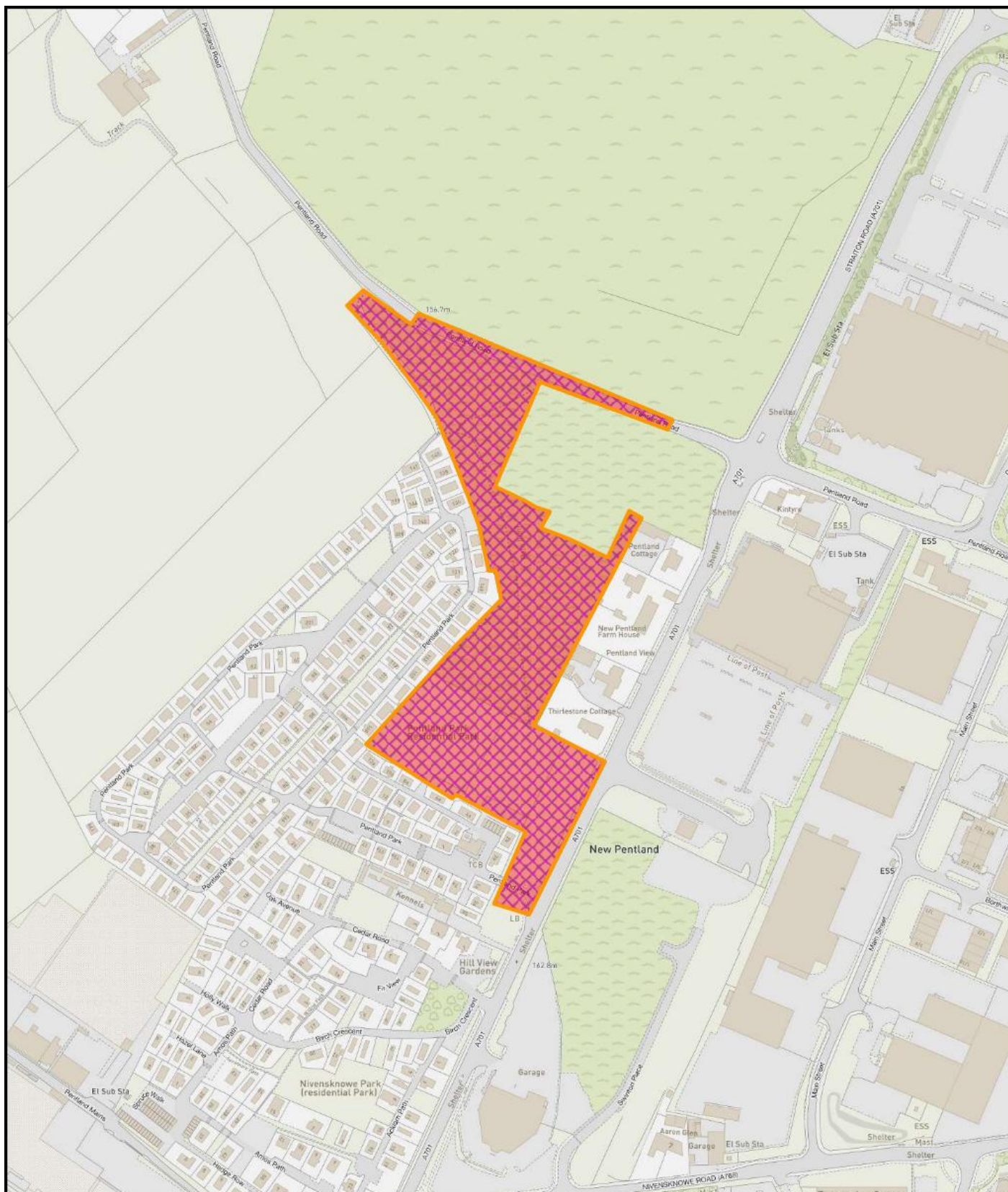
That planning permission be refused for the following reasons:

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

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

<b>Date:</b>	19 August 2022
<b>Application No:</b>	21/00958/PPP
<b>Applicant:</b>	Pentland Park Marine Ltd
<b>Agent:</b>	Marc Giles, Ryden
<b>Validation Date:</b>	26 November 2021
<b>Contact Person:</b>	Graeme King
<b>Email:</b>	<a href="mailto:graeme.king@midlothian.gov.uk">graeme.king@midlothian.gov.uk</a>
<b>Background Papers:</b>	21/00055/PAC, 21/00237/SCR, 21/00338/DPP





**Education, Economy  
& Communities**  
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## **Proposed mixed-use development Land at Junction of A701 and Pentland Road**

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File No.21/00958/PPP

Scale: 1:4,000



